

A PARENTS' GUIDE

**THE EDUCATIONAL RIGHTS
OF
STUDENTS WITH
DISABILITIES**

(Revised 2001)

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OF
STUDENTS WITH DISABILITIES**

**Illinois State Board of Education
Special Education Compliance Division**

Revised 2001

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Illinois State Board of Education

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MEMORANDUM

TO: Parents, Advocates, School Personnel and Others

FROM: Jack Shook, Division Administrator
Special Education Compliance Division
Illinois State Board of Education

DATE: May 1, 2001

SUBJECT: A Parents' Guide: The Educational Rights of Students with Disabilities

A Parent's Guide: The Educational Rights of Students with Disabilities is a document, developed by the Illinois State Board of Education, for parents and others to learn about the educational rights of children who have disabilities and receive special education services. This document has been revised to incorporate the changes made to the Individuals with Disabilities Education Act (IDEA) in 1997 and the Illinois special education rules and regulations effective August 25, 2000.

The Parents' Guide is not meant to replace the Explanation of Procedural Safeguards that districts are required to provide to parents of eligible children at specific times throughout the school year. The Illinois State Board of Education recognizes that the special education process is complex and parents may have questions about the information contained in the Parents' Guide. Parents may contact one of the four Parent Training Information Centers listed on page 76 with questions about the special education process or the rights of students receiving special education services.

Questions regarding a specific violation of a special education rule or regulation may be directed to any of the special education program consultants in the Special Education Compliance Division at 217/782-5589 (Springfield) or 312/814-5560 (Chicago).

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SECTION 1

INTRODUCTION

This booklet is written for parents of children who have special education needs. The word "parent" includes anyone who has major responsibilities for the care and well-being of a child. If you are a person who has such responsibility - parent, grandparent, surrogate parent, foster parent - and you think your child has special education needs, you will want to read this booklet carefully. The booklet will answer many questions that you may have such as:

- What kinds of services are appropriate to address my child's areas of need?
- Is my child too young or too old for special services?
- What can I do to help?
- Is this going to cost me a lot of money?
- What are my rights?

Before you read the full booklet, there are several things you should know:

- ◆ A Free Appropriate Public Education (FAPE) is required for all children with disabilities who are between the ages of 3 and 21 and who have not yet graduated from high school. Students with disabilities may attend school until receipt of a high school diploma or until the end of the school year of their 21st birthday, whichever is earlier.
- ◆ Special education and related services must begin on the child's third (3rd) birthday for children served in an early intervention program or for those children referred 60 school days before their third (3rd) birthday and found eligible. While it is not mandated that the school district provide direct services to children birth through the age of 2, the school district must identify, locate, and evaluate children of this age with known or suspected disabilities. When these children are identified by the local school district, a referral must be made, within 2 days, to the local Child and Family Connections (CFC) office. (See *Section 10* for more information on services for children ages 3 through 5.)
- ◆ You do not need to read the whole booklet at one time. Check the *Table of Contents* to find the parts you want or need to read.
- ◆ It is very helpful for you to keep records of your own. (See page 5 - Parental Involvement.)
- ◆ You are not alone. There are many resources available to you, starting with your local school district. See *Section 18* for additional resources.

STEPS TO GETTING SERVICES

What Happens If My Child Is Having Trouble Learning in School?

If your child is having trouble in school, you should contact the teacher or principal to discuss your concerns. Some school districts have teams consisting of school personnel that review student problems and suggest academic and/or behavioral strategies in an attempt to change or improve student performance. Please be prepared to provide information that may be helpful to the team. This process does not preclude you from making a referral for special education. The chart below will guide you through the **special education process**.

	PARENT/GUARDIAN	SCHOOL DISTRICT
REFERRAL	<ul style="list-style-type: none"> • Make a referral, <i>preferably written</i>, for an evaluation if you suspect a disability or believe that your child has significant learning problems. • Receive a copy of parent rights information (called Explanation of Procedural Safeguards). • Have questions answered. • Ask for information about advocacy groups or area parent support groups, if desired. • Provide consent. • If it is determined that no evaluation is needed, receive in writing the reasons for not conducting the evaluation. 	<ul style="list-style-type: none"> • Make written referral for an evaluation if child is suspected of having a disability. • Contact parent, explain referral process, and provide copy of procedural safeguards. • Obtain parental consent. • If it is determined that no evaluation is needed, provide in writing reasons for not conducting the evaluation to parent and person who made the referral.
EVALUATION	<ul style="list-style-type: none"> • Provide information for evaluation process (e.g. medical, family, and educational history; perceptions of child's strengths and needs at home and in community). • Provide input, in collaboration with the school district, to determine the specific assessments needed to evaluate. • Receive notification of the evaluation decisions. 	<ul style="list-style-type: none"> • Collect information from parent, teacher, and others. • Review existing information, in collaboration with the parent, to determine the specific assessments needed to evaluate. • Notify parent of the evaluation decisions. • Complete evaluation.
BEFORE THE MEETING(S)	<ul style="list-style-type: none"> • Review procedural safeguards information. • Seek support, if needed. • Bring support person(s) to meetings, if needed. • Bring concerns, questions, and suggestions to meeting. 	<ul style="list-style-type: none"> • Notify parent of meeting(s) and participants. • Determine mutually agreed on time and place for the meeting(s). • Provide a copy of procedural safeguards. • Arrange for appropriate school personnel to be present.

PARENTAL INVOLVEMENT

Both state and federal laws and regulations governing the administration of educational programs for students with disabilities have recognized the important role of parents in the special education process. It is important that you take an active role in the educational process. You and the school personnel should establish a positive relationship with shared goals and a common understanding of your child's needs at home, at school, and in the community. It is essential that you and the school district work cooperatively together.

To be an effective advocate for your child, you should:

- ✓ Be fully informed about the services available in or through your child's school,
- ✓ Know your child's special needs,
- ✓ Know your child's rights,
- ✓ Participate in the meetings to determine eligibility and the Individualized Education Program (IEP) meetings, and
- ✓ Ask questions and voice concerns when you are unsure of terms, language, the appropriateness of your child's program, the school's recommendations, etc.

In addition:

- ✓ Share letters, reports, or other materials that can help the school understand your child and provide appropriate services to your child. Be sure to keep a copy of these items for your records.
- ✓ Start a log or journal in which you record important dates and milestones of your child's program. This will also be a good place to record the results of important conversations and meetings you have had with teachers and others regarding your child's program.
- ✓ Keep all documents and correspondence from the school that you feel are important such as IEPs, samples of your child's work, notices regarding the dates of meetings, etc. Keep these documents with your journal.
- ✓ Develop an ongoing working relationship with those persons who are responsible for or provide services to your child. Get to know the names and responsibilities of all those working with your child.

Any questions or concerns you have may be answered and/or may be resolved by contacting your child's teacher, the school district, program administrator(s) or the district/cooperative director of special education. You are encouraged to be involved in every aspect of your child's educational program. You are your child's best advocate.

Parent Participation in Meetings

School districts are required to ensure your participation in the discussion regarding your child's evaluation. School districts are also required to ensure your participation in the meetings to determine eligibility and plan your child's IEP including where those services will be delivered. This means that the local school district or special education cooperative must contact you in a timely manner to set a mutually convenient time to meet.

To be an active participant in these meetings, you must be able to use effective communication skills such as good listening skills, assertive communication patterns, and respect for other's opinions and feelings. The following are general suggestions for establishing and maintaining an effective team atmosphere:

BE POSITIVE

Go to the meetings with a positive attitude.

BE PREPARED

Go to the meetings with specific ideas, suggestions and questions to ask.

BE DIRECT

Speak clearly and avoid vague statements or charges. If you have specific concerns, bring them up and let school personnel respond to your concerns.

BE CONFIDENT

Do not be intimidated. If terms or concepts are presented that you do not understand, ask for clarification.

BE CALM

Remain in control of your feelings. A team meeting can plan an effective instructional program when all participants are calm and no member is under attack.

BE INVOLVED

Take an equal and active role in the team. You may have information that is important to effective program development - do not be afraid to ask questions, to disagree with instructional or management suggestions, and to expect the team to treat you with respect.

Before the Meetings

- Review your child's school records, previous eligibility reports, IEPs and any other information you received from the school.
- Write down questions and concerns to discuss or any suggestions you have regarding special education and related services and/or the special education placement.
- Prepare a folder to take to the conference that contains: (a) information you want to share about your child; (b) questions, (c) paper on which to take notes, and (d) any other pertinent information.

- Decide whether your child should attend.

During the Meetings

- Introduce yourself and be introduced to all by name and job title.
- Maintain a positive attitude.
- Stay on task - remember the purpose of the conference and the scheduled time period is to address your child's needs.
- Take notes on discussions, recommendations, items to follow through on, and scheduled dates/appointments.
- Ask school personnel to explain terms, language or statements that are unclear.
- Set a regular time to contact the teacher to discuss your child's progress.
- Provide school personnel with praise when you are pleased with their efforts.

