

# A PARENT'S GUIDE TO SPECIAL EDUCATION



# A Parent's Guide to Special Education

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Note: This guide was created to provide parents with a basic understanding of key rights in special education. The information presented here is not legal advice and should not be used as such.

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## INTRODUCTION

The Individuals with Disabilities Education Act (IDEA) is a federal law which guarantees children with disabilities the right to a free and appropriate public education. It creates several significant rights which a parent/guardian may exercise to secure a free and appropriate public education for her/his child.

The law provides federal funds to state and local education agencies which are used to reimburse those agencies for some of the additional costs of providing special education and related services to children with disabilities. In exchange for receiving these federal funds, state and local education agencies promise that they will provide each child with a disability with a free education in a program which has been specifically designed to meet her/his needs. They also agree to provide procedural due process safeguards in evaluation, placement decisions, hearings and appeals, as well as safeguards for student records.

In addition to the rights guaranteed to parents/guardians under the IDEA and its accompanying federal regulations, Rhode Island has enacted state regulations (Regulations of the Rhode Island Board of Regents for Elementary and Secondary Education Governing the Education of Children with Disabilities or “State Regulations”). The IDEA was amended by Congress in 1997 and 2004.

These materials are designed to give parents and other advocates a working knowledge of the special education process within the State of Rhode Island. They are based on the State Regulations and the 2004 IDEA amendments and can serve as an explanation of the technical, legal language contained in those laws and regulations. Citations in the text are to the State Regulations unless otherwise noted.

These materials cover the four basic steps in the special education process: Identification, Evaluation, Individualized Education Program (IEP) and Procedural Safeguards, including school discipline. However, there are many other provisions in the State Regulations that are not discussed here. If you have a particular question about educational services, you should refer to the Regulations.

Remember, a free appropriate public education is your child’s right, and it is your right as her/his parent/guardian to participate in the process of securing and developing that education program.

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## **IDENTIFICATION OF CHILDREN WITH DISABILITIES**

### **1. Who is a Child with a Disability?**

Under the IDEA, the term “child with a disability” includes all children (ages 3-21) who have been evaluated as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, a serious emotional disturbance, an orthopedic impairment, autism spectrum disorder, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities AND who require special education; or a child between the ages of 3 and her/his ninth birthday who is developmentally delayed and who requires special education. (§300.8)

The State Regulations elaborate on this broad definition and outline specific criteria for identifying the existence of a specific disabling condition. Once a student is identified as having a disability which falls into one or more of the categories listed, then s/he is entitled to both the education benefits (programs, placements, and related services) and procedural guarantees required by other sections of the Regulations.

### **2. What Age Children Are Covered by the Law?**

In Rhode Island, these special educational rights begin as soon as the child is 3 years old and continue until s/he reaches 21 or completes high school, whichever comes first. (§300.8(a)(1))

Early Intervention services may be available for children under 3. When a child receiving such services reaches the age of 30 months, planning for transition to a special education program should begin. (§300.124)

### **3. Children with Emotional Disturbance**

This category includes children with a wide range of behavior problems which adversely affect their educational performance. It includes children who have been diagnosed with schizophrenia, neurosis, psychosis, or emotional disturbance. The definition also includes students who, over a long period of time and to a marked degree, exhibit behavioral problems, which adversely affect educational performance. The behaviors listed in the regulation which may indicate an emotional disturbance include an inability to learn that cannot be explained by intellectual, sensory or health factors; an inability to make friends or establish a personal relationship with peers and/or teachers; inappropriate types of behavior or feelings under normal circumstances; a general mood of unhappiness or depression over a long period of time or psychosomatic complaints or fears related to personal or school problems.

As a general rule, if your child’s behavior seems to be interfering with her/his ability to learn in school, s/he may have an emotional disturbance and need special education in order to learn. (§300.8(c)(4))

#### **4. Children with Mental Retardation**

Mental Retardation can range from a very mild cognitive impairment to a profound disability which limits the child's ability to think and behave like children her/his own age. The Regulations define MR as significantly below average intellectual functioning combined with deficits in adaptive behavior which shows up during the child's developmental period and which adversely affects the child's educational performance. (§300.8(c)(6))

The important thing to remember is that the special education laws recognize that every child can learn, no matter how severe the disability. The law requires that education be geared toward the child's needs.

