



Parent's Guide to Special Education

3535 E. 30th Street, Suite 201, Farmington, New Mexico 87402
Phone (505) 566-5880 • Toll free (800) 862-7271 • Fax (505) 566-5889

This pamphlet is intended to provide general information. It is not a substitute for legal advice.

Please note that all laws are subject to change at any time. If you have any questions about the material, please contact the Native American Disability Law Center or consult with a lawyer in your community if you require further information.

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INTRODUCTION AND OVERVIEW

The Individuals with Disabilities Education Act (IDEA) is a federal law that guarantees that children with disabilities receive a free appropriate public education alongside their non-disabled peers. Congress passed the law in 1975 after finding that 1.75 million children with disabilities were entirely excluded from the public school system, and that 2.2 million were in programs that did not meet their educational needs. Although the law has been amended and revised throughout the years, the basic requirements have remained unchanged.

The IDEA covers eligible students with disabilities ages 3 to 21. To be eligible, the student must have one of several listed impairments and, as a result, need special education. Special education means specially designed instruction to meet the unique needs of the child. Each student has a written individualized education program (IEP), which is devised by a group of people including the parent. Students with disabilities must be educated in the regular educational environment to the maximum extent appropriate. Parents have the right to enforce the IDEA by requesting a “due process hearing” and making appeals to court. Students with disabilities enrolled in schools funded by the Bureau of Indian Education are entitled to the benefits and protections of IDEA.

In addition to the IDEA, there are other laws that affect your child’s right to an appropriate education such as:

Section 504 of the Rehabilitation Act (Section 504): Section 504 prohibits discrimination on the basis of disability in programs receiving federal funding. Some students who do not qualify for special education services under the IDEA may still receive services under Section 504 if they are considered a “qualified individual with a disability.” To be qualified, the student must have a physical or mental impairment which substantially limits one or more major life activities, such as reading, playing, moving between classes or a condition that requires medication, such as diabetes; a record of such impairment; or is regarded as having such impairment. Section 504 requires that all qualified students have an equal opportunity to participate in activities and services at school including school clubs, after-school programs, sports, and other extracurricular activities.

Americans with Disabilities Act (the ADA): Title II of the ADA protects qualified individuals with disabilities from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. The anti-discrimination prohibition extends to all activities of State and local governments, including those that do not receive Federal financial assistance. All public schools must comply with the ADA.

No Child Left Behind Act (NCLB): NCLB is a federal law that reauthorized a number of federal programs. NCLB aims to improve student performance by increasing the standards of accountability, as well as providing parents more flexibility in choosing which schools their children will attend. NCLB requirements and standards also apply to special education programs and services.

Family Educational Rights and Privacy Act (FERPA): FERPA is a federal law that protects the privacy of student educational records. The law applies to all schools that receive federal funds. FERPA gives parents certain rights with respect to their children's educational records, which transfer to the student when he or she turns 18. Parents or eligible students have the right to inspect and review the student's educational records and the right to correct inaccurate or misleading information contained in educational records. Generally, schools must have written permission from the parent or eligible student in order to release information from a student's files.

State laws and regulations: Each state receiving IDEA funds is entitled to create its own rules for implementing the law. The state can do more than federal law requires, but can never do less. In Arizona, the Arizona Department of Education is responsible for enforcing the IDEA. In Colorado, it is the Colorado Department of Education. In New Mexico, it is the New Mexico Public Education Department. In Utah, it is the Utah Office of Education. Bureau of Indian Education funded programs are enforced through that agency. For more information, please contact the appropriate entity:

Arizona: Exceptional Student Services
Arizona Department of Education
1535 West Jefferson Street, Bin 24
Phoenix, Arizona 85007
Telephone: (602) 542-4013 or (800) 352-4558
TTY: (800) 842-4681
Facsimile: (602) 542-5404
www.ade.state.az.us/ess

Colorado: Colorado Department of Education
State Office Building
201 East Colfax Avenue
Denver, Colorado 80203-1799
Telephone: (303) 866-6600
Facsimile: (303) 830-0793
www.cde.state.co.us/cdesped

New Mexico: Special Education Bureau
New Mexico Public Education Department
120 South Federal Place, Room 206
Santa Fe, New Mexico 87501
Telephone: (505) 827-5800
Facsimile: (505) 954-0001
www.ped.state.nm.us/seo

Utah: Special Education Services
Utah State Office of Education
250 East 500 South
Post Office Box 144200
Salt Lake City, Utah 84114-420
Telephone: (801) 538-7587
Facsimile: (801) 538-7991
www.schools.utah.gov/sars

BIE: Division Performance and Accountability
Bureau of Indian Education
1011 Indian School Road NW (Room 332)
Post Office Box 1088
Albuquerque, New Mexico 87104-1088
Telephone: (505) 563-5255
Facsimile: (505) 563-5281
www.oiep.bia.edu/bie

EVALUATION AND ELIGIBILITY FOR SPECIAL EDUCATION SERVICES

What is special education?

Special education means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability. Special education is a service, not a place and can be provided in the classroom, home, hospitals, or other settings. The definition includes instruction in physical education and travel training.

What are related services?

Related services are support services a student requires in order to benefit from his or her special education program. The term includes, but is not limited to, transportation, speech-language therapy, audiology, psychological services, physical and occupational therapy, recreation, social work services, orientation and mobility services, counseling, medical services for diagnostic purposes, health and nursing services, and parent counseling and training.

What does “free appropriate public education” mean?

A free appropriate public education or FAPE is defined as an educational program that is individualized to a specific child, designed to meet that child's unique needs, provides access to the general curriculum, meets the grade-level standards established by the state, and from which the child receives *meaningful* educational benefit.