After the Meetings

- Put items on the calendar that you agreed to follow through on.
- Add documents from the conference to your files.
- Contact the teacher periodically to see how the program is going.

EXAMPLES OF CURRICULAR, ENVIRONMENTAL, AND BEHAVIORAL MODIFICATIONS

This chart provides examples of curricular, environmental, and behavioral modifications/interventions that may be useful for improving your child's performance in school. If specific interventions are required for your child, they should be documented in the IEP. The chart is meant to provide some examples but is not an exhaustive list.

Curricular Modifications	Environmental Modifications	Behavioral Interventions
<ul style="list-style-type: none"> - tape lessons or instructions for student - simplify vocabulary of test items, practice sheets - provide tests in segments - provide visual or memory aids such as number lines, formulas, pictures, and charts - highlight main ideas and supporting details in text - provide study outlines and guides - reduce quantity of materials to be read - have student keep an assignment notebook - provide a sample or practice test - provide opportunities for extra drill - use special supplementary material - provide text written at student's reading level - provide self-checking materials - provide immediate correction of errors - teach learning strategies 	<ul style="list-style-type: none"> - change the student's seat assignment - assign preferential seating - post class routine - move location of classroom supplies to minimize distractions - assign student a study partner - provide one-on-one tutoring - use small group instruction - provide a monitoring buddy - establish time expectations for assignment completion - provide verbal cues to indicate beginning and ending instructional time - provide visual, tactile, or auditory prompts to indicate appropriate behavior 	<ul style="list-style-type: none"> - establish home-school communication system - post rules and consequences for behavior - put student on daily/weekly progress report - keep graphs, charts, or calendars of student progress - establish contingency contracts - establish verbal or nonverbal signals to monitor behavior (winks, hand signals, etc.) - move closer to student to monitor behavior - establish a list of reinforcers for student - offer social reinforcers (hugs, praise, winks) - offer tangible reinforcers (points, tokens, stickers) - provide immediate reinforcement for correct responses - implement a token or point system - implement a self-recording of behavior

SECTION 2

CHILD FIND/SCREENING

Child Find

Each school district is responsible for actively locating, identifying and evaluating all children with disabilities who live within the district boundaries, are between the ages of birth and 21, and may be eligible for special education and related services. The local school district is not required to actually conduct the evaluations for children birth through 2 years of age, but must ensure that they are carried out at no cost to the parent. All school districts are required to have written procedures for child find activities for all school children, including those attending private, charter, and/or religiously affiliated schools. These procedures must describe activities for:

- ❖ annual screening of children under the age of five to identify those who may need early intervention or special education services to maintain satisfactory educational performance;
- ❖ ongoing review of all children in regular education classes;
- ❖ ongoing coordination with early intervention programs; and
- ❖ coordination and consultation with nonpublic schools located within the district.

Screening

Screening is the process of reviewing all children in a given group with a set of criteria for the purpose of identifying certain individuals for evaluations who may be in need of special education. One purpose of screening is to locate children, birth through age 21, who may need special education services to maintain satisfactory educational performance. No child can be determined eligible to receive special education and related services based only on the results of a screening procedure.

Screening is different from evaluation. Screening means reviewing all children in a given group (all kindergartners, all students who are new to the school district, all 3-year-old children in the community, etc.). It is not specific to an individual child. All children in the group must be screened with the same assessment process. Screening does not involve administration of assessment instruments which would be used in an evaluation.

The district must inform the public of the process for conducting group screening through school handbooks, newsletters, child find activities, letters, or similar methods. Written parent/guardian permission is not required for this type of screening. Screening results should be shared with the parents/guardians. Screening is done only to determine those students in need of or not in need of an evaluation. When a student is identified through screening as needing to be referred for evaluation, the date of the decision to initiate an evaluation is the date that begins the 60-school-day process as described in the Evaluation section that follows.

****School districts are required by public health to conduct annual vision and hearing screening of all students, including those with disabilities.***

REFERRAL

Making a Referral

If you believe your child is experiencing educationally related problems and alternative intervention strategies have not been successful, you should make a referral for an evaluation. To make a referral for an evaluation, you should contact your child's building principal, local school district superintendent, or any school official. A referral may also be initiated at anytime through coordination with early intervention programs, as a result of a screening, or concern of school personnel. The special education rules define "date of referral" at 23 Illinois Administrative Code 226.75 as *the date on which written parental consent to complete an evaluation is obtained or provided*. If you make a verbal referral, the district is required to provide any necessary assistance in order for you to meet the district's requirements regarding referral procedures. If you make a written referral, you should date it and indicate the reasons for your concerns. Be sure to keep a copy of your request for your own records.

Determining Whether To Conduct an Evaluation

Each district must have a procedure in place for determining whether or not to conduct an evaluation. A referral for an evaluation does not necessarily mean that your child has a disability which interferes with educational performance. It signals that your child is having educationally related difficulties and that the person making the referral is concerned that the problem may be due to a disability. Not all referrals result in an evaluation being conducted. If the district determines that the evaluation is not necessary, it must notify you in writing of its decision not to evaluate and the reasons for the decision. The district must advise you of your right to request a due process hearing to challenge its decision.

If, after reviewing the referral information, the district determines that an evaluation is appropriate, your written consent must be obtained to proceed with the evaluation. A request for your consent should not be misinterpreted as a decision that your child has a disability. It is important that you fully understand the reasons for the evaluation and support the district's decision to conduct the evaluation.

If you disagree with the district's decision to evaluate your child and you do not give written consent, the district may request a due process hearing. If the district requests a due process hearing, an impartial hearing officer will determine if the evaluation is necessary. In the case of a reevaluation for which you do not give your consent, the district must prevail in a due process hearing in order to conduct an evaluation (see - Reevaluations).

The Illinois State Board of Education has developed consent forms that all districts must use. These mandated forms indicate the reason(s) the evaluation has been requested, the evaluation domains, a description of the evaluation procedures, and your rights regarding special education.

EVALUATION

Timelines

Once your child has been referred for an evaluation, the local school district has sixty (60) school days (at least 3 months) to complete the evaluation and hold a conference to determine if your child has an educational disability. The 60-school-day timeline begins the day your written consent is obtained or provided. If your child is referred for an evaluation with fewer than 60 pupil attendance days left in the school year, the evaluation and eligibility determination must be made prior to the first day of the following school year.

If your child has an Individualized Family Service Plan (IFSP) developed by an early intervention program, a transition conference must be arranged by early intervention with the school district at least 90 days prior to the child's third birthday. Planning should include a timeline so that when the child turns 3, an evaluation has been completed, eligibility determined and an IFSP or IEP developed so that services can begin. If your child turns three at the end of the school year or during the summer months, the IEP team will determine when the services to the child will begin.

Mode of Communication

Your child must be evaluated in his/her primary language or mode of communication by qualified personnel. All communication about your child's educational needs must be provided to you in your primary language and mode of communication. If you require the use of an interpreter or other communication accommodation, you should notify the school district as soon as possible. Your child's primary language or other mode of communication and general cultural identification must be determined prior to the evaluation.

Identification of Needed Assessments

The special education rules define evaluation at 23 Illinois Administrative Code 226.75 as *a series of procedures designed to provide information about a child's suspected disability; the nature and extent of the problems that are or will be adversely affecting his/her educational development; and the type of intervention and assistance needed to alleviate these problems.*

Your child will be evaluated in all areas related to his/her suspected disability, including, if appropriate:

- ◆ academic performance
- ◆ general intelligence
- ◆ hearing
- ◆ social and emotional status
- ◆ communication status
- ◆ health
- ◆ motor abilities
- ◆ vision

The IEP team and other qualified personnel will review existing evaluation data for your child as a part of an initial evaluation (if appropriate) and as a part of any reevaluation. Evaluation data may include, but is not limited to, classroom-based assessments, teacher observations, and information provided by you. This review, along with your input, will identify if any additional data are needed in order to determine (1) whether your child has a disability; (2) your child's

present levels of performance; (3) whether the disability is adversely affecting your child's education; (4) whether your child needs special education and related services; and (5) whether any modifications are needed for your child to participate in the general curriculum and to meet his/her goals and objectives/benchmarks.

Once the team determines what assessments are needed, if any, it will document the evaluation decisions and provide you this information in writing. If additional data are needed, the tests and assessments will be completed and the team, including you, will meet to determine eligibility. If additional data are not needed, the school district will notify you of the reason(s) for the determination and of your right to request an assessment to determine whether or not your child has or continues to have a disability. If you request an assessment, within ten school days, the district will either:

- (1) Notify you that the assessment you requested will be conducted; or
- (2) If the district decides not to conduct the assessment, the district will either request a due process hearing or notify you of your right to request a due process hearing.

The team will meet to determine eligibility based upon the existing data and results of the evaluation. The district will send you an official notice with the proposed conference time, date, place and a list of the people invited to the conference.