#### **5. Children with Developmental Delays**

This category includes children between the ages of 3 and their ninth birthday who show delayed development in one or more of the following developmental areas: social/emotional or behavioral adjustment, cognition, communication, receptive or expressive language, visual perception, fine or gross motor control. (§300.8(b))

#### **6. Children with Orthopedic Impairments**

These are children who would be unable to function in school with healthy children of the same age and grade level unless some type of special accommodation is made to provide for their education. Impairments include those present at birth (e.g. clubfoot, absence of some member, etc.), those caused by disease (e.g. polio, bone tuberculosis, etc.), and from other causes (e.g. cerebral palsy, amputations, fractures or burns that cause contractures. (§300.8(c)(8))

#### **7. Children with Other Health Impairments**

A child with a health impairment is one who has limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that reduces ability to function in school and that is due to chronic or acute health problems such as asthma, ADD or ADHD, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, and Tourette syndrome. (§300.8(c)(9))

#### **8. Children with Learning Disabilities**

Children who have trouble learning in school and who have difficulty in listening, thinking, speaking, reading, writing, spelling, or doing math may be learning disabled. However, not all students who learn slowly or have trouble in a particular subject are learning disabled. Only those students who have a specific problem in one of the basic thought processes are actually learning disabled. This category of students includes students who have been diagnosed as



having perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (§300.8(c)(10))

### **9. Children with Deafness or Hearing Disorders**

This category of children includes students who are deaf and those who are hard of hearing. These children are distinguished from each other by whether or not they are able to learn through hearing. Both types of students are entitled to receive special education if their hearing loss adversely affects educational performance. (§300.8(c)(3) and (c)(5))

### **10. Children with Speech or Language Disorders**

Children who have difficulty speaking which adversely affects their educational performance fall into the classification of speech disordered. Stuttering, articulation problems, or abnormal pitch or loudness when talking are all types of problems experienced by speech disordered students, and problems which can be addressed through special education services. (§300.8(c)(11))

### **11. Children with Vision Impairments**

This classification of children includes any child whose vision is so severely impaired, even with corrective lenses, that it affects the child's ability to learn. (§300.8(c)(13))

### **12. Children with Multiple Disabilities**

If your child has a combination of severe impairments, s/he may be a "multi-handicapped" child and therefore entitled to more services to meet her/his complex needs. (§300.8(c)(7))

### **13. Children Who are Deaf and Blind**

This category includes children who have both vision and hearing impairments whose educational needs cannot be met in a special education program solely for deaf or blind children. (§300.8(c)(2))

### **14. Children with Autism Spectrum Disorder**

This category includes children with a significant impairment in the areas of verbal and non-verbal communication and social interaction, generally evident before age three, which adversely affects a student's educational performance. Children falling in this category may also engage in repetitive activities and stereotyped movements, may resist environmental change(s) or change(s) in daily routines, and may have unusual responses to sensory experiences. This

category includes autism, pervasive developmental disorder, Rett's Disorder, Asperger's Disorder, and Childhood Disintegrative Disorder. (§300.8(c)(1))

### **15. Children with Traumatic Brain Injury**

Children who suffer brain injuries caused by outside physical force (e.g. car accident) are in this category. Children will experience mild, moderate, or severe difficulties in one or more of the following areas: problem solving, language, cognition, memory, attention, reasoning, abstract thinking, judgment, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing, and speech. (§300.8(c)(12))

## **THE EVALUATION PROCESS**

### **16. How is the Special Education Process Started?**

If you feel your child needs special education, the first step in having him/her identified as a special needs student is referral for a special education evaluation. Each school district is required to establish a system by which a student may be referred for an initial evaluation. Pre-school children are referred for special education evaluation and identification in the same way as are school-aged children. A child can be referred before age three so that the evaluations can be completed and the child can begin to attend the program on her/his third birthday. Every school district has a "child find" outreach program which screens children not yet attending school. Parents, teachers and doctors, among others, may make a referral for special education evaluation.

Before making a referral for special education evaluation, school personnel may try classroom alternatives, which means making modifications to the general education program for children having trouble learning. These modifications are often called "Response to Intervention" or RTI, and can include things like peer tutoring, changes in the curriculum, or remedial reading. You can request that these classroom modifications be tried before a referral is made, or in addition to a referral.

"Response to Intervention" may not be used to delay a referral, which may be made at any time. You should be notified that your child is experiencing some problems, that classroom modifications will be tried, and that you have the right to request a direct referral for evaluation at any time. (§300.300-300.311)

### **17. What is the Evaluation Process?**

The evaluation process is the means by which the school department determines how and to what extent your child has a disability that interferes with her/his ability to learn. The evaluation process (examinations, tests, observations, etc.) will depend on your child's suspected disability.

The results of the tests are used to determine if your child has a disability and if so, what the special education plan should be.