To provide FAPE to a child with a disability, schools must provide the student with an education, including specialized instruction and related services that prepares the child for further education, employment, and independent living.

How do I refer my child for special education services?

The school must complete an initial evaluation before it places the child in a special education program. The parent, teacher, or other professional involved in the education of the student may refer the child for a special education evaluation. However, the school must obtain a parent's informed written consent in order to conduct the evaluation.

What does the evaluation involve?

The school must conduct a full and individual initial evaluation to determine if the student has a disability and needs special education services. The evaluation is a set of activities, not a single test. A team of trained and knowledgeable professionals must do

all evaluations. The evaluation must cover all areas of suspected disability and be comprehensive enough to identify all the special education and related service needs of the student. The evaluation must gather relevant functional, developmental, and academic information, including information provided by the parent. The school must assure that the evaluation is administered in the language most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally.

What is the purpose of the evaluation?

The evaluation must answer the following two questions: Does the student have a disability? If yes, what are the student’s educational needs resulting from the disability?

Will the school evaluate my child for related services?

Yes. The evaluation must be sufficiently comprehensive to identify all of the child’s special education *and* related services needs.

How long will it take to complete the evaluation?

The school must complete the evaluation process within 60 calendar days from the date the school receives written consent for testing signed by the parent or legal guardian.

Does the evaluation have to be provided in my child’s primary language?

Yes, unless it is clearly “not feasible” to do so.

How does the school evaluate a child for a suspected learning disability?

The school may consider whether the student has received a method of instruction known as “response-to-intervention” when determining if a learning disability exists. The intent is to assure that a student is not labeled as having a learning disability until the student has first been provided with quality educational instruction.

Will the school provide me with a copy of the report?

Yes. The school is required to provide you with a copy of the written evaluation report.

Can the school evaluate my child without my permission?

No. The school must obtain your written consent before conducting the evaluation.

What happens after the evaluation is completed?

After the evaluation, your child's IEP Team must meet to decide what, if any, special education services should be provided, and to write an Individual Education Program (IEP). Your school is supposed to give you copies of its written assessments before that meeting. Ask for explanations of anything you don't understand in the report.

What if I decide not to put my child in special education after the evaluation?

The parent's consent for an evaluation is *not* the same as consent for special education services. You will be asked to consent for services after the evaluation. It is up to you whether to put your child in a special education program or not.

What can I do if I disagree with the school's evaluation?

If you have concerns about the evaluation results or the team's program recommendations, you can request an independent educational evaluation at public expense. You must tell the school in writing that you "disagree" with its evaluation, although you do not have to explain why you disagree. We have attached a sample letter to this pamphlet to help you to request an independent evaluation.

Who conducts the independent evaluation?

Independent evaluations are done by qualified persons who are not employed by the school. You may ask the school how and where to get an independent evaluation or you may get the independent evaluation done by someone not recommended by the school, as long as this person is qualified to perform the evaluation.

Can the school refuse to pay for the independent evaluation?

If you ask the school to pay for the independent evaluation, the school must do so unless the school asks for a due process hearing to show its evaluation was appropriate. If you want the school to pay for the independent evaluation, the testing you get must meet the same requirements the school uses.

Is the school required to accept the findings of the independent evaluator?

The IEP Team must discuss and consider the independent evaluation. The Team does not, however, have to accept any or all of the evaluator's recommendations.

Who is eligible for special education?

To be eligible for special education, a child must have a particular disability listed in the statute and must need special education services and related services. If a child has a disability but does not need special education services, the child is not eligible for special education under IDEA.

What disability categories are listed in the statute?

Mental Retardation
Hearing Impairment (including deafness)
Speech Language Impairment
Visual Impairment (including blindness)
Seriously Emotionally Disturbed
Orthopedic Impairment
Autism
Traumatic Brain Injury
Other Health Impairment
Specific Learning Disability
Deaf-Blindness
Multiple Disabilities

Can a child with attention deficit disorder or attention deficit hyperactivity disorder (ADD or ADHD) be eligible for special education?

Yes. Federal law has specifically recognized ADD and ADHD as examples of conditions that may qualify under the category of “other health impairment” if the other criteria for that condition are met. Students with ADD or ADHD may also qualify under the categories of “specific learning disability” or “seriously emotionally disturbed” depending upon the situation.

My child is two years old and has a disability. Is she eligible for special education from the school?

No. Infants and toddlers ages birth to three receive early intervention services under Part C of the IDEA from the state’s early intervention agency. The appropriate state agency will conduct an evaluation to determine eligibility and need for services. If services are needed, an Individual Family Service Plan (IFSP) is developed with the family.

How often must the school reevaluate my child?

After the initial evaluation, the school and the parent must meet at least once every three years to consider the student’s need for a reevaluation. The group reviews “existing data” to decide if they need additional information to determine the student’s needs.

What is existing data?

Existing data includes evaluations and information provided by the parent, current classroom-based assessments, observations, and teacher and related services providers' observations.

Who is included in the group that reviews the existing data?

The group includes the parents, IEP Team members, and “other qualified professionals” as appropriate.

Does the school need my consent to conduct the reevaluation?

Yes, unless the school took “reasonable steps” to obtain your consent and you failed to respond. The school must show that it made multiple attempts to contact you, including visits to your home or workplace, and keep records of those attempts. If the school takes reasonable steps and you fail to respond, then it can conduct the reevaluation.

I think my child needs a reevaluation but the school doesn't agree. What can I do?

As the parent, you have the right to obtain a reevaluation even if the school disagrees. Be sure to put your request for a reevaluation in writing. There is a sample letter attached to this pamphlet that can help you request a reevaluation.