CONFERENCE

Once the evaluation has been completed, you, along with a team of qualified professionals, will meet to interpret the evaluation data. This interpretation will determine (1) if your child has a disability; (2) if the disability is having an adverse affect on your child's education; and (3) whether special education and related services are needed. The district must notify you at least 10 days prior to the meeting of the scheduled date, time and purpose. If you cannot attend, the district must attempt to reschedule the meeting at a mutually agreed upon time and date.

If it is difficult for you to attend, you should notify the school as soon as you receive notice of the meeting. The school must use other methods to ensure your participation such as conference telephone calls or other means of communication. In addition, the district must provide interpreters at the meeting if you have a hearing impairment or do not speak or understand English. A meeting may be conducted without you in attendance if the school district has a record of attempts made to mutually arrange a time and place but is unable to obtain your participation.

Reasons for Convening

Purposes for convening this conference are to:

- ❖ discuss the results of your child's evaluation;
- ❖ consider any independent educational evaluations that may have been conducted;
- ❖ determine your child's eligibility (or change in eligibility) for special education and related services;
- ❖ recommend discontinuing special education (including students who return full time to regular education and students who complete special education programs); or
- ❖ determine the relationship, if any, between the student's actions and his/her disabling condition(s) in relation to your district's disciplinary code.

Participants

The IEP team and other qualified professionals whose expertise is necessary to administer and interpret evaluation data and make informed determinations as to whether the child needs special education and related services must participate in meetings when:

- ❖ identifying the specific assessments required in order to evaluate your child;
- ❖ determining whether your child is eligible for special education and related services; and
- ❖ conducting a manifestation determination review.

Conference Summary Report

A conference report must be written during the meeting which describes consideration of pre-existing information, new evaluation reports, and any other relevant information. The report should also include the date, the conference participants, the conditions that would affect educational performance, and the conclusions reached regarding eligibility for special education and related services. A copy of this report must be given to you at the end of the meeting. You may also request a copy of any evaluation reports developed. If you disagree with the determination(s) made at this meeting, you may challenge the district's decision by requesting a due process hearing (see *Section 8 Conflict Resolution for Parents of Students with Disabilities*).

If your child is determined not eligible for special education and related services at the eligibility conference, he or she may still be eligible for services under Section 504 of the Rehabilitation Act. (See *Section 14* for more information on Section 504.)

INDEPENDENT EDUCATIONAL EVALUATION

Public Expense

You have the right to request an independent educational evaluation at public expense when you disagree with the evaluation conducted or obtained by your local school district. Your request must be made in writing (and dated) to the district superintendent. The district then has five (5) school days to respond to your request.

- ❖ If the district **agrees** with your request, the independent evaluation must be completed within 30 calendar days and a meeting convened to consider the results. You and the district may agree to extend this timeline.
- ❖ If the district **denies** your request, the district must state its reasons for the denial and demonstrate at a due process hearing that its evaluation is appropriate.

Within ten (10) days after the district receives the evaluation report or after your request for an IEP meeting to consider the results of the evaluation, the district must provide you with notice of the IEP meeting. The required credentials a person must have in order to conduct an independent educational evaluation are listed in the special education regulations at 23 Illinois Administrative Code 226.840. The district must provide to you, upon request, a listing of independent evaluators.

Private Expense

You always have the right to obtain an independent evaluation, but not necessarily at public expense. Whether you obtain an independent educational evaluation at public expense or at your own expense, the district must consider the results of **all** independent evaluations at a conference.

REEVALUATION

State and federal laws require all children with disabilities who are receiving special education and related services to be reevaluated every three years or more frequently if necessary. Your written consent is required for all reevaluations. The district **must** request a due process hearing when you do not provide written consent to conduct a reevaluation within 10 calendar days of the date of request.

The purpose of the three-year reevaluation is to determine if your child continues to be eligible for special education and related services. The district must reevaluate your child before determining that he/she is no longer eligible for special education services. The district is not required to reevaluate your child if he/she is graduating from high school with a diploma or attains the age of 21. The reevaluation will address all areas related to his/her suspected disability. After a child is reevaluated, his/her individualized education program must also be reviewed and revised, if necessary, to reflect current programming needs.

If your child has been receiving special education services, but you believe that his/her program needs to be changed, it is sometimes useful to obtain a reevaluation before the three year reevaluation is due. Your request for a reevaluation should be made in writing and given to your building principal or your child's teacher as discussed in Making a Referral in *Section 2*. Be sure to keep a copy of your request for your own records. If the district decides not to conduct the reevaluation, they must notify you in writing of their decision not to conduct the reevaluation and advise you of your right to a due process hearing.

SECTION 3

ELIGIBILITY CATEGORIES FOR SPECIAL EDUCATION

Under IDEA, a child with a disability may have a physical, emotional, learning, or behavioral problem that is educationally related and requires special education and related services. Below are definitions of each of the categories for which a child may be eligible. Your child may be eligible in one or more of the categories, but please keep in mind that the IEP addresses your child's needs, services, and placement decisions. Federal definitions for each area may be found at 34 Code of Federal Regulations (CFR) 300.7 and state definitions may be found at 23 Illinois Administrative Code 226.75. Your child must meet all the requirements listed in the Illinois State Board of Education Rules and Regulations for Special Education.

Your child may be declared eligible for special education services under the category of developmental delay. This category can only be used for young children, ages 3 through 5, who meet the criteria of one or more of the other disability categories and who are experiencing delay(s) in at least one of the following areas: physical development, cognitive development, communication development, social and emotional development, or adaptive development. The child must be determined eligible for special education under one of the IDEA special education categories in order to apply the developmentally delayed category.

Categories

Autism

Autism is a developmental disability that generally appears before the age of three and significantly affects verbal and nonverbal communication and social interaction. Children with autism may have significant qualitative differences in the ability to do some or all of the following:

- use and/or process meaningful spoken language and nonverbal communication cues;
- relate to people and be aware of their feelings;
- actively engage in social play and make peer friendships;
- develop a variety of activities or interests; and
- handle changes in routines or the environment.

The disability can affect broad areas of educational performance ranging from academic to social to behavioral. It can occur with other disabilities, but does not apply if a child's educational performance is adversely affected primarily because of the existence of an emotional disturbance.

Deaf-Blindness

The combination of hearing and visual impairments causes such severe communication and other developmental and educational problems that the child

cannot be accommodated in special education programs solely for children with deafness or children with blindness.

Deafness

A hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification.

Emotional Disturbance

A diagnosis of emotional disturbance means that the child exhibits one or more of the following characteristics to a marked degree and over an extended period of time:

- difficulties in learning that cannot be explained by intellectual, sensory, or health impairments;
- problems relating to children and adults;
- inappropriate types of behavior or feelings under normal circumstances;
- a general mood of unhappiness and depression;
- a tendency to develop physical symptoms, pains, or fears associated with personal or social problems.

There should be evidence that the child's behavior is not the result of a temporary reaction to home, school, or community situations.

Hearing Impairment

Hearing impairment includes any degree of hearing loss that results in a diagnosis of hard of hearing. Hearing loss for the hard of hearing can be either permanent or fluctuating. Hearing loss must be confirmed by a certified audiologist and the school district must complete an evaluation to determine how the loss affects the child in school. A child with a hearing loss often has problems learning and using language which can affect many or all areas of performance, including academic subjects as well as social development.

Children with identical hearing levels can function differently. The child's evaluation team and IEP team should include someone who is familiar with the needs of children with hearing impairments.

Mental Impairment

A child who is diagnosed with mental impairment typically learns at a rate below other children of the same age. Language, adaptive behavior (learning, social, daily living skills), and other skills are markedly delayed. Such mental impairment may be mild, moderate, severe, or profound.

Multiple Disabilities

The school may diagnose a child as having multiple disabilities if they occur in combination with each other, cause severe educational problems, and cannot be accommodated in special education programs solely for one of the impairments. Examples

of such combinations are physically impaired/mentally impaired; physically impaired/visually impaired; and hearing impaired/mentally impaired. The term does not include deaf-blindness.

Orthopedic Impairment

An orthopedic impairment that adversely affects a child's educational performance may be caused by congenital anomaly (e.g., clubfoot), impairments caused by disease (e.g., bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations).

Other Health Impaired

A child may be diagnosed as other health impaired if there is a medically diagnosed physical or physiological condition, including but not limited to a seizure disorder, asthma, attention deficit disorder, or diabetes, that causes educationally related problems. The disability interferes with the student's ability to function at school using traditional instructional materials and techniques.

Attention deficit disorder (ADD) and attention deficit with hyperactivity disorder (ADHD) are referenced in the federal and state special education rules and regulations under the definition of other health impaired. ***A child with a diagnosis of ADD or ADHD is not automatically eligible for special education services.*** If a child with a diagnosis of ADD or ADHD meets the requirement(s) under "other health impaired" or one of the other disability categories due to a disability that adversely affects his/her educational performance, he/she may be eligible for special education and related services. A special education evaluation and eligibility conference would be necessary to determine your child's specific disability. Children with ADD or ADHD who do not meet the eligibility criteria of any of the disabilities in P.L. 105-17 may be entitled to the services and legal protections described in Section 504 of the Rehabilitation Act of 1973 (*see Section 14*).