### **18. Who Starts the Evaluation Process?**

If the teacher or other professional working with your child suspects that your child has a disability, s/he may refer your child for an evaluation. You will receive a notice informing you that a referral has been made and requesting your consent for an evaluation. If you think your child has a disability, you can also request an evaluation. (§300.301(b); §300.300(a))

### **19. How do I Request an Evaluation?**

If you think that your child may have special learning needs, you should contact the school district's special education office.

You should put the request in writing. (See the sample letter in the Appendices). It is a good idea to give copies to your child's teacher and school principal, so they know a referral has been made. Be sure to date the letter and keep a copy for yourself.

### **20. Who Decides if a Child Should be Evaluated?**

The decision whether to evaluate a child must be made by a team of qualified professional and the child's parent at a meeting held within ten school days of receipt of the referral. This team is known as the "Evaluation Team." It must include:

- a. The parents of the child;
- b. At least one regular education teacher of the child;
- c. At least one special education teacher of the child or if appropriate, at least one special education provider of the child;
- d. A representative of the school district who is (1) qualified to provide or supervise the provision of special education services, (2) knowledgeable about the general curriculum, (3) knowledgeable about the availability of resources in the school district and who has the authority to commit those resources;
- e. An individual who can interpret evaluation results (who may be a member of the team described in paragraphs b through f);
- f. At the discretion of the parent or agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel;
- g. Whenever appropriate, the child.

The team decides: (1) if the child requires an evaluation and, if so, (2) the types of evaluations appropriate to the needs of the child. (§300.301(c), 300.321)

## **21. How Will I Know If My Child Will be Evaluated?**

The Evaluation Team will meet to decide if your child needs an evaluation. You must be invited to this meeting and should make every effort to attend. If you cannot make that meeting, you can ask that you be allowed to participate by conference call or other means. If this is not possible, you must be provided with written notice of the Evaluation Team's decision, your right to challenge a decision that you disagree with, and you must be asked to consent in writing to the evaluation, if the Team decides that an evaluation is appropriate. (§300.300)

## **22. What If I Refuse to Consent?**

If you do not provide written consent to the evaluation within five (5) school days of the request to evaluate, the Evaluation Team must document its efforts to obtain consent, and if it doesn't obtain your consent within fifteen (15) school days, the Team must meet again to decide how to proceed, including whether to request mediation and/or a hearing. (§300.300)

You have the right to be present at the mediation and/or hearing and to be represented by an attorney or advocate at the hearing. (See paragraphs 56, 58).

## **23. What If the Team Says an Evaluation Is Not Necessary?**

If the Evaluation Team decides that your child does not need to be evaluated, you must be provided written notice within ten (10) school days explaining the reasons for the decision. The notice must include information about your right to challenge the decision if you disagree with it. You have the right to challenge the decision by requesting mediation or an impartial hearing.

## **24. What Type of Evaluation Will Be Done?**

If the Team determines that the child should be evaluated, a full evaluation will be done, assessing the child in all areas related to the suspected disability, including if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.(§300.304(c)(4)) A vocational / career assessment shall be done with every child with a disability at the age of 14. Specific assessment procedures will be authorized depending upon the type of disability the Team suspects your child has. (§300.304; §300.307)

Typically, the individuals who conduct the evaluation will be employees of, or regular consultants to, the school district.

Additional procedures are required for evaluating children with specific learning disabilities. (§300.307)

## **25. How are Evaluations for Learning Disabilities Different from Other Evaluations?**

In evaluating whether a child has a specific learning disability the Team should consider the child's response to interventions (RTI) that are based on research over time. However, this RTI process should not be used to delay a full special education evaluation if a parent or teacher requests one. (§300.307-300.311)

## **26. What if My Child Does Not Speak English or Has Other Special Needs?**

The regulations require that the evaluation and test materials be provided and administered in the child's native language or other mode of communication unless it is clearly not feasible to do so. (§300.304(c)(1)(ii))

The tests cannot be culturally or racially discriminatory. (§300.304(c)(1)(i)) For example, a child from Cambodia should not be subjected to intelligence tests that measure general knowledge of American culture.

If the child has impaired sensory, manual, or speaking skills, the tests must be chosen and administered in a way that compensates for those deficits (except if the test is to measure the degree of impairment in that area). (§300.304(c)(3)) For example, a deaf child is entitled to have someone who knows sign language administer her/his tests.

The tests must be appropriate to the child's age, language, and ability.

## **27. What Should I Do Before Consenting to the Evaluation?**

Since the evaluation results are used to determine if your child has special education needs, and if so, what services are needed, it is important for you to ensure that the tests are thorough, fair, and take into account your child's individual needs.