Evaluation Tip:

Ask your private therapist or doctor to look at your child's evaluation & ask for his or her opinion about the results.

INDIVIDUALIZED EDUCATION PROGRAM

What is an IEP?

An individualized education program (IEP) is a written plan that describes the educational program the school will provide to meet a child's unique needs. The IEP must contain measurable annual goals in each area of need. The IEP states what special education and related services and supplemental aids and services the school will provide, and when and where those services will be provided. The IEP must consider and address the academic, developmental, and functional needs of the student. Services must be based on peer-reviewed research to the extent practicable.

Each child who receives special education and related services must have an IEP. The IEP must be designed for one student and must be a truly individualized program.

My child's initial evaluation is complete. When will the school hold the IEP Team meeting?

The school must hold the IEP meeting within 30 days of the determination that your child needs special education. Services under that IEP must begin as soon as possible.

How will I be notified of an IEP meeting?

The school must take steps to ensure that one or both of the parents of the student can attend the IEP meeting. The school must notify you of the IEP meeting early enough to ensure that you have an opportunity to attend. The school must also inform you of the purpose, time, and location of the meeting, as well as the anticipated participants. The school must notify you of your right to invite others to the meeting who have knowledge or special expertise about the child.

What if I received meeting notice but can't attend?

The meeting must be scheduled at a mutually agreed upon time and place. If neither parent can attend the IEP meeting, the school must either reschedule the meeting or use other methods to make sure that the parent can participate in the meeting, such as individual or conference calls. Before the school can hold an IEP meeting without a parent, it must show that it tried to convince the parent to attend.

How often does the IEP Team meet?

The IEP Team must meet at least once a year to develop, review, and revise your child's written educational program. An IEP meeting may also be held when the student demonstrates a lack of progress or upon request of a parent or teacher.

Who is a member of my child's IEP Team?

The IEP Team includes: (1) one or both parents; (2) one general education teacher if the child is or may be in general education; (3) one special education teacher or service provider; (4) a school district representative with the sufficient qualifications; (5) an individual who conducted the assessment of the student or is knowledgeable and qualified to interpret those results; (6) at either the parent or school's request, other people with specific expertise or knowledge of the student, and (7) the student when appropriate.

Can I bring a friend or an advocate to the meeting?

Yes. You may invite "other people with specific expertise or knowledge of the student." As the inviting party, you decide if the invited person has sufficient knowledge or expertise.

What is included in the written IEP?

In general, each IEP must include the following:

- (1) A statement of the student's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum;
- (2) Measurable annual goals;
- (3) A statement of specific special education services, related services, supplementary aids and services, and program modifications and supports for school personnel;
- (4) An explanation of the extent, if any, the child will not participate in regular education classes;
- (5) Date for the initiation and the anticipated duration, frequency, and location of the services and modifications included in the IEP;
- (6) Modifications in the administration of state or district-wide tests;
- (7) Objective criteria for determining whether the measurable goals are being achieved;
- (8) A description of the type of placement needed to implement the IEP in the least restrictive environment.

When does my child's IEP go into affect?

The school must begin providing the services in the IEP as soon as reasonably possible. The school should give a parent a Prior Written Notice that will indicate when services will begin.

What does it mean when I sign my child's IEP?

By signing the IEP, you are telling the school that you agree with the program and services identified in the IEP and that you consent to those services being provided as written. Services will not begin until a parent signs the first IEP. After the first IEP, you may be asked to sign the IEP to show that you agree with the services described in the IEP. If you do not agree with the IEP, you can sign to show that you disagree with the services, but that you did attend the meeting.

What are transition services?

Transition services are those services and activities provided to students that specifically help them to move successfully from public school to life after public school. Transition activities should help your child make a successful transition to post-secondary education, employment, and/or independent living. These services should be very individualized for your child and his or her needs as an adult.

Transition services must be based on your child's strengths, preferences and interests. IEPs must include transition services for the child by age 16. The student must be invited to participate in the IEP meeting when transition services are discussed.

What are "extended school year" services?

Extended school year (ESY) means services that are provided in the summer or over a holiday break to some students with disabilities who require them as a part of their free appropriate public education. ESY services are required when a student may lose skills during extended breaks or vacations. ESY services are to be provided in accordance with the IEP, at no cost to the parents. Not all students with an IEP will be eligible for ESY services. Like other IEP services, the ESY services must be provided based on the student's needs, not the extent of services that are available during vacations.

How does my child become eligible for extended school year services?

The IEP team must consider whether a student with an IEP needs services during extended breaks or vacations to prevent the student from losing skills. This determination is based on whether the student will regress or lose skills and take longer than usual to recoup those skills.

My son just turned 18. Is he still eligible for special education?

Students with disabilities are entitled to receive special education and related services until they graduate from high school with a "regular" diploma, or reach their 22nd birthday, whichever happens first.

Where will my child's IEP be implemented?

After the IEP Team drafts a program of services, the next step is to determine where the special education and related services will be provided. This is generally referred to as the "placement decision." Parents must be a part of any decision regarding the child's educational placement.

How are placement decisions made?

Placement decisions must be made at least once every year and based on the student's individual needs. The decision is based on evaluation information and not on disability label or staff convenience. We presume that the child will attend his or her neighborhood school. If the neighborhood school is not appropriate, then the placement must be as close to home as possible.

What does Least Restrictive Environment (LRE) mean?

The school must educate students with disabilities in the least restrictive environment (LRE). This means that the student must be placed in the setting that puts the fewest limits on his or her opportunities to be educated with students who do not have disabilities. If the IEP Team places the child somewhere other than the regular classroom, the IEP must specify why a more restrictive placement is needed.