Specific Learning Disability

A child who has a learning disability may have a disorder in one or more of the processes needed to receive, understand, or express information (psychological processing). As a result, the child may have difficulty in one or more of the following:

- Basic reading skills
- Reading comprehension
- Written expression
- Mathematics calculation
- Listening comprehension
- Oral expression

Children with learning disabilities show a significant difference between ability and achievement. The learning disability, then, is not primarily due to a physical, mental or emotional disability nor to environmental, cultural or economic factors.

Speech and/or Language Impairment

A child with a speech impairment has problems with the mechanics of speech production when speech is the primary way of communicating. Speech problems may occur with voice (pitch, intensity or quality), fluency (the flow of speech) or articulation (the way sounds are made). The disorder affects how others understand your child's speech.

A child with a language impairment has difficulty in understanding or expressing gestural (signs/mannerisms that express ideas), spoken, or written ideas. The disability may involve sounds or sound combinations, forming words, or putting words together in sentences. It may involve the meaning of words and combination of words. It may involve the function of language in communication. The disorder can affect school functioning through listening, speaking, reading, and/or writing activities.

Traumatic Brain Injury

A child with a traumatic brain injury has had a sudden injury to the brain. This injury has been caused by an external event resulting in total or partial functional disability or psychological and social problems that affect educational performance. The term includes open or closed head injuries.

A child with traumatic brain injury may experience problems with vision (blurred or doubled), hearing, health or motor skills, thinking or functional living skills, learning, speech or language functions, or inappropriate or impulsive behaviors. Parents are encouraged to contact their local school district as soon as possible after a head injury occurs so the district can begin planning for the child's return to school.

Visual Impairment and Blindness

Visual impairment includes any type of sight problem which, even with glasses/contacts, adversely affects school performance. Children with visual impairments can be further described as partially sighted or blind based on the degree of visual impairment and their educational needs.

SECTION 4

INDIVIDUALIZED EDUCATION PROGRAM

General

The *individualized education program (IEP)* is a written plan describing the provision of special education and related services for a student with a disability. This written document describes your child and what you and the school will do to give your child the extra help and attention needed. Since parents help to write IEPs for their children, it is important that you know what goes into an IEP. You should also understand what will happen at IEP meetings and what will happen after the IEP is written.

Once you and the other members of the eligibility conference decide that your child is eligible and special education services are needed, an IEP must be developed. The IEP may be completed immediately following the eligibility conference or a second meeting may be held to develop, review, or revise the IEP. The IEP meeting must occur within 30 days of the determination of your child's eligibility for special education and no more than 60 school days from the date of the referral.

Your school district must have an IEP in effect for each child who is eligible for special education and related services at the beginning of each school year. When an IEP is developed or revised, the district is required to provide you with a notification of the results of the meeting. The IEP will be implemented no later than ten (10) days after the notice has been provided. Your school district must have procedures outlining how staff members will be provided with the results of the IEP meeting and what responsibilities they will have in implementing the IEP.

Content

The IEP describes what your child can already do and what he/she needs to learn for the next year. It lists the special help your child will receive in order to learn. The IEP team must consider:

- ❖ **Your child's strengths and your concerns about your child's education,**
- ❖ **The results of the initial or most recent evaluation,**
 - ❖ **The need for assistive technology devices and services,**
 - ❖ **Special needs related to communication,**
 - ❖ **Language-related needs due to limited English proficiency or a hearing impairment,**
- ❖ **The need for behavioral interventions, including positive interventions, to address behavior, and**

◆ **The need for instruction in Braille due to a visual impairment.**

Your child's IEP must include these things:

- ◆ **Present level of educational performance**
(descriptions of what your child can do, what he/she knows and how the disability affects your child's progress in the general curriculum)
- ◆ **Annual goals**
(statements of what your child needs to learn and should be able to learn over the next year in order to be involved in and progress in the general curriculum-should reflect consideration of the State Goals for Learning and the Illinois Learning Standards)
- ◆ **Progress toward annual goals and how parent(s) will be informed**
(how you will be regularly informed of your child's progress on his/her annual goals)
- ◆ **Short-term instructional objectives/benchmarks**
(small steps that your child must learn or accomplish in order to reach the annual goals)
- ◆ **Specific special education, related services, supplementary aids and services and a statement of program modifications or supports for school personnel**
(special services your child will have to support his/her education to be involved in and progress in the general curriculum, nonacademic activities, and extracurricular activities)
- ◆ **Beginning date, amount, frequency, location and anticipated duration of services and modifications**
(when your child will begin receiving special services, the length of time your child will need the program or services during that school year, the anticipated frequency of the services, and location of services)
- ◆ **Extent of participation in regular education programs**
(explanation of your child's lack of participation, if any, in academic, nonacademic and extracurricular programs)
- ◆ **Language(s) or mode(s) of communication**
(how special education and related services will be provided, if other than or in addition to English)
- ◆ **Participation in assessments**
(what accommodations are necessary, if any, for your child to participate in State or district-wide assessments or if the assessments are not appropriate, how your child will be assessed, including participation in the Illinois Alternate Assessment – see the next section for a more detailed description of assessments)

- ❖ **Placement**
(the placement that the team has determined appropriate for your child)
- ❖ **Extended school year services**
(whether your child requires the provision of services beyond the district's normal school year in order to receive FAPE – see the next section for a more detailed description of extended school year services)

In addition:

(If needed based upon the evaluation results and input from school personnel, your child's IEP **MAY INCLUDE** the following information)

- ❖ **Adapted Physical Education** - for students who cannot participate in a regular physical education program because of their disabilities, a description of the specially designed physical education services.
- ❖ **Assessments (State and District-Wide)** - for all eligible students at the appropriate grade level. The IEP team must determine how the student will participate in state and district-wide assessments, including the need for accommodations or by the use of an alternate assessment. If the IEP team determines that a student needs accommodations in order to take the regular state or district-wide assessment(s), the accommodations must be listed in the IEP, must address the student's specific disability, be consistent with accommodations used during instructional time, and be allowable within the parameters of the test.

If a student requires an alternate assessment, the IEP must include a statement of why the student is unable to take, even with accommodations, the regular assessment(s). For district-wide assessments, the local district must develop and conduct an appropriate alternate assessment. The alternate assessment for state-wide tests in Illinois is the Illinois Alternate Assessment.

Parental permission is not required for students with disabilities to participate in state and district-wide assessments, unless it is required for nondisabled students. As a member of the IEP team, it is important that you be actively involved in the team's decision about how your child will participate in state and district-wide assessment programs.

- ❖ **Assistive Technology** - for students with physical impairments or other disabilities who require special equipment to participate in school. Assistive technology is an item, piece of equipment, or product that helps a child with a disability benefit from his/her educational program. It may be a product that is already available or one that is designed or modified to increase, maintain, or improve functional ability. It includes an evaluation of your child and training in the use of the device that can be extended to family members. Information regarding the provision of assistive technology must be documented in the IEP, including an educational need for use at home and repairs necessary to ensure a working device. Access to these devices can significantly change how your child learns and interacts with others. *(For more*

information regarding assistive technology, you may contact the Illinois Assistive Technology Project at 800/852-5110.)

- ❖ **Behavioral Intervention Plan** - for students with disabilities who have behavior problems that interfere with their learning or the learning of others. It should be based on your child's behavior and include a summary of the findings of the functional behavioral assessment, summary of previous interventions that were implemented, description of the interventions to be used, including positive behavioral interventions, identification of measurable behavioral changes and methods of evaluation, schedule for review of effectiveness, and provisions for coordinating the plan with you.

- ❖ **Extended School Year Services** - for eligible students, the type and length of the school program must appear on the IEP. Extended school year services for students with disabilities is not the same as regular or remedial summer school. The need for extended school year services must be decided at an IEP meeting and based on your child's individual needs, the anticipated degree of learning lost by your child over the summer, the projected length of time necessary to relearn skills or information, and your child's progress in relation to his/her behavior and/or social/emotional needs. If you think your child needs extended school year services, you should request an IEP meeting.

Your child may attend a regular or remedial summer school program if he/she meets the local district eligibility criteria established for all students seeking admittance to the program and can benefit from the program. If your child meets the eligibility requirements, he/she cannot be excluded due to his/her disability.

- ❖ **Graduation Planning-** for all students, prior to the expected graduation. At least one year prior to graduation, the IEP must address the anticipated date of graduation from high school and the type of diploma to be issued. Special education services end following the granting of a high school diploma. Students who have not been given a regular high school diploma continue to be eligible to receive FAPE through the age of 21. You may request a review of the recommendation for graduation if, in your opinion, your child has not reached a satisfactory level of achievement.

- ❖ **Home-Based Support** - for students who may be eligible to participate in the Home-Based Support Services Program for Mentally Disabled Adults funded through the Department of Human Services (DHS). The Home-Based Support Services Program tailors services and pays for services to help adults with disabilities (age 18 or older) living on their own or with their families. These students have severe autism, severe mental illness, severe or profound mental retardation, or severe and multiple impairments and have reached age 18 and no longer receive special education services. There are also income and residency requirements. The school district will inform you of the existence of the Home-Based Support program. The IEP must document plans for: (a) determining the student's eligibility for home-based services, (b) enrolling the student in the home-based service program, and developing a plan for the student's most effective use of home-based services.

