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**Community Legal  
Aid Society, Inc.**

# **Your Rights as a Parent of a Special Education Student**

EQUAL JUSTICE

# Introduction

As a parent of a special education student, you play a crucial role. You are not only your child's most important advocate, you are also a member of the school team that decides placement and services for your child.

## The Laws on Special Education

### ■ Section 504

- Section 504 of the 1973 Rehabilitation Act provides for accommodations for students who have disabilities and need extra assistance at school. As long as your child has some type of diagnosed disability (either from a health care provider, therapist or psychologist), your child is eligible for a Section 504 Plan.
- Some examples of 504 plans include allowing for extra time on tests, special seating, time out, mentoring and incentive structures for students with disabilities. These types of accommodations are available to students with disabilities who need additional assistance to succeed in school. Typically, students who have Section 504 plans need minimal accommodations in mainstream or regular education classes.
- A student who qualifies for special education under Section 504, will be entitled to a document called a Section 504 plan which outlines the areas of need and the necessary accommodations, and also contains a quarterly log to track the student's progress.
  - For example, many students with 504 plans are children with ADHD, ADD, or emotional/behavioral issues who need assistance in refocusing, test taking, behavior modification or prompting.

before a three judge panel composed of a Delaware attorney, a Delaware educator with knowledge of special education and a lay person with knowledge of special education.

**If you are unsuccessful at Due Process, you have the right to appeal to Federal District Court or Delaware State Family Court within 90 days from date of decision.**

### Legal Representation

You are entitled to represent your child's interests at a due process hearing before an administrative body without an attorney. If you choose to have legal representation, you may be able to collect attorneys' fees for any actions arising out of the due process complaint. Attorneys' fees are available if you are successful in your due process complaint for drafting the complaint, participation in mediation, resolution meetings, the due process hearing or court proceedings. No attorneys' fees are available for attorney representation prior to filing for due process. The school district is also entitled to seek attorneys' fees for due process complaints that are frivolous, unreasonable, or for an improper purpose in limited circumstances.

**If you file a complaint in good faith and withdraw it if the complaint is no longer valid, you are not subject to this sanction.**

However, if you proceed to court (either federal or family court) you must be represented by an attorney.

Because special education is often costly for schools to develop and implement, you will likely have to advocate for your child throughout his or her education to receive the appropriate services and placement.

If your child has not received appropriate accommodations, has not received proper placement, or the school has not complied with your child's 504 plan or IEP, you may want to contact Community Legal Aid Society, Inc. for further information.

**A new 45 day period begins each time a party amends the complaint.**

5. If you find you have more issues that you want to raise you must seek the school district's consent to amend the complaint and the hearing time line starts fresh after each amended complaint.

**Resolution meeting**

After you have filed your due process complaint, the school district must hold a resolution meeting with you and the IEP team within 15 days of receipt of the due process complaint to give parents and the school a chance to work through the complaint.

A resolution meeting can only be waived in writing.

- Any agreement signed during a resolution meeting can be modified or cancelled within three business days.
- Any agreement reached is enforceable by a court.
- The agreement and meeting are **not** confidential. Therefore, any information acquired at the meeting may be used as fact finding or as a way to gather evidence by either party if the school and the parents later go to a formal due process hearing.
- The school's attorney is allowed to attend the resolution meeting only if the parents are also represented by counsel.

**Mediation**

You have the option of going to mediation before you initiate due process. But the school district is also required to offer mediation during due process in addition to a resolution meeting. There is no requirement for parents to attend mediation before proceeding straight to due process. However, any agreement reached at mediation is enforceable in court.

**The Due Process Hearing**

At a due process hearing, you have the right to present any evidence or testimony in support of your case. The school district has the burden of proof, which means the school has to prove their actions were more reasonable than not. The case will go