What does the school have to provide so that my child can be successful in the regular education classroom?

In order to be successful in the least restrictive environment, students are to be provided supplementary aids and services. This may include assistive technology or staff assistance that compensates for limits in functioning and allows students to perform educational and social activities in a general education environment.

Who is responsible for implementing my child's IEP?

The school district where you live is responsible for insuring that the services in your child's IEP are provided. Those services are not based on what personnel or equipment the school district already has on site. The school district and your child's school must provide the services and supports as written on you child's IEP.

IEP Tip:

Make sure you fully understand your child's IEP, including where he will be receiving services & who will be working with him.

RELATED SERVICES & ASSISTIVE TECHNOLOGY

What are related services?

Related services are support services a student requires in order to benefit from his or her special education program. The term includes, but is not limited to, transportation, speech-language pathology, audiology, psychological services, physical and occupational therapy, recreation, social work services, orientation and mobility services, counseling, medical services for diagnostic purposes, health and nursing services, and parent counseling and training.

What does “benefit from the special education program” mean?

A school does not have to provide a related service to a student with a disability just because he or she will benefit from the service. The service is only related if it is necessary to help the student benefit from educational instruction.

My child doesn't need special education, but I would like for him to receive occupational therapy at school so that he can learn to hold his pencil better. Does the school have to provide occupational therapy to my child?

Unfortunately, under federal law, a student cannot receive related services unless he or she has been found eligible for special education. State laws can vary, so check with your state educational agency to find out if your state would require the school to serve your child.

Who decides if my child needs a related service or not?

The IEP Team decides whether a student is eligible for each related service. The decision will be based on written reports from related service professionals, as well as information provided by the parent. Every service the school provides must be written into the IEP, including information about how often the services will be provided, how long each session will last, the type of related service professional needed, and when the services will begin and end.

The IEP Team agrees that my child needs direct speech therapy at least 3 times per week, but the school says it doesn't have enough service providers to follow the IEP. Can the school refuse to provide the service?

No. Lack of money or personnel cannot be used as reasons to deny the student any related services she needs to benefit from her educational program. If the school lacks the necessary personnel, it can contract with outside professionals to provide related services.

When can my child get transportation as a related service?

Transportation is a related service when it is necessary in order for a student to benefit from special education. The IEP Team must consider how the child's disability affects the child's need for transportation, including, determining whether the child's disability prevents him from using the same transportation provided to non-disabled children or from getting to school in the same manner as non-disabled children.

Children should only be placed on a "special education bus" when their individual circumstances require that placement, not simply because they are receiving special education services. To the greatest extent possible, a child with a disability should travel on the "regular" bus even if she requires assistance for that to be appropriate.

What is assistive technology?

An **assistive technology device** is any item, piece of equipment or product used to increase, maintain, or improve the functioning of a student with a disability. Assistive technology devices for students with disabilities include those used for seating and positioning, mobility, augmentative communication, computer access and instruction, environmental control, adaptive toys and games, visual and listening aids and self-care.

Assistive technology services (including training) assist students with disabilities in the selection, acquisition or use of an assistive technology device. An assistive technology evaluation will determine if an assistive technology device and/or service is necessary to ensure the student will benefit from special education services.

Who decides if my child needs assistive technology?

The IEP Team committee must consider whether a student requires assistive technology devices and services. These decisions must be documented in the IEP.

These decisions will be based on written reports from evaluations, as well as information provided by the parent. The assistive technology devices and services must be written into the IEP, including the training needed for the student, school personnel and family.

Who pays for the assistive technology device?

Assistive technology devices must be provided at no cost to the parents. The school must pay for the device or find an alternative funding source such as Medicaid or the state vocational rehabilitation agency.

Can my child take the assistive technology device home with her after school hours?

The school may permit the child to use school purchased assistive technology devices at home or in other settings if the IEP Team determines that the child needs access to those devices in non-school settings in order to progress.

Can the school hold me financially responsible if the device is damaged?

Only if the damage to the device was intentional. Parents cannot be charged for normal use or general wear and tear.

Related Services Tip:

Make sure you know who is working with your child – is the person a Physical Therapist, a Physical Therapist Assistant, or an Educational Aide – this should be clearly stated on your child’s IEP.

Assistive Technology Tip:

Many times a child is not evaluated for Assistive Technology until a parent asks. Consider whether your child would benefit from tools or equipment that would help him or her write, stay focused, or participate in class.

BEHAVIOR AND DISCIPLINE

My child exhibits inappropriate behaviors that interfere with her learning. Does the school have a responsibility to help?

Yes. If your child's behavior interferes with her learning or is disruptive to others students, the IEP must address those behaviors. The IEP Team must identify appropriate **positive** behavioral interventions, supports, and other strategies to address each behavior. You can ask for a "functional behavior assessment" (FBA) to determine why and when she is displaying the inappropriate behaviors and how best to respond. With that information, the IEP Team can develop a "behavior intervention plan" (BIP), which becomes a part of her IEP. The BIP should identify the supports and services she needs so she doesn't display the inappropriate behaviors.

My child has an IEP. Does this mean she can't be suspended from school?

No. The IDEA contains specific procedures that must be followed when making decisions about disciplinary removals such as suspension or expulsion. However, your child can be suspended or expelled in accordance with those procedures.

If your child is facing a disciplinary removal for misconduct, it is important that you seek legal advice as soon as possible. We do not recommend withdrawing your child from school.

My child engaged in misconduct at school. The principal says she doesn't want to suspend him but she has no choice because of the district's zero tolerance policy? Is this true?

No. School administrators are allowed under IDEA to use discretion as to whether to change the placement of a student with a disability who violates the student Code of Conduct. This means the principal (or other administrator) no longer must apply a local "zero tolerance" policy to a student with a disability, but can use discretion because of the impact of the student's disability.