- classroom, peer supports, related services provided in the general education setting, grading modifications, and/or classroom or individual aides.

*A child with a disability should not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

- **Resource Room (Special Class)** - The child receives specially designed instruction through a special education class. The child is included, to the maximum extent appropriate, in regular education classes.
- **Self-Contained Room (Special Class)** - The child receives specially designed instruction through a special education class. The child is included, with support (using some of the above methods) in those parts of regular education classes which are appropriate.
- **Separate Day School (Special School)** - The child receives specially designed instruction in a special school. The child is included in those parts of regular education classes that are appropriate.
- **Residential Program (Special School)** - The child receives specially designed instruction in a special school and lives on the grounds of the residential program.
- **Home/Hospital Program** – The child, with extraordinary needs that cannot be met by public schools, receives specially designed instruction at home or in the hospital.

Schools may not make placements based solely on factors such as the following:

- ✓ Category of disability;
- ✓ Severity of disability;
- ✓ Configuration of delivery system;
- ✓ Availability of educational or related services;
- ✓ Availability of space; or
- ✓ Administrative convenience.

Funding concerns cannot be used as an excuse for not providing appropriate programs or services. If funding is a problem, your local school district must explore other ways of serving your child.

Facilities and Classes

Facilities

Facilities used for special education services shall be appropriate for the specific programs or services and should be comparable to those provided to the students in the general education environment.

SECTION 5

PRIVATE SCHOOLS

Placement by School District

If the IEP team determines that your child needs to be educated in a State-operated or nonpublic special education facility, it will be documented in the IEP and the services provided by the nonpublic facility will be at no cost to you. Your school district is responsible for the development and implementation of the IEP.

Placement by Parents

If your child is receiving special education services in the public school system and you decide to enroll him/her in a private school without the consent or referral of your school district, you are responsible for the cost of the services. Your local school district must do the following for the children who live within the school district but are enrolled in a private school:

- ✓ Complete the necessary special education evaluations, even if your child attends a private school outside of your local school district;
- ✓ Consult annually with representatives of the private schools in which children with disabilities attend. This consultation will determine:
 - Which children will receive services,
 - What services will be provided,
 - How and where the services will be provided, and
 - How the services provided will be evaluated;
- ✓ Make the final decision regarding the provision of services to eligible children enrolled in private schools;
- ✓ Maintain a written record of its decisions.

Children with disabilities enrolled in private schools do not have an individual right to receive special education services. If it is determined that your child will receive special education and/or related services, a “services plan” will be developed. The services plan will describe the special education and related services that will be provided. Services may either be provided on site at your child’s private school or at the public school. This will be determined by the local school district. If services are not provided at the private school, your school district is responsible for providing transportation to and from the service site. Due process rights related to the provision of services, available to parents of children enrolled in the public schools, do not apply in this situation.

If you request part-time attendance at a public school, the school district where you reside must accept and enroll your child on a part-time basis. An IEP will be developed and your child will be entitled to the full array of special education services. If your child is enrolled on a part-time basis, he/she will most likely receive special education services at the public school. If you request services on-site at the private school, the services may only be available at the discretion of the school district or through the services plan described above.

Issue of FAPE

If you enroll your child in a nonpublic school or facility because you disagree with the district's provision of an appropriate special education program, you may seek resolution through the due process system. Your district may be required to reimburse you for the cost of enrollment if a hearing officer or the court system finds that a free appropriate public education was not provided by the school district. Reimbursement may be reduced or denied if the court finds your actions to be unreasonable. Reimbursement may also be reduced or denied if *you do not*:

- ✓ At the most recent IEP meeting, state your concerns about the proposed placement, inform the IEP team that you are rejecting the placement decision, and explain that you plan to enroll your child in a nonpublic school or facility at public expense.
- ✓ Provide the school district with written notice regarding your intent to enroll your child in a private school ten (10) business days prior to removing him/her from the public school system.
- ✓ Make your child available when the school district notifies you of its intent to evaluate your child (including the purpose of the evaluation that was appropriate and reasonable), prior to removing him from the public school system

The cost of reimbursement may not be reduced or denied for a parent's failure to provide notice to the public school system if: (a) the parent is illiterate and cannot write in English, (b) providing notice would result in physical or emotional harm to the child, (c) the school prevented the parent from providing such notice, and (d) the parents did not receive notice.

SECTION 7

STUDENT DISCIPLINE

School safety starts with the commitment of every student to take full responsibility for his or her own safety and the safety of others. This commitment to personal responsibility is important to ensure that students are educated in a safe school. For any student who misbehaves, a school district should decide what action is most likely to change the behavior. For a student receiving special education and related services, this decision must take into account the student's disability.

In-School Suspension

An in-school suspension is served on the school premises. A student is not considered suspended when the nature and quality of the educational program and services provided during the in-school suspension are comparable to the nature and quality of the educational program and services required in the IEP and provided to the student in the current placement.

Disciplinary Actions (Out-of-School Suspensions)

School officials may order the removal of an eligible child for periods of no more than ten consecutive school days each in response to separate incidents of misconduct as long as the removals do not constitute a change of placement. A change of placement occurs if the removal is for more than 10 consecutive school days or if the removals constitute a pattern. The removals of more than 10 school days in a school year constitute a pattern based upon consideration of factors such as the:

- ◆ Length of each removal;
- ◆ Total amount of time the child is removed; and
- ◆ Proximity of the removals to one another.

When a student is removed from school for more than ten school days during a school year, the following applies:

- ◆ Services must be provided during removals beyond the ten school days. School personnel, in consultation with the special education teacher, will determine the services to be provided. The services must enable your child to appropriately progress in the general curriculum and progress in achieving the goals in the IEP.
- ◆ When a child is *first* removed beyond ten school days, the district must either: (a) convene an IEP meeting to review/revise the child's behavioral intervention plan, or (b) if the child does not have a behavioral intervention plan, convene an IEP meeting to develop a plan for conducting a functional behavioral assessment. A behavioral intervention plan must be developed upon completion of the assessment.

Upon any subsequent removals, members of the IEP team should review the behavioral intervention plan. If you or any other member of the IEP team believe that the plan needs to be modified, the district will convene an IEP meeting to review and revise the behavioral intervention plan, as appropriate.

If it is determined that the behavior was not related to the student's disability, the district may apply relevant disciplinary measures. Services must continue to be provided during the removal period so the child continues to progress in the general curriculum and progress in achieving the goals in the IEP. An IEP must be developed to document the change of placement and/or services.

- ◆ If it is determined that the behavior was related to the student's disability, the district must take immediate steps to remedy any deficiencies identified in the IEP or its implementation. The behavior, then, may be addressed through other appropriate behavioral intervention strategies. The school district may want to review the special education and related services and current placement of the student.
- ◆ Proper notification must be provided to the parent(s) regarding the conference and must include an explanation of procedural safeguards and due process rights.

For more information regarding the discipline of students with disabilities, please contact the Information Center at the Illinois State Board of Education at 217/782-4321 to request a copy of a document entitled, Communication on Discipline of Children with Disabilities.

SECTION 8

CONFLICT RESOLUTION

Even when you and the school district try your best to come up with the right services and placement for your child, there may still be disagreements. Examples are

- ⇒ Is an evaluation or reevaluation needed?
- ⇒ What tests/procedures should be used?
- ⇒ Does your child have a disability and, if so, which disability?
- ⇒ What program and related services are needed and in what amounts?
- ⇒ Is your child's program working or not?
- ⇒ What class and school is needed to help your child learn?

When you disagree with the school's decision about the student's educational program or feel that your child's rights have been violated, conflict resolution procedures are available to assist you and the district.

The steps you can take to *informally* resolve issues with local school district personnel include the following:

- ◆ Talk informally with the school staff, principal, superintendent, or director of the special education cooperative.
- ◆ If you disagree with the identification and/or evaluation, you can request another eligibility meeting or you can request an independent educational evaluation at public expense.
- ◆ If you disagree with the educational placement or services, you can request an IEP meeting to discuss the issues. *(In order for your child's placement to remain the same while you try to resolve your disagreement, you must request a due process hearing within ten (10) calendar days of receiving the notice of intent to change the placement.)*

If informal talks with the school personnel do not resolve the conflict and you feel that a more formalized action is necessary, the following options are available:

- ◆ **Complaint Investigation,**
- ◆ **Mediation,**
- ◆ **Due Process Hearing.**

COMPLAINT INVESTIGATION PROCESS

If you believe that the local school district has not complied with the law or that one of your or your child's educational rights have been violated, a complaint can be filed with the Illinois State Board of Education. A letter of complaint should be submitted to:

Illinois State Board of Education
Special Education Compliance Division
100 North First Street
Springfield, Illinois 62777-0001

Preparing the Letter of Complaint

When preparing the letter, you should include the following information:

- ◆ a statement detailing the alleged violation(s) and the facts on which the statement is based
- ◆ student information which includes the student's name, parent/guardian name, mailing address, daytime telephone number, and name of student's resident school district.