It is your right to know why particular tests are being given. If you were present at the Evaluation Team meeting where the decision was made to evaluate your child, you may already know why certain tests will be given. If you were not able to attend, it may be helpful to meet with the school personnel before agreeing to the evaluation to know what disability they suspect your child has and to learn why certain tests are being ordered.

If you think the evaluation will not uncover all your child's needs, you should bring this to the school's attention. You know your child best and can inform the school personnel about issues they may not be aware of. For example, if you know there have been difficulties at home and your child may be suffering from an emotional problem, you should make sure there is a test done to evaluate her/his emotional state.

## **28. What Happens After the Evaluation is Done?**

When the evaluation is completed, you and the Evaluation Team review the reports and decide whether or not your child requires special education and/or related services. You must be invited to this meeting.

The Evaluation Team and the parents must meet to determine eligibility and submit its report to the Special Education Director and the parents within 60 calendar days after the receipt of parental consent to evaluate. You will be provided with a copy of the evaluation report and documents relating to the eligibility determination. (§300.301; 300.306 (a)(2))

## **29. What if My Child Is Found Not Eligible for Services?**

If the Evaluation Team, including you, after reviewing the evaluation results makes a determination that your child is not eligible for special education, the Team can refer the child back to general education for consideration of classroom modifications. In addition, the Team should refer the child for consideration of Section 504 eligibility. (§300.301)

If you do not agree with the decision, you can request mediation and/or a hearing.

## **30. What is Section 504?**

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based upon disability. A person is considered disabled if s/he has an impairment that significantly interferes with any major life activity, such as learning, walking, breathing, etc. A disability that may not “adversely impact education” for IDEA eligibility may still entitle a child to Section 504 protections, which would include accommodations in the classroom to help the child learn. If eligible, a child would get a written 504 plan that describes any classroom modifications needed to address her/his specific areas of need.

## **31. What If I Do Not Agree with the School District’s Evaluation?**

If you do not agree with the school district’s evaluation, you have the right to have an independent educational evaluation. In some cases, the evaluation must be paid for by the school district. (§300.502)

The independent educational evaluation is conducted by qualified examiners who are not employed by the school department responsible for your child’s education.

To request an independent evaluation, you must contact the Director of Special Education stating that: (1) you disagree with the results of the school’s evaluation, and (2) you are requesting an independent educational evaluation. You should put this request in writing, date it, and keep a

copy for your records. The school department can ask, but not require, you to explain why you object to its evaluation.

The school district must provide you with information about where an independent educational evaluation may be obtained and the agency criteria that apply (e.g. the evaluator must have the proper credentials). There is a sample letter requesting an independent evaluation in the Appendices.

Not later than fifteen (15) calendar days from receipt of your request, the school department must either (1) authorize the independent educational evaluation, or (2) request a hearing to show that its own evaluation is appropriate. If a hearing officer finds that the school's evaluation was appropriate, the school department does not have to pay for the independent educational evaluation. You still have the right to obtain one, but the school does not have to pay. (Other funding may be possible through various insurance plans). (§300.502(b))

If you choose to have an independent educational evaluation at your expense, the results of the examination must be considered by the school in determining the educational plan for your child and can be presented as evidence at any hearing involving your child's education plan. (§300.502(c))

### **32. What Happens If My Child Is Found Eligible for Special Education?**

If you and the Evaluation Team decide that special education is necessary, the next step is to develop your child's individualized education program ("IEP"). The IEP must be developed and services must be provided to the child within fifteen (15) school days of the eligibility determination. (§300.301(c)(3))

### **33. Will My Child Be Evaluated Again?**

Yes. The regulations require that children with disabilities be reevaluated at least every three years, more often if appropriate, unless you, the parent, comes to an agreement with the school district that reevaluation is unnecessary. (§300.303(b)(2)) A parent must be notified that the reevaluation is proposed and informed parental consent is required unless the district can show that it has taken reasonable measures to obtain consent but the parent failed to respond. (§300.300(c))

A parent or teacher may request a reevaluation more frequently than the three year period if necessary or appropriate. The same time lines apply for conducting a reevaluation as for the evaluation.

The Evaluation Team (including the parent) will review existing data and, with input from the parent, make a decision as to whether additional data may be needed to determine continued eligibility or levels of educational needs. The Evaluation team may determine continued eligibility for special education and related services without conducting some or all formal

assessments if the parent agrees. A parent may request that some or all assessments be conducted.