What is a manifestation determination review?

Before taking disciplinary action that results in a student with a disability having her placement changed for more than ten days, the school district must first determine whether the behavior was a manifestation of her disability. It is now more difficult to find a student's misbehavior was a manifestation of his disability.

The new standard is that the misbehavior must have been "caused by" or had a "direct and substantial relationship" to the child's disability, or was the "direct result" of a school

district's failure to implement the IEP. Manifestation determinations are still not required for removals of less than 10 consecutive school days.

Who is a member of the team making the manifestation determination?

The full IEP Team does not have to meet to conduct a manifestation determination. The group consists of the parent and "relevant" members of the IEP Team.

What happens if the behavior IS found to be a manifestation of the disability?

If the behavior is found to have been directly related to the student's disability, the student must be returned to the placement she was in when the behavior occurred, unless the parent agrees the student should go to another placement as part of a modification of her behavioral intervention plan.

What happens if the behavior is NOT related to the disability?

If the behavior is found NOT to be related to the disability, the school is entitled to discipline the student just like any other student without a disability. However, services must continue. The IEP Team must meet to place the student. Students in disciplinary settings are still entitled to special education services as necessary to access the general curriculum progress toward his or her IEP goals.

My child got into an argument with another student on the playground. Neither child was hurt. The school says it can remove my child for 45 days for fighting. Is this true?

No. The school can remove a student for up to 45 school days for offenses involving drugs, weapons, and the infliction of "serious bodily injury to another person," regardless of whether the offense was a manifestation of the student's disability.

How do I challenge the school's decision to discipline my child?

You may file a due process complaint and request for hearing. In discipline cases, the student is entitled to an expedited hearing within 20 school days after the hearing is requested. The hearing officer must issue a decision within 10 school days. Unless the team found the student's conduct to be a manifestation of the disability, the student will remain in the disciplinary setting pending the hearing decision, or the end of his or her disciplinary placement.

Contact your state educational agency or the BIE to obtain a sample form for filing a due process complaint and request for expedited hearing.

RESOLVING DISPUTES

I feel overwhelmed by the IEP process. Do I have any rights?

YES! The IDEA contains a system of **procedural safeguards** designed to protect the rights of children with disabilities and their parents. Procedural safeguards include the right to participate in all meetings, to examine all educational records, and to obtain an independent educational evaluation of the child.

What is Prior Written Notice?

The school must give prior written notice to parents when the school proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child. The school must also give you written notice if it is refusing something you have asked for.

What information should the school include in the Prior Written Notice?

The written notice must contain **all** of the following:

- (1) A full explanation of the all procedural safeguards available to the student;
- (2) A description of the action proposed or refused by the school, an explanation of why the school proposes or refuses to take the action, and a description of the any options the school considered and the reasons why those options were rejected:
- (3) A description of each evaluation procedure, test, record, or report the school used as a basis for the proposed or refused action;
- (4) A description of any other factors that are relevant to the school's proposal or refusal;
- (5) A statement that the parents have certain rights and how the parents can obtain a written description of those rights.

I attended an IEP meeting and I disagree with the school's proposed program. Do I have to accept the school's program or do I have other options?

During the IEP meeting, tell the Team that you disagree with their suggestions and offer alternatives. Try to resolve any disagreement during the meeting and make sure that your Prior Written Notice includes your suggestions if they were rejected by the Team.

If you are unable to resolve the disagreement during the meeting, the IDEA contains various ways for parents and schools to resolve disputes. You can file a “compliance complaint,” ask for mediation, or request a “due process” hearing.

How do I use the complaint resolution procedures?

If you believe the school is violating the educational rights of your child, you can file a compliance complaint with the state educational agency in the state where you live. If your child attends a BIE school or a BIE-funded school, you may submit your complaint to the BIE.

Under federal regulations, the state educational agency or BIE must investigate any complaint that a school is violating any requirement of the IDEA, including the identification, evaluation, or placement of a special education student, or any violation of a student's right to a free appropriate public education. The state educational agency or BIE is required to make sure the school complies with the law. Your complaint must be filed within one year of the alleged violation. The state educational agency or BIE must review, investigate, and resolve complaints within sixty (60) calendar days.

What do I include in my compliance complaint?

Your complaint must be in writing and should contain specific information about the violation. Include your name, the name of your child, the name of the school she or he attends, the school district, your address, and a phone number where the agency can reach you during the day. Complaints must be signed and a copy of the complaint must be sent to the local school district.

Where do I send my complaint?

If your child goes to a public or charter school in **Arizona**, send your complaint to:

Exceptional Student Services
Arizona Department of Education
1535 West Jefferson Street, Bin 24
Phoenix, Arizona 85007
Telephone: (602) 542-4013
TTY: (800) 842-4681
Toll Free: (800) 352-4558
Facsimile: (602) 542-5404

If your child goes to a public or charter school in **Colorado**, send your complaint to:

IDEA Part B State Complaints Officer
Colorado Department of Education
State Office Building
201 East Colfax Avenue

Denver, Colorado 80203-1799
Telephone: (303) 866-6600
Facsimile: (303) 830-0793

If your child goes to a public or charter school in **New Mexico**, send your complaint to:

Special Education Bureau
New Mexico Public Education Department
120 South Federal Place, Room 206
Santa Fe, New Mexico 87501
Telephone: (505) 827-5800
Facsimile: (505) 954-0001

If your child goes to a public or charter school in **Utah**, send your complaint to:

Special Education Services
Utah State Office of Education
250 East 500 South
Post Office Box 144200
Salt Lake City, Utah 84114-420
Telephone: (801) 538-7587
Facsimile: (801) 538-7991

If your child goes to a **BIE school** or a **BIE-funded school**, send your complaint to:

Bureau of Indian Education
Division Performance and Accountability
1011 Indian School Road NW (Room 332)
P.O. Box 1088
Albuquerque, New Mexico 87104-1088
Telephone: (505) 563-5255
Facsimile: (505) 563-5281

What happens if the state educational agency or BIE finds the school to be out of compliance?