Required Actions of the Illinois State Board of Education

The Illinois State Board of Education will send you and the local school district written notice within 10 school days of receipt of the written complaint. The notice should include one or more of the following:

- ◆ nature of the complaint that has been received,
- ◆ confirmation of any action to be taken through informal contact with the school district,
- ◆ confirmation that the situation has been resolved.

If you file a written complaint that involves one or more issues that are also the subject of a due process hearing, the Illinois State Board of Education will hold those issues of the complaint in abeyance until the completion of the hearing. Any issues that are not addressed in the due process hearing will be handled through the complaint process.

Resolution of the Complaint

If the Illinois State Board of Education is unable to resolve the issue(s) within 10 school days of receiving the complaint, a full investigation will be conducted to gather additional information and/or make an on-site visit, if necessary. This investigation will be completed within 60 calendar days unless circumstances require an extension of time to properly investigate and resolve the complaint. Following the investigation, the Illinois State Board of Education will provide you and the local school district with written notification regarding:

- ◆ the findings,
- ◆ the specific action to be taken to reach compliance, if necessary, and
- ◆ the time by which the action must be taken, if necessary.

If the local school district or the special education cooperative does not verify compliance with the Illinois State Board of Education, additional enforcement proceedings may begin.

Use of the complaint process does not preclude an eligible party such as a parent, school district, or a student from requesting a special education due process hearing (see the section titled “Due Process Hearing”). If you want to learn more about the complaint process, you may contact the Special Education Compliance Division, Illinois State Board of Education, at 217/782-5589.

MEDIATION PROCESS

If you have unresolved concerns regarding the appropriateness of the special education program and related services provided to your child, you may request mediation. Mediation is a voluntary process in which both parents and school district personnel meet to resolve disputes with the help of a trained mediator. In mediation, both you and the local school district are brought together to discuss and consider alternative solutions to the issue(s), your child's capabilities, and the concerns and problems expressed by the other party. This service is provided by the state at no cost to you or the local school district.

Mediation is designed to resolve issues without going to the often more expensive and more formal due process hearing. ***Either party can request mediation without initiating a due process hearing.*** If either party chooses to initiate a due process hearing, mediation is still encouraged as an option to resolve the dispute. It does not delay or deny the due process hearing.

Procedures

- ★ Mediation is conducted by an impartial mediator. A trained mediator, provided by the Illinois State Board of Education, will establish the issue(s), determine points of agreement, and offer suggestions for resolution of the disagreement(s).
- ★ Mediation requires the full participation of both parties. Mediation activities can only occur if both parties agree to participate and will end if either party chooses to end the activity.
- ★ Mediation cannot force either party to take an action. A mediator does not have the authority to require any action by either party. Thus, if you or the local school district are unhappy with the suggestions and unwilling to take suggested actions, there is no legal requirement that you do so.
- ★ Mediation is conducted in complete confidentiality and will not be used for any other purpose. The only record kept of the mediation will be a listing of participants; the date, time, location of mediation session; and a summary of the outcome. Discussions held at mediation meetings will not be transcribed and cannot be used by either party in a due process action. Documentation that a mediation occurred and the terms of the agreement are the only evidence that may be presented at a due process hearing.
- ★ Mediation must include those persons who have the authority to act on behalf of the student and the local school district. Participants may be only those persons who have the legal responsibilities for the student and the school. Typically, mediation activities are limited to three persons, per side, to support face-to-face discussion and resolution.

If you want to request a mediation or learn more about the mediation process, you may contact the mediation coordinator, Special Education Compliance Division, Illinois State Board of Education, at 217/782-5589.

During the Hearing

The hearing officer will

- ❖ introduce the parties,
- ❖ review the ground rules for conducting the hearing,
- ❖ restate any agreements or rulings entered prior to the hearing, and
- ❖ restate the issue(s) as determined at the pre-hearing conference.

You and the school district will

- ❖ present opening statements (these should be brief and include the desired outcome),
- ❖ present witnesses and cross-examine witnesses,
- ❖ present evidence/exhibits, and
- ❖ present summary statements.

The hearing officer will inform you of the timeline for receiving a written decision, the right to request clarification, and the right to appeal the decision. A written decision should be sent to you within ten (10) days after the hearing. The hearing officer shall retain jurisdiction for the sole purpose of considering a request for clarification of the final decision. A request for clarification must be submitted to the hearing officer within five (5) days after receipt of the decision. A copy of the request for clarification must specify the portions of the decision for which clarification is sought and must be mailed to all parties involved in the hearing including the Illinois State Board of Education. The hearing officer will respond to the request for clarification within 10 days. The hearing officer's decision is binding unless appealed by either you or the school district. Unless there was a request to delay the hearing, a decision should be made no later than 45 days after the request for a hearing was received by the district.

Under specific conditions, when there is a need to move a student to an interim alternative educational setting because of alleged misconduct believed to be dangerous to the student or others, a hearing may be conducted in an expedited manner with the decision rendered within 10 days of the date of the request. An expedited hearing may also be requested by the parents if they disagree with the district's manifestation determination (the relationship between the alleged misconduct and the student's disability). The procedures governing expedited hearings can be found in Section 14/8.02b of the Illinois School Code.

Appeal to the Court of Law

If you disagree with the hearing officer's decision, you have a right to appeal the decision in court. The appeal must be filed within 120 days after a copy of the decision was mailed to you and the school district.

Recovery of Attorney Fees

The *Handicapped Children's Protection Act of 1986* provides for the recovery of attorney fees. A parent who prevails in either a hearing or court action may recover reasonable attorney fees subject to limitations. It is advisable that prior to proceeding to a hearing, you thoroughly discuss with an attorney the question of cost and the applicability of this law.

SECTION 9

SCHOOL RECORDS

Schools keep many records about exceptional students. These records contain a lot of personal and private information about your child. Two types of school records are:

"Student Permanent Record":

Basic personal and educational information which must be maintained by the school district for at least sixty (60) years after the student has transferred, graduated, or otherwise permanently withdrawn from school. (See *Section 17* for specific examples.)

"Student Temporary Record":

All information not required in the student permanent record including any special education information and reports which must be maintained for at least five (5) years after the student has transferred, graduated, or otherwise permanently withdrawn from school. (See *Section 17* for specific examples.)

Your Child's Records

As a parent, you have the right to see and read any educational record the school keeps on your child. You may want to familiarize yourself with the contents of your child's school record. You may also have someone else - a friend, relative, or advocate - look at the records with you.

You have a right to:

- ❖ Inspect all information contained in your child's school records (*not including personal notes of school staff, provided the notes are not shared with other persons*).
- ❖ Copy all information contained in your child's school records. The school may charge for these copies as long as the fee does not prevent you from inspecting the records.
- ❖ Receive an explanation of the contents by a qualified professional.
- ❖ Inspect and review the records within 15 school days of your request.

You should review your child's records

- ❖ Before your child transfers to another school,
- ❖ Before you participate in a special education meeting,
- ❖ Before you participate in a special education impartial due process hearing.

meeting in which the required participants are in attendance. In using the IFSP, the local school district must provide a detailed explanation of the differences between an IFSP and an IEP and obtain informed, written consent from you for the use of the IFSP.

The IEP or IFSP must be developed and services must be in effect beginning on the child's 3rd birthday. The type, amount and location of special education services provided must be based on the child's needs. The law requires that preschoolers receive their services together with children without disabilities, to the maximum extent appropriate.

SECTION 11

EDUCATIONAL SURROGATE PARENT

A local school district must make reasonable attempts to contact the parent of a student who has been referred for, or is in need of, special education and related services. If the parent cannot be identified or located or the student is a ward of the state residing in a residential facility, an educational surrogate parent must be appointed by the Illinois State Board of Education (ISBE) to ensure the educational rights of the student are protected. A student residing in a foster home or relative caretaker setting no longer requires the appointment of an educational surrogate parent. The foster parent or relative caretaker will represent the educational needs of each child placed in his/her home.

The person selected as an educational surrogate parent cannot be an employee of a public agency which is involved in the education or care of the student, can have no interest that conflicts with the interest of the student he/she represents, and must have knowledge and skills to ensure adequate representation. An employee of a residential facility may be selected as an educational surrogate parent for a student residing in that facility if that facility provides only non-educational care for the student.