**■ The Individuals with Disabilities Education Act (IDEA)**

- Under the Individuals with Disabilities Education Act, students with specific disabilities receive special rights and services based on their individual needs. Each child identified under IDEA is entitled to a free appropriate public education (FAPE). A FAPE has been interpreted through case law to mean that your child is entitled to receive services necessary to help him or her advance from grade to grade. However, there is no right or school requirement to maximize the student's education potential. Your child is only entitled to accommodations that are minimally appropriate to promote him to the next grade.
- In order to qualify under IDEA for special education services, a student must be classified as being:
  - Autistic
  - Deaf or hearing impaired
  - Blind or sight impaired
  - Emotionally disturbed
  - Developmentally delayed
  - Learning disabled
  - Mentally disabled
  - Physically impaired
  - Speech impaired
  - Language impaired
  - A child with a traumatic brain injury
  - Other health impaired.
- Generally, students who qualify for special education services under IDEA will be identified by the school district during grade school or during pre-school. Every school has an obligation to identify and serve children with disabilities. However, it is not unusual for a parent to request that his or her child be evaluated for special education services when the school has not independently initiated an evaluation. If you request an evaluation for special education, the school has 45 school days/ 90 calendar days to begin the evaluation process after the school receives your written consent to evaluate.

- The IDEA requires school agencies to provide each child with an Individual Education Program (IEP). The IEP is a document developed and implemented by a team composed of parents, teachers and specialists who will work together to provide services to the student. Initial diagnostic tests and evaluations will be completed by specialists. The IEP team will then use these assessments in formulating the range of services for a student with special needs.
- The IEP will spell out the specific goals of the student and the type and duration of related services such as therapists, aids or assistive technology. The plan will also spell out the student's current level of performance and accommodations for the Delaware Student Testing Program (DSTP). The plan further determines the student's placement, which can range from mainstream regular education classes to a self contained classroom to a private placement.
- Once you, as the parent, agree to the IEP document the team can begin to implement it. At any time after the IEP begins, you always have the right to request an IEP meeting or a reevaluation if you feel that parts of the IEP are not appropriate for your child.

### IEP meetings

- Once the school determines that your child needs special education, they must conduct an Individual Education Plan meeting within 30 days of that determination.
- The IEP team consists of the parents, at least one regular education teacher, at least one special education teacher or one special education provider (i.e. a speech therapist or occupational therapist), a representative from the school (i.e. the principal or assistant principal), an individual who is qualified to interpret diagnostic evaluations (i.e. the educational diagnostician or school psychologist), any expert or individuals with special knowledge of the child that the parents would like to invite, and if appropriate, the child.

### Due Process

Before you file for due process, you have the right and opportunity to consider alternatives such as calling an IEP meeting, mediation or a resolution meeting. If you decide to file for due process, keep in mind that it may take a long time to resolve and your child will remain in his or her same placement through the duration of the due process proceedings under “stay put.” However, if you believe that due process is the most appropriate means to resolve disagreements with the school regarding your child's educational needs, the following are important steps in handling due process.

1. The due process hearing is **limited** to issues raised in your complaint. The hearing panel has 45 days from the date they receive your complaint to schedule a hearing.
2. The complaint must be **specific**—i.e. “violation of FAPE” is not a sufficient reason in the complaint to request a due process hearing. Be explicit about what problems you see in your child's special education plan (For example, a parent can plead an inadequate number of therapy hours based on the recommendations of the therapist or that no progress has been made on a child's IEP goals and the goals are the same every year.)
  - You have **2 years** from the date you knew or should have known of the action/basis for the complaint (unless you have cause to show the school made misrepresentations about your child's progress).
3. After a parent/advocate files a due process complaint, the school district must file a response to the complaint and provide the parents/advocate with two copies within 10 days of receipt of the complaint.
4. Alternatively, the school district can also object to the complaint within 15 days of receipt of the parents' complaint if it lacks sufficiency/specificity. When the complaint lacks specificity, the parents can no longer proceed with due process. Instead, an objection by the school that a complaint is insufficient has the effect of starting the 45 day period for a due process hearing again.

- Administrative complaints are appropriate for cases where there is a clear denial of services or placement. Appropriate administrative complaints include, for example, when your child has not received therapy sessions listed in your child's IEP, or when the school will not consider a certified evaluation in developing an IEP plan.
- Administrative complaints are only available for issues that arise within one year of when you knew or should have known about the problem(s).
- The complaint will go to the Department of Education, P.O. Box 1402, Dover, DE 19903, and should include:
  1. the name of the school or the agency you are filing the complaint against;
  2. a statement that the agency has violated a requirement of IDEA or a Delaware special education regulation;
  3. the facts of your claim;
  4. the time frame in which the incident(s) occurred;
  5. a description of the attempts made to resolve the issue(s) before filing the administrative complaint; and your name, address, phone number(s)
- Once you file an administrative complaint, the Department of Education will investigate within 60 days and issue a decision.
- A member of the DOE will interview you to hear your side of the situation and will also interview the school district.
- You also have the option of going to mediation after you have filed your administrative complaint to attempt a negotiation.