If the investigation shows the school district to be out of compliance, the state educational agency or BIE may require corrective action. The investigation report must set forth the corrective action the school is to take, along with timelines for correction.

The state educational agency or BIE may also order the school to provide your child with make-up services, referred to “compensatory education.”

What is mediation?

Mediation is an informal and voluntary process conducted by an impartial mediator. There is no cost to either the parent or the school. You may bring an attorney to the mediation, but it is not required. Because mediation is voluntary, both the parent and the school must agree to attend. The state educational agency or BIE will assign a mediator and the mediation session will be held at a mutually agreed upon date and time.

Mediators try to help people resolve disputes without litigation. The mediator cannot order either side to do anything. The mediator is there to help you communicate and, hopefully, reach an agreement. If mediation is successful, the mediator writes up the agreement that you and the school officials sign. That agreement is a legally binding document. Discussions at mediation are confidential and cannot be used as evidence in other proceeding.

What is a due process hearing?

If you disagree with the school about your child's eligibility for special education, school placement, program or related services, you can request a due process hearing. At the hearing, both you and the school will present evidence by calling witnesses and submitting exhibits. An independent hearing officer will decide which side (you or the school) is correct. If you disagree with the decision of the hearing officer, you can file an appeal to state or federal court.

We recommend that you consult with a lawyer before requesting a due process hearing.

How do I request a due process hearing?

You must put your request in writing (called a "due process complaint notice") and send one copy to the school and one copy to the state educational agency or BIE. You must include the following information:

- the name of the child, the address of the child, and the name of the school the child is attending;
- a description of the problem in dispute, including relevant facts; and
- a proposed resolution to the problem

Make sure you include all of the information because the school can ask to have your case dismissed if you do not. Either your state educational agency or the BIE will have a model form for requesting a due process hearing that you can use.

What happens after I file the due process complaint?

1First, if the school hasn't sent you a prior written notice, it must do so within 10 days of receiving your due process complaint. That notice must explain the school's proposal and describe the basis for its position.

Second, the school must send you a written response within 10 days of receiving your due process complaint that specifically addresses the issues raised in the complaint.

What is the resolution meeting?

Before conducting a due process hearing the school must convene a meeting with the parents and the relevant members of the IEP Team who have knowledge of the facts in the due process hearing complaint. The meeting must include a school representative who has decision-making authority and must be held within 15 days of receiving the complaint. The school may not bring an attorney to the meeting unless the parent is bringing an attorney.

The purpose of the resolution meeting is to give the parents the opportunity to discuss their complaint and the school is given the opportunity to resolve the complaint. The resolution meeting is required unless both the parent and school agree in writing to waive the meeting or they agree to mediation. If the school has not resolved the complaint within 30 days of receiving it, the due process hearing will proceed. Unless an extension of time has been ordered, the hearing officer's decision is due 45 days from the date after complying with the resolution meeting requirement.

If a resolution is reached, the parents and the school must sign a legally binding agreement. The agreement is enforceable in state or federal court. Either the school or the parent can withdraw their agreement within three days of signing it.

How long do I have to file my due process complaint?

A request for a due process hearing must be filed within two years of the date the parent knew, or should have known, about the action that forms the basis of the complaint. The timeline does not apply if the school misrepresented to the parent that it had resolved the problem, or if the school withheld information from the parent that it is required to provide, such as failing to provide written notice or a procedural safeguards notice.

Where will my child go to school while the due process and appeals are pending?

If you choose to challenge the school's evaluation, program or placement at a due process hearing, the IDEA requires the student to remain in the current placement during the hearings and appeals. This is often referred to as the "stay put" provision of the law. In discipline cases where a student has already been removed from the classroom for an interim period, the "stay put" provisions do not apply. You may be entitled to an expedited hearing.

Can the school request a due process hearing?

Yes. Either the parent or the school may request a due process hearing.

TIPS FOR IEP MEETINGS

- Remember, it is your child's meeting.
- Before your child's IEP meeting,
 - review his or her IEP
 - make a list of questions about his or her program
 - is your child making progress?
 - what is working?
 - what can be done differently?
 - is your child with other students without disabilities to the greatest extent possible?
 - what works best for your child?
 - make a list of your child's strengths, needs and services you think would help him or her make progress in school
- If possible, take someone with you.
 - It is helpful if someone can take notes for you during the meeting about options that are discussed & final decisions.
- Don't feel limited by the time the school schedules for the meeting.
 - Offer to schedule another time to meet, if the school tells you they are on a tight schedule. Take the time you need to develop a plan that meets all of your child's needs.
- If you become upset, take a break. If you don't feel it's productive to continue, ask to end the meeting & set another time & place be scheduled to continue the meeting.
- Put any important requests, questions, or concerns in writing & keep copies of all letters or documents you send or give to school personnel.
- Ask for copies of your child's school records, especially the evaluations and the final IEPs.
 - Create a binder for your child's school records so that you can keep them together & organized.
- As you go through the IEP meeting, keep a list of things you have requested that the school do for your child.
 - At the end of the meeting, review your requests and ask the school for "prior written notice" for anything that the school has refused to do.
- Do Not feel rushed to sign the IEP.
 - If you want to review the draft of your child's IEP with your family or with your child's other service providers, you can do so.
- Trust your instincts.
 - Parents know their children the best and have the best sense of what will work for them, if you feel uncomfortable or have questions about how your child's program is being developed or being implemented, ask for details or raise those concerns.