The educational surrogate parent protects the educational rights of students with disabilities in matters relating to identification, evaluation, and special education placement. The educational surrogate parent has all of the rights and responsibilities of a parent or guardian in regard to the special education process. These rights and responsibilities include:

- ❖ the responsibility to give informed consent regarding the initiation of an evaluation or reevaluation of the student,
- ❖ the right to participate in discussions regarding the student's evaluation,
- ❖ the right to participate in meetings to determine eligibility and development of the Individualized Education Program (IEP)
- ❖ the right to give informed consent regarding the student's initial placement in a special education program,
- ❖ the right to be notified of any changes in the student's special education placement,
- ❖ the right to initiate and to access the due process system,
- ❖ the right to be kept informed regarding the student's educational progress,
- ❖ the responsibility to comply with all state and federal confidentiality requirements,
- ❖ the responsibility to help determine and then advocate for the best educational interests of the student,
- ❖ the right to see and read any educational records the school keeps on the student (See School Records *Section 9*),
- ❖ the right to sign consent for the release of educational records.

- ❖ Access to such information shall be limited to personnel who require the information to perform their duties or for whom access is permitted by law.

Assurances

The Illinois Department of Public Aid has made a letter available to parents stating that:

- ❖ Children with disabilities, who are eligible for Medicaid, may participate in this program which allows the local school district to bill Medicaid for healthcare services provided to the students at school. The services must be eligible for benefit payments by Medicaid.
- ❖ Your child's Medical Assistance will not be reduced if the school district bills Medicaid for services included in your child's IEP or IFSP.
- ❖ Careful attention is given to safeguarding confidentiality. Information that is provided will be used only for the purpose for which it was made available and only personnel who require the information to perform their duties will have access to it.

SECTION 13

THE STATE ADVISORY COUNCIL FOR THE EDUCATION OF CHILDREN WITH DISABILITIES

The State Advisory Council for the Education of Children with Disabilities is responsible for advising the Governor, the General Assembly, and the State Board of Education on the educational needs of students with disabilities in Illinois. The Council meets about six times a year. At each meeting, the Council is available to hear public testimony from parents, educators, and administrators about the unmet needs of students with disabilities.

If you are interested in attending an Advisory Council meeting or providing either written or oral testimony, you may contact:

The State Advisory Council for the Education of Children with Disabilities
c/o Illinois State Board of Education
100 North First Street
Springfield, IL 62777-0001

SECTION 14

SPECIAL EDUCATION RULES AND REGULATIONS

A child with a disability is entitled to receive a free appropriate public education. This means that special education and related services must be available and be specifically designed to meet the unique needs of the child. The following state and federal laws and regulations guarantee that a child with a disability has an equal opportunity to benefit from public instruction.

-
- Individuals with Disabilities Education Act (IDEA), P.L. 105-17, formerly The Education for All Handicapped Children Act, P.L. 94-142
 - 34 Code of Federal Regulations Part 300 (the implementing regulations for IDEA)
 - Section 504 of the Rehabilitation Act of 1973
 - The School Code, Article 14
 - 23 Illinois Administrative Code 226 (implementing regulations for the School Code, Article 14)
 - 23 Illinois Administrative Code 226 Part 375 (student records)
 - Title VI of the Civil Rights Act of 1964
 - Title IX of the Education Amendments of 1972
 - Family Education Rights and Privacy Act (FERPA)
 - Education Department General Administrative Regulations (EDGAR) (34 CFR 76)
 - 23 Illinois Administrative Code 226 Part 210 (private schools)
-

Public Law 105-17 (IDEA)

The Individuals with Disabilities Education Act (IDEA) is a law that was originally passed in 1975 by the United States Congress guaranteeing all children and youth (ages 3 through 21) with disabilities receive a free appropriate public education (FAPE). IDEA also ensures that the rights of children and youth with disabilities and their parents are protected. (*This booklet, A Parents Guide: The Educational Rights of Students with Disability, describes the rights of students under the IDEA.*)

Public Law 99-457 (Early Intervention)

In 1986, P.L. 99-457 was passed authorizing states to establish early intervention programs for infants and toddlers with disabilities and their families. The focus is to provide services to infants and toddlers, ages birth through 2, during the most critical developmental period. (*For more information, you may contact the Department of Human Services, Early Intervention Bureau, 623 E. Adams, P.O. Box 19429, Springfield, IL 62794-9429.*)

Section 504 of the Rehabilitation Act of 1973

Section 504 was the first federal Civil Rights Law to protect the rights of people with disabilities. It prohibits discrimination in:

- the education of students with disabilities
- vocational education programs

- college programs and other post-secondary education programs
- employment
- health, welfare, and other social service programs; and
- other programs and activities that receive federal funds.

Section 504 requires an evaluation to determine whether or not your child meets the criteria to be eligible for services under Section 504. If your child is eligible for services under Section 504, the school district is required to provide an appropriate education. This may mean modifying the regular education program and providing any necessary services. These services might include reducing the amount of required work, completing fewer assignments in a shorter period of time, providing more visual instruction, and/or developing behavioral interventions.

This legislation is relevant to schools because all schools receive federal funds. Therefore, they cannot exclude or discriminate against children and adolescents on the basis of a disability. Schools are required to (a) have written policies and procedures regarding Section 504 and (b) make reasonable accommodations to make programs accessible to children with disabilities. You may contact your local school district administrator regarding Section 504 issues. *(For more information about Section 504, you may contact the Office of Civil Rights, U.S. Department of Education, 111 North Canal, Chicago, IL 60606.)*

Americans with Disabilities Act (ADA)

The ADA, passed in 1990, gives civil rights protections to individuals with disabilities. More specifically, it mandates equal opportunity for persons with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunication. *(For more information about ADA, you may contact the Office of Civil Rights, U.S. Department of Education, 111 North Canal, Chicago, IL 60606.)*

Nonacademic Settings

The LRE mandate also applies to nonacademic services and extracurricular activities. School districts and other agencies serving students with disabilities must ensure that these students have an equal opportunity to participate in such activities (34 C.F.R. §300.553). When a district or appropriate private agency provides or arranges nonacademic and extracurricular services/activities appropriate for a student with disabilities, the IEP team must determine the required supplementary aids and services necessary for participation.

Nonacademic and extracurricular services/activities may include, but not be limited to, meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available [34 C.F.R. §300.306(b)].

Children in Public or Private Institutions

To ensure that students with disabilities are educated in the LRE and receive a free, appropriate public education, the ISBE will enter into agreements with appropriate public and private institutions and associated state agencies, as necessary.

Technical Assistance and Training

The ISBE will ensure that teachers and administrators in public agencies that deal with students with disabilities are fully informed about their responsibilities for implementing the LRE requirements. The ISBE will provide technical assistance and training necessary to assist in this effort.

Monitoring Activities

The ISBE will monitor public agencies to ensure that the LRE requirements are being implemented. If the ISBE discovers evidence that placements inconsistent with the LRE mandate are being made, staff will review the public agency's justification and documentation and then help the agency plan and implement any necessary corrective action.

SECTION 16

REQUESTING (REFERRAL FOR) AN EVALUATION AND/OR REEVALUATION (SAMPLE LETTER)

(Your Address)
(Your Phone Number)
(Date)

Mr./Ms. _____
(*Superintendent or Principal*)

District Address

Dear _____ (Name) _____:

I am the parent of _____, whose date of birth is _____, and who is a student in the _____ grade/school.

I am referring my child for a special education evaluation/reevaluation for the following reason(s):

(List your reasons here.)

- 1.
- 2.
- 3.
- 4.
- 5.

I understand that if the school district accepts my referral request, the district must obtain my consent prior to conducting the evaluation/reevaluation. I also understand that this letter starts the 60-school-day timeline.

Finally, I understand that if the school district turns down my request, the district will provide me with a written explanation of the reasons for not conducting an evaluation/reevaluation.

Thank you.

Sincerely,

(Your Name)

(THIS LETTER MAY BE HANDWRITTEN)

**REQUESTING AN INDEPENDENT
EDUCATIONAL EVALUATION
(SAMPLE LETTER)**

(Your Address)
(Your Phone Number)
(Date)

Mr./Ms. _____
(*Superintendent*)

District Address

Dear _____ (Name) _____:

I am the parent of _____, whose date of birth is _____ and who is a student in the _____ grade/school.

I am requesting that the school district agree to pay for an independent evaluation of my child. I believe the district's evaluation was not appropriate because: (*examples*: it did not identify the specific special education needed to help my child; it did not use the correct evaluation instruments; it has not helped develop an appropriate program for my child.)

(List your reasons here.)

- 1.
- 2.
- 3.
- 4.
- 5.

I understand that if the school district turns down my request, the district must immediately request a due process hearing. I would appreciate it if you would contact me at your earliest convenience to let me know whether the independent evaluation will be provided or when the hearing will be scheduled.

Thank you.

Sincerely,

(Your name)

(THIS LETTER MAY BE HANDWRITTEN)

**REQUESTING A DUE PROCESS HEARING
(SAMPLE LETTER)**

(Your Address)
(Your Phone Number)
(Date)

Mr./Ms. _____
(*Superintendent*)
District Address

Dear _____ (Name) _____:

As provided for under Public Law 105-17 and the special education rules for Illinois, I am requesting a due process hearing on behalf of my (*son/daughter/ward*) _____, whose birthdate is _____. My child currently attends _____ school.

