

# A Parent's Guide to Special Education



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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.

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 Arkansas Department of Education (ADE) are entitled to the benefits and protections of IDEA.

Though the focus of this guide is on special education through 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 that 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 (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.

**Every Student Succeeds Act (ESSA):** ESSA is a federal law signed in 2015 and represents the new version of the No Child Left Behind Act. ESSA aims to further ensure the success of students and schools by upholding protections for students, requiring that all students be taught high academic standards to prepare them for college and careers, and stressing the importance of accountability standards.

**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 Arkansas, the Arkansas Department of Education is responsible for enforcing IDEA.

## **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 does “free appropriate public education” (FAPE) 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 some 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.

We recommend that parents put their request for special education evaluation and services in writing so that a record of your request is created. Be sure to keep a copy for yourself.

### **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 service 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 whether your child is a student with a disability eligible for special education and if so, to develop an IEP. Your school district is required to give you copies of its written evaluation report before that meeting. Ask for explanations of anything you do not 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 Guide 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.

Disability categories listed in the IDEA include 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, and 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 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.



## **Can a child with passing grades be eligible for special education?**

Yes. The fact that a child may have passing grades or have the ability to earn passing grades does not prevent them from being eligible for special education. School districts have an obligation under the IDEA to identify those children who need special education services, even if they are advancing from grade to grade. Grades are only one factor to be considered in the eligibility determination. Other important factors to consider include behavior, social skills, communication abilities, or illness that requires frequent absences from school.

## **My child is not yet three years old and has a disability. Is he or 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. In Arkansas, this is done through First Connections, a program run by the Arkansas Department of Human Services Division of Developmental Disability Services. The appropriate state agency will conduct an evaluation to determine eligibility and need for services. If services are needed, an Individualized 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 with new evaluations even if the school disagrees. Be sure to put your request for a reevaluation in writing. There is a sample letter attached to this guide that can help you request a reevaluation.

# **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 an Evaluation/Programming Conference within 30 calendar days of completing the tests and evaluations. If the team determines

the child is eligible, an IEP must be drafted and services 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 to the meeting others 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; and
- (8) A description of the type of placement needed to implement the IEP in the least restrictive environment.

## **When does my child's IEP take effect?**

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 meeting, 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 that you attended the meeting and note in writing that you disagree with the services in the IEP.

## **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 primarily 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. There are other considerations that can require the provision of ESY, including the nature and severity of the child's disability, the child's rate of progress, whether there are areas of a student's curriculum that need continuous attention, and other factors.

Your child's need for ESY services may be raised at any IEP meeting or Annual Review conference by a member of the IEP team, including you as the parent. Eligibility would then be determined by the IEP team based on a number of factors deemed relevant by the IEP team and on a thorough analysis of data collected. If ESY is to be provided, it will be noted in your child's IEP.

### **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 ensuring 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 in your child's IEP.

## **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?**

Under the IDEA, a student cannot receive related services unless he or she has been found eligible for special education. However, if your child is a child with a disability, he or she may be eligible to receive occupational therapy under a Section 504 Plan.

### **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 must consider whether a student requires assistive technology services 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 a way to ensure that a child has access to needed assistive technology.

### **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?**

The school can hold you financially responsible only if the damage to the device was intentional. Parents cannot be charged for normal use or general wear and tear.

## **BEHAVIOR AND DISCIPLINE**

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

Yes. If your child's behavior interferes with his or her learning or is disruptive to other 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 he or 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 the IEP. The BIP should identify the supports and services he or she needs so he or she doesn't display the inappropriate behaviors.

**My child has an IEP. Does this mean he or 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 or her 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 his or her placement changed for more than ten days, the school district must first determine whether the behavior was a manifestation of the disability. The 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 he or she was in when the behavior occurred, unless the parent agrees the student should go to another placement as part of a modification of the behavior 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.

You can find a sample form for filing a due process complaint and request for expedited hearing on the ADE Special Education Unit website. We

recommend that you consult with an attorney if you are considering a due process complaint.

## **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 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, a description of 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; and

- (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 state 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 state complaint with the Arkansas Department of Education (ADE).

Under federal regulations, the ADE 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 ADE is required to make sure the school complies with the law. Your complaint must be filed within one year of the alleged violation. The ADE must review, investigate, and resolve complaints within sixty (60) calendar days.

**What do I include in my state complaint?**

Your complaint must be in writing and should contain specific information about the violation. Your complaint should 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.

You can find a sample form for filing a state complaint on the ADE Special Education Unit website.

### **Where do I send my complaint?**

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

Arkansas Department of Education Special Education Unit  
1401 West Capitol Ave.  
Victory Building, Ste. 450  
Little Rock, AR 72201  
501-682-4221, TTY: 501-682-4222  
<https://arksped.k12.ar.us>

### **What happens if the ADE finds the school to be out of compliance?**

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

The ADE may also order the school to provide your child with make-up services, referred to as “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. In Arkansas, attorneys are not currently allowed at special education mediations. Because mediation is voluntary, both the parent and the school must agree to attend. The ADE 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 proceedings.

## **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.

## **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 Arkansas Department of Education. You must include 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.

You can find a sample form for filing a due process complaint and request for hearing on the ADE Special Education Unit website. We recommend that you consult with an attorney if you are considering a due process complaint.

## **What happens after I file the due process complaint?**

First, 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. If you filed an expedited due process hearing, the resolution meeting must be held within 7 days. 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 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. The timeline is much shorter for an expedited due process hearing as discussed above.

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.

## COMMON ABBREVIATIONS

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

## **SAMPLE LETTERS**

### **SAMPLE LETTER #1**

REQUEST FOR INITIAL EVALUATION (please keep a copy for yourself)

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. I can be reached at (include contact information).

Sincerely,

Parent's Signature

**SAMPLE LETTER #2**

REQUEST FOR REEVALUATION (please keep a copy for yourself)

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. I can be reached at (include contact information).

Sincerely,

Parent's Signature

**SAMPLE LETTER #3**

**REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATION (please keep a copy for yourself)**

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. I can be reached at (include contact information).

Sincerely,

Parent's Signature

**SAMPLE LETTER #4**

REQUEST FOR IEP MEETING (please keep a copy for yourself)

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. I can be reached at (include contact information).

Sincerely,

Parent's Signature

**SAMPLE LETTER #5**

**REQUEST TO REVIEW RECORDS (please keep a copy for yourself)**

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. I can be reached at (include contact information).

Sincerely,

Parent's Signature



## RESOURCES FOR ADVOCACY ASSISTANCE

### **Disability Rights Arkansas, Inc.**

400 West Capitol Ave., Suite 1200

Little Rock, AR 72201

(501) 296-1775

(800) 482-1174 V/TTY

### **The Center for Exceptional Families**

1702 Stone Street, Suite A

Jonesboro, AR 72401

(870) 336-3012

(888) 360-9654

### **Northwest Arkansas Community Parent Resource Center**

614 E. Emma, Suite 219

Springdale, AR 72764

(479) 927-4100

(800) 748-9768

### **Medical-Legal Partnership at Arkansas Children's Hospital**

One Children's Way, Slot 695

Little Rock, AR 72202

(501) 364-1541

### **Legal Aid of Arkansas**

(800) 952-9243

[www.arlegalaid.org](http://www.arlegalaid.org)