## **THE IEP AND PLACEMENT PROCESS**

### **34. When Will an IEP Meeting Be Held?**

After an initial evaluation, the IEP must be developed and special education services must be provided to the child within fifteen (15) school days of the eligibility determination. (§300.301(c)(3)) If the school district fails to schedule a meeting, you should contact the Director of Special Education and request that the meeting be scheduled as soon as possible. If the school district continues to delay in scheduling the IEP meeting, you can seek assistance from the Rhode Island Department of Education.

The purpose of the meeting is to review the results of your child's evaluation, to define her/his needs, and to develop an individualized education program ("IEP") to meet your child's needs.

### **35. Do I Have a Right to Be at the IEP Meeting?**

Yes. The law protects your right to attend the meeting and to actively participate in it. (§300.322)

The school district must notify you of the meeting at least ten school days prior to the meeting to ensure that you will have a chance to attend. (You can waive the ten day notice if you want the meeting to take place sooner). The meeting must be scheduled at a time and place that you and the school district agree upon. The notice of the meeting must tell you the purpose, time, and place of the meeting. It should tell you who will be there. The notice should also tell you that you or the school district may invite other people to the meeting. (§300.322(b))

If you are deaf or you do not speak English, the school district must provide an interpreter at the meeting. (§300.322)

### **36. What If I Cannot Attend the Meeting?**

If you cannot get to the school because of illness, transportation problems, work, or other reasons, the school district must try to make arrangements to ensure your participation at the meeting. For example, they could schedule a conference call, a meeting at your home, or provide transportation. (§300.322(c))



### **37. Can the School District Hold the IEP Meeting Without Me?**

A school district can hold an IEP meeting without a parent only if it makes a detailed record of its unsuccessful attempts to persuade the parent to attend the meeting. (§300.322(d))

### **38. What Should I Do to Prepare for the IEP Meeting?**

It is a good idea to become familiar with your child's educational file before the meeting. You should have already met with the Evaluation Team at the meeting where eligibility was determined and the Team's findings and probable recommendations were reviewed. It is helpful to read the written evaluations in advance of the IEP meeting. The school department must allow you to review your child's evaluations before an IEP meeting and no later than 10 days after your request. The school will provide you with copies of the evaluations.

This preparation allows you to think ahead of time about whether the program recommendations make sense to you when they are discussed at the IEP meeting. It also allows you to anticipate whether there will be a problem getting a placement or services that you think your child needs and if so, to arrange to bring an advocate with you to the IEP meeting.

### **39. Who Will Be at the IEP Meeting?**

In addition to you and the individuals you invite, the school district must make sure that at least the following people are present at an initial IEP meeting: (a) at least one regular education teacher of the child (if the child is or may be participating in the regular education environment); (b) at least one special education teacher of the child or, if appropriate, at least one special education provider of the child; (c) a representative of the school district who is qualified to provide, or supervise the provision of, special education, who is knowledgeable about the general curriculum and the availability of resources in the district and who has the authority to commit those resources; (d) an individual who can interpret the test results and explain how these test results are reflected in the IEP goals and objectives; and (e) if appropriate, your child. You and the school district may invite other appropriate individuals to the meeting. (§300.321)

### **40. What Happens at the Meeting?**

If your child has been evaluated for the first time, the focus of the meeting should be on the results of the evaluation, and what those results mean in terms of the program and services your child needs. The goal is to develop an IEP for your child based on the information gathered through the evaluation process.

During the meeting, you should ask questions if you do not understand what is being said. If school personnel use educational, medical, or other terms that do not make sense to you, ask them to explain what they mean so that you can understand.

#### **41. What Does the IEP Team Need to Consider?**

The IEP team must consider the child's strengths and needs and the concerns of the parent for enhancing the child's education. For children whose behavior gets in the way of learning, the team must consider appropriate strategies, including positive behavioral interventions, and supports to address the behavior. For children with limited English proficiency, the team must consider the child's language needs. For children who are blind or visually impaired, the team must provide for instruction in Braille and the use of Braille unless the team determines Braille is not appropriate. For children who are deaf or hard of hearing, the team must consider language and communication needs, opportunities for direct communication with peers and professionals in the child's communication mode, including opportunities for direct instruction in the child's language and communication mode. The team must consider whether the child needs assistive technology devices or services. The regular education teacher must participate in the discussion, including consideration of behavior modifications and support for school personnel. (§300.324)

#### **42. What Will Be in My Child's IEP?**

The IEP, or individualized education program, is usually a multi-page typed or handwritten document. It must contain at least the following information (§300.320):

- a. A statement of your child's present levels of academic achievement and functional performance;
- b. A statement of how the child's disability affects involvement and progress in the general curriculum (or in appropriate activities for pre-school children);
- c. A statement of measurable annual goals