The hearing is requested to resolve differences over (*state the specific reasons for the request*) and I will be requesting that the hearing officer order the following remedy (*be specific*)

Please contact me at (phone number) _____ if you have any questions or want more information.

Thank you.

Sincerely,

(Your name)

Enclosure: (*Due Process Request Form*)

(THIS LETTER MAY BE HANDWRITTEN)

SECTION 17

PARENT DICTIONARY

On the next several pages, you will find definitions for a number of words often used by the people who work with children with disabilities. Different school districts and educators may use these words in somewhat different ways.

Accommodation - learning to do things differently from other students because of a disability or impairment. An example of “accommodation” is the visually impaired student who reads by listening to a recording of a textbook.

Advocacy - agencies or individuals acting on behalf of themselves or others.

Annual Goal - a statement in an IEP of what a student needs to learn and should be able to learn in his/her special education program within a year.

Annual Review - a review of a student's special education program each year which includes an update of the student's progress, a review of the current IEP, and development of a new IEP for the upcoming year.

Appeal - a written request for a court to review or change the decision of a hearing officer.

Assessment - a way of collecting information about a student's special learning needs, strengths, and interests to help make educational decisions. An assessment may include giving individual tests, observing the student, looking at records, and talking with the student and his/her parents.

Behavioral Intervention - a method or technique used to influence a student's actions.

Behavioral Intervention Plan - a written plan developed as part of the IEP to address a serious behavioral problem. It is based on a functional behavioral assessment of the student's behavior, describes the interventions to be used, methods of evaluation, and provisions for coordinating with the home.

Business Day – Monday through Friday except for Federal and State holidays.

Claim - the written or electronically submitted request for payment of benefits for Medicaid-covered services that have been provided to students.

Complaint - the written action taken to notify the state education agency that special education regulations are not being followed.

Confidential - being careful and using good judgment in reporting only the information that is educationally relevant about a student when disclosing personal information to school personnel and others.

Consent - a voluntary agreement by the parents to let the school take an action which affects their child's education. Consent is shown by the parent signing a form or letter which describes the action the school wants to take.

Day – a calendar day, unless otherwise indicated as a “business day” or “school day”.

Date of Referral – The date on which written parental consent to complete an evaluation is obtained or provided.

Directory Information - data that may be released to the general public unless a parent requests that any or all information not be released. The information shall be limited to parent name(s) and address(es), student name, address, gender, grade level, birth date, birth place, academic awards, degrees, honors, participation in school-sponsored activities, major field of study, and period of attendance in school.

Disability - a problem or condition that makes it hard for a student to learn or do things in the same way as most other students. A disability may be short-term or permanent.

Due Process - a legal term that assures that persons with disabilities have the right to challenge any decision made on their behalf.

Due Process Hearing - a formal meeting held to settle disagreements between parents and schools in a way that is fair to the student, the parents, and the school. The meeting is run by an impartial hearing officer.

Duration - the length of time a student will need a special program or service during the school year or extended school year, as documented on the IEP.

Early Childhood - programs and services provided to children with disabilities from age 3 through 5.

Early Intervention - programs and services provided to infants and toddlers with disabilities from birth through age 2.

Educational Surrogate Parent - a person who protects the educational rights of a student with disabilities who has no parent/guardian available or who is under the guardianship of the Department of Children and Family Services (DCFS).

Eligibility Conference - a conference held to determine, review, terminate, or consider changes in a student's eligibility for special education.

Eligibility Conference Summary Report – a written report containing a summary of the results of the evaluation and the determination of eligibility for special education.

Eligible - a decision that determines a student meets the requirements for and is in need of special education and related services. The decision is based on the results of the evaluation and the conclusions reached at the eligibility conference.

Evaluation - collecting information about a student and any problems that may affect his/her educational development for the purpose of determining eligibility for special education and related services. The evaluation may include giving individualized tests, observing the student, looking at records, and talking with the student and his/her parents (see also assessment).

Free Appropriate Public Education (FAPE) - the words used in the federal law (IDEA) to describe the right of a student with disabilities to receive special education and related services which will meet his/her individual learning needs, at no cost to the parents.

Hearing Officer - an impartial person in charge of a due process hearing who issues a written decision based upon the evidence and witnesses presented at the hearing.

Independent Educational Evaluation - an assessment conducted by someone who is not employed by the school district. The person(s) completing the assessment must be fully trained and qualified.

Individualized Education Program (IEP) - the written educational plan for a student receiving special education and related services with goals and objectives to be attained during a calendar year.

Individualized Education Program (IEP) Team – the group of individuals enumerated in *Section 4* who determine the special education and related services to be provided to an eligible child. The IEP team and other qualified professionals are required to participate in meetings when identifying specific assessments, determining eligibility, and conducting manifestation determination reviews.

Individualized Education Program (IEP) Team’s Report – see eligibility conference summary report

Individualized Education Program (IEP) Conference - a meeting held to develop, review, and consider changes in a student’s special education and related services and educational placement.

Individualized Family Service Plan (IFSP) - a written plan for eligible children aged birth through 2 receiving early intervention services.

Initiation Date - the date, month, and year in which a program or service will begin as documented on the IEP.

Least Restrictive Environment (LRE) - the requirement that children with disabilities shall be educated to the maximum extent possible with children who do not have disabilities.

Mediation - a process in which parents and school personnel try to settle disagreements with the help of a trained mediator provided by the Illinois State Board of Education.

Medicaid - a federal-state public medical assistance program administered by the Illinois Department of Public Aid that enables eligible recipients to obtain medical benefits outlined within the state Medicaid guidelines.

Placement - the identification of special education and related services and development of an instructional program and setting for a student.

Present Levels of Performance - statements in an IEP that specifically describe what a student can or cannot do.

Positive Intervention - a reinforcer (e.g., praise, positive points, tokens) provided in order to increase the frequency of the response (e.g., praising a student for cooperative turn-taking).

Reevaluation - an assessment that occurs every three years, or more if needed, to determine continued eligibility for special education.

Referral - the process of requesting that a student be evaluated for special education and related services. Any concerned person may refer a student, including teachers, principals, parents, other agency personnel, or the student.

Related Services - support services needed by a student in order to benefit from special education services. These may include transportation, occupational therapy, physical therapy, speech/language therapy, school social work services, etc.

School Day - any day, including a partial day, during the regular school year that students are in attendance at school for instructional purposes.

Screening - a review of all children in a given group to identify those students who may need an evaluation to determine the need for special education.

Short-Term Instructional Objectives/Benchmarks - statements in an IEP that describe small steps a student must learn or master before he can reach the “annual goals” set for him/her.

Student Permanent Record - file that includes the following information: parent name(s) and address(es), student name, address, birthdate, birth place, gender, transcripts, grades, class rank, graduation date, grade level achieved, scores on college entrance exams, attendance reports, accident reports, health records, release of information forms, honors/awards received, and participation in school-sponsored activities and events.

Student Temporary Record - file that includes, but is not limited to, family background information, intelligence test scores, aptitude test scores, special education evaluations, achievement level test results, participation in extracurricular activities, disciplinary information, eligibility conference summary reports, IEPs, reports or information from non-educational persons or agencies, and other information of relevance to the education of the student.

Suspension - removal from school programs by administrative action for gross disobedience or misconduct.

SECTION 18

LEGAL OR ADVOCACY ASSISTANCE

This listing includes many resource centers that provide legal or advocacy services to families of children with disabilities, usually free or at low cost to the client. Upon request, your school district will provide you with local information regarding free or low-cost legal services.

The Secretary of State provides a complete list of disability resource information called, *Special Services Guide for Persons with Disabilities and Parents of Children with Special Needs*. For more information regarding this list, you may contact 1-800-252-2904.

LOCAL SERVICES

ALTON 62002

Impact Inc.
2735 E. Broadway
618/462-1411
618/474-5303 (TDD)

ALTON 62002-5099

(Metro East Regional Office)
Guardianship & Advocacy Commission
4500 College Avenue, Suite 100
618/474-5503
Fax: 618/474-5517

ALTON 62002

*Land of Lincoln Legal Assistance
Foundation, Inc.*
413 East Broadway
618/462-0029
1-800-642-5570

BATAVIA 60510

Prairie State Legal Services, Inc.
201 Houston Street, Suite 200
630/232-9415
1-800-942-4612

BELLEVILLE 62220

*Living Independently Now CIL
(LINC)*
120 E. "A" Street
618/235-9988

618/235-0451 (TDD)

BLOOMINGTON 61704

*Living Independence for Everyone
(LIFE)*
2201 Eastland Drive, Suite 1
309/663-5433 V
309/663-7024(TDD)
888/543-3245 (Toll Free)

BLOOMINGTON 61701

Prairie State Legal Services, Inc.
102 North Center, Suite 405
309/827-5021
1-800-874-2536

CARBONDALE 62903

Southern Illinois CIL
100 N. Glenview, P.O. Box 627
618/457-3318 V/TDD
Fax: 618/549-0132

CAROL STREAM 60188

Prairie State Legal Services, Inc.
350 South Schmale Road, Suite 150
630/690-2130
1-800-690-2130