Administrative complaints are investigatory actions; you will not go before a hearing panel to decide upon the complaint. Therefore, any issues you have need to be thoroughly explained in your complaint. Administrative complaints are a less contentious and faster way to resolve disputes, but they are most appropriate where no material factual disputes exist.

- All IEP team members must attend your child's IEP meeting. An IEP team member can only miss a meeting if he or she requests excusal in writing and if the parent consents.
- **Amendments to IEP:** Any changes/revisions to an IEP without a formal meeting must be agreed to in writing by the parent(s).
- You should always request a copy of the amended IEP, since one will not necessarily be provided to you after it is amended.
- Although you will be scheduled to have an IEP meeting every year, your child is entitled to a reevaluation of tests, services, or diagnoses every three years.
- However, at any time you can request a **reevaluation** if you believe your child is not adequately placed, does not have appropriate services, or needs additional accommodations. You should always put your request in writing.
- To ensure that your child has appropriate IEP goals and services, you should request a yearly meeting to go through your child's progress. At that meeting you will be able to assess if your child's goals or services need to change or if a reevaluation is warranted. You are also entitled to meet with the IEP team at any time, but it is helpful to make the request in writing.

### **Transfer students**

If your child transfers to a new school, the school must review the IEP from the former school.

- The new school must adopt, modify, or draft a new IEP and any behavior plans within a reasonably prompt amount of time. Although no time frame exists, 60 days is often considered to be a reasonable amount of time.
- The new school must also provide comparable services to the previous placement until the new school assembles an IEP team to adopt or revise your child's IEP to fit the new school's services.

## Your Rights as a Parent of a Special Education Student

If you disagree with the suggested 504 plan or the IEP, you have many options including due process, administrative complaints, mediation and resolution meetings. However, your rights regarding your child's education are different under Section 504 and IDEA protections.

### Section 504

- You always have the option to assemble a meeting and discuss your areas of concern before taking a more adversarial step.
- Under Section 504, if you disagree with the proposed accommodations, you have the right to file a grievance with the local school district. A grievance would be in the form of a letter, which spells out your complaints with your child's 504 Plan.
- You can also file a complaint with the Office of Civil Rights of the United States Department of Education within six months from the date you knew or should have known about the problem for which you are filing a complaint. In your complaint you will need to specify the type of discrimination your child suffered based on your child's 504 Plan.
- You can obtain a complaint form on line at <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/complaintform.cfm> or call 1-800-421-3481.

### IDEA

- As a parent of a student classified under IDEA, you have a substantial number of options if you believe that your child needs changes in his or her IEP.
- First, it is always a good idea to try to request changes when you are at the IEP meeting. You should explain your reasons for wanting changes and listen to the IEP team's reasons if the other members' opinions differ from yours. You can request an

IEP meeting at any time, even if your child's IEP is not scheduled for a review for several months.

- Alternatively, you can ask for a reevaluation if you believe the IEP team has failed to consider important information.
- You also have the right to request an independent educational evaluation, which the IEP team will be required to consider in planning for the student. You can either pay for the evaluation on your own, or you can request that the independent evaluation be covered at public expense. Be aware that the procedures to have the school district pay for an independent evaluation are very specific.

### Independent Evaluations

- First, you will need to put your request in writing. The school district will either give you a list of evaluators and the district's requirements and procedures or the district may file for due process if it does not agree that your child needs an independent evaluation.
- Bear in mind that an independent evaluation is only appropriate if an independent evaluator is likely to offer different recommendations, or a different classification and/or placement for your child. An independent evaluation that would duplicate an existing evaluation will not be helpful, and is unlikely to be paid for at public expense.

### Mediation

- If you find that you and the school have reached an impasse, you can write the school to request mediation. The school IEP team and the parents can attend mediation with a neutral third party at no cost to the parents. It is often a successful, efficient way to resolve differences between the parties.

### Administrative Complaints

- If you are not satisfied with the school's special education services and you have hit an impasse at meetings, you also have the option of filing an administrative complaint with the Delaware Department of Education.