DEFINITIONS

ADD	Attention Deficit Disorder	MD	Multiple Disabilities
ADE	Arizona Department of Education	MR	Mental Retardation
ADHD	Attention Deficit/Hyperactivity Disorder	MS	Multiple Sclerosis
AT	Assistive Technology	NCLB	No Child Left Behind
AYP	Adequate Yearly Progress	OCR	Office of Civil Rights
BD	Behavioral Disorder	OJT	On the Job Training
BIA	Bureau of Indian Affairs	OI	Orthopedic Impairment
BIE	Bureau of Indian Education	OHI	Other Health Impairment
BIP	Behavior Intervention Plan	OSEP	Office of Special Education Programs
CBI	Community Based Instruction	OSERS	Office of Special Education & Rehabilitative Services
CP	Cerebral Palsy	OT	Occupational Therapy
CRS	Children's Rehabilitation Services	OT/PT	Occupational Therapy/Physical Therapy
DD	Developmental Disability	OTR	Occupational Therapist, Registered
ED	Emotional Disability	PDD	Pervasive Developmental Delay
ELL	English Language Learners	PED	New Mexico Public Education Department
ESY	Extended School Year	PT	Physical Therapy
FAPE	Free Appropriate Public Education	PTA	Physical Therapy Assistant
FBA	Functional Behavior Assessment	RSA	Rehabilitation Services Administration
FERPA	Family Educational Rights & Privacy Act	RTI	Response to Intervention
HI	Hearing Impairment	SEA	State Education Agency
IAES	Interim Alternative Educational Setting	SED	Seriously Emotional Disturbed
IDEA	Individuals with Disabilities Education Act	SLD	Specific Learning Disability
IEP	Individualized Education Plan	S/LI	Speech/Language Impairment
IFSP	Individualized Family Service Plan	SSI	Supplemental Security Income
IQ	Intelligence Quotient	TBI	Traumatic Brain Injury
LD	Learning Disability	USOE	Utah State Office of Education
LEA	Local Education Agency	VI	Visual Impairment
LEP	Limited English Proficient	VR	Vocational Rehabilitation
LRE	Least Restrictive Environment		

SAMPLE LETTERS

SAMPLE LETTER #1
REQUEST FOR INITIAL EVALUATION
(please keep a copy for yourself)

Your Name
Your Address
Your City, State and Zip Code
Your Phone Number

Date

Special Education Director
School District
Address
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I believe my child may have a disability and is in need of special education services. I am requesting a full and comprehensive individual evaluation of my child.

I understand that the evaluation must be completed within 60 calendar days from the date I have signed consent for evaluation. Please consider my signature below to constitute consent for evaluation.

I look forward to hearing from you soon.

Sincerely,

Parent's Signature

SAMPLE LETTER #2
REQUEST FOR REEVALUATION
(please keep a copy for yourself)

Your Name
Your Address
Your City, State and Zip Code
Your Phone Number

Date

Special Education Director
School District
Address
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I am writing to request that the school system conduct a complete reevaluation of my child. I believe a reevaluation is necessary in order to obtain a better understanding of my child's current academic and functional abilities, and to draft an appropriate educational program.

I look forward to hearing from you soon.

Sincerely,

Parent's Signature

SAMPLE LETTER #3
REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATION
(please keep a copy for yourself)

Your Name
Your Address
Your City, State and Zip Code
Your Phone Number

Date

Special Education Director
School District
Address
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I have received and reviewed the district evaluation of my child. I disagree with the evaluation and request an independent educational evaluation at public expense.

Please send me a copy of the written criteria under which independent evaluations must be conducted and a written list of independent evaluators I can consider.

I understand the school must pay for the independent evaluation unless it requests a hearing to prove that its evaluation was appropriate.

I look forward to hearing from you soon.

Sincerely,

Parent's Signature

SAMPLE LETTER #4
REQUEST FOR IEP MEETING
(please keep a copy for yourself)

Your Name
Your Address
Your City, State and Zip Code
Your Phone Number

Date

Special Education Director
School District
Address
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I am requesting that an IEP meeting be held as soon as possible to review and, if necessary, revise my child's IEP. Please contact me at your earliest convenience so that the meeting can be scheduled at a mutually agreeable date and time.

I look forward to hearing from you soon.

Sincerely,

Parent's Signature

SAMPLE LETTER #5
REQUEST TO REVIEW RECORDS
(please keep a copy for yourself)

Your Name
Your Address
Your City, State and Zip Code
Your Phone Number

Date

Special Education Director
School District
Address
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I am writing to arrange a time to review my child's educational records, including all documents that are collected, maintained or used by the school district. I would like to make copies of some of the records. I will let you know which records I would like to copy after I review them all.

I look forward to hearing from you soon.

Sincerely,

Parent's Signature

SAMPLE COMPLAINT FORMS

Arizona

STATE COMPLAINT FORM

(Please do not use this form to file Due Process)

An organization or individual may file a signed written complaint under the procedures described in 34 C.F.R. § 300.151-300.152. The complaint must include a statement that a public agency has violated a requirement of Part B of the Act or of part 300; and the facts on which the statement is based. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with 34 C.F.R. § 300.151 .

Although it is not required in order to file a complaint, you may use this form if you believe a public education agency that is responsible for the provision of special education services has violated requirement(s) of Part B of the Individuals with Disabilities Education Act (IDEA) Amendments of 2004, its implementing regulations, Arizona Revised Statutes, and/ or the Arizona Administrative Code.

The Arizona Department of Education/ Exceptional Student Services Division is ONLY authorized to investigate allegations regarding special education.

PLEASE PRINT CLEARLY OR TYPE

Name of Student(s)

_____ DOB ____ / ____ / ____ Grade _____
First Last

_____ DOB ____ / ____ / ____ Grade _____
First Last

Name(s) of Parent(s) or Guardian _____
First Last

Address _____ City _____ State ____ Zip _____

Phone Number: Home (____) ____ - ____ Work (____) ____ - ____ Alternate (____) ____ - ____

Name(s) of Complainant (if different from above) _____
First Last

Address _____ City _____ State ____ Zip _____

Phone Number: Home (____) ____ - ____ Work (____) ____ - ____ Alternate (____) ____ - ____

Name of School or School District this complaint is regarding: _____

Name of School or School District where the student currently attends: _____

Signature of person filing complaint _____ Date _____

THE FOLLOWING PAGE IS DESIGNED FOR YOU TO PROVIDE THIS OFFICE WITH INFORMATION NEEDED IN ORDER TO ACCURATELY PROCESS YOUR COMPLAINT. PLEASE COMPLETE ONE FORM PER ALLEGATION.

TOTAL NUMBER OF ALLEGATIONS ATTACHED:

ALLEGATION FORM for STATE COMPLAINT

(Please do not use this form to file Due Process)

Please complete one form per allegation. If more space is needed, write on the back of this form.

Name of Student(s) _____ Allegation Number _____

1. What is the alleged violation?

2. What are the facts or evidence on which the allegation is based?

3. What are significant dates and events that may be relevant to this allegation?

4. What documents should be reviewed regarding this allegation?

5. What ideas do you have for how the issue you stated in (1) could be resolved?

Questions concerning this form or the complaint process may be addressed by contacting:

Arizona Department of Education, Exceptional Student Services

Attn: Director of Dispute Resolution

1535 West Jefferson, Bin 24, Phoenix, Arizona 85007

Telephone: (602) 542 – 3084 FAX: (602) 364 – 0641

Please send copies of any relevant documents and the completed forms to the above address

Colorado

The Colorado Department of Education does not have a complaint form readily available on the website, but requires the same information as is required by these other states.

New Mexico

New Mexico Public Education Department
Special Education Complaint Form
(Use of this form is optional)

Date: _____

Please complete all information and mail to:

New Mexico State Special Education Director
New Mexico Public Education Department
Special Education Bureau
120 South Federal Place, Room 206
Santa Fe, NM 87501

I. **Public Agency or School District serving the child:** _____

II. **Complainant and Student Information:**

a. Complainant(s) Name(s): _____

b. Address (or available contact information): _____

c. Phone number (s): HM _____ Work _____

Cell _____ FAX _____

d. Alleged violation of state or federal special education law with respect to specific child: _____

e. Student's Name: _____

f. Address (or available contact information): _____

g. Grade: _____ School: _____

District: _____

III. **Representative Information (if applies):**

a. Are you using an:
Attorney _____ Advocate _____ Other Representative _____

b. If using other representative, please identify:

Name: _____ Title: _____

Address: _____

Phone number(s): HM _____ Work _____

Cell _____ FAX _____

IV. **Details Concerning Complaint:**

a. Complainant, please describe the nature of the problem the child or children are experiencing and the facts relating to the complaint: (Who? What? Where? Why?) **Attach any documents that support your position.**

b. Does the complaint allege violations that occurred in the last year?

Yes _____ No _____ If yes, please provide specific dates:

c. Describe how this complaint could be resolved (to the extent known):

V. **Signature and Date:**

Signature of Complainant

Date

VI. **Mediation:**

Federal law requires that the State make mediation available to the parties in response to a Formal Complaint. Mediation is offered at no cost to the parties. Mediation is encouraged and may be beneficial in resolving your concerns. Mediation is voluntary, and both parties must agree to mediate the dispute. You may request mediation now by signing below or at any time during the complaint investigation process.

I request mediation: _____

I decline mediation: _____

Signature of Complainant

Date

THE PARTY FILING THIS COMPLAINT MUST FORWARD A COPY OF THE COMPLAINT TO THE SCHOOL DISTRICT OR PUBLIC AGENCY SERVING THE CHILD AT THE SAME TIME THIS COMPLAINT IS FILED WITH THE SPECIAL EDUCATION BUREAU.

Utah

STATE COMPLAINT
under the Individuals with Disabilities Education Act (IDEA)-Part B and
the Utah State Board of Education Special Education Rules, IV.G.
(Submit to the Superintendent of the school district or charter school and
copy to Nan Gray, State Director of Special Education,
Utah State Office of Education, P.O. Box 144200, Salt Lake City, Utah 84114-4200.)

Date: _____

School District: _____ School Student Attends: _____ Grade: _____

Name of Student: _____ Age: _____

Student's Parent(s)/Guardian: _____ Phone: _____

Address: _____

Mailing Address (if different): _____

Student's Address, (if different): _____

A State Complaint may be filed if the parent alleges there has been a violation of IDEA that occurred not more than one year prior to the date the complaint is received by the LEA, unless a longer period is reasonable because the violation is continuing or compensatory services are requested for a violation that occurred not more than three years prior.

Complaints must be regarding the proposal or refusal of an LEA with respect to identification, evaluation, educational placement, or the provision of a Free Appropriate Public Education (FAPE) to a student with disabilities.

Describe the problem relating to the proposal or refusal indicated above.

How do you think this violated IDEA?

Name of person filing complaint: _____

Signature: _____

Address: _____ Telephone: _____

Email address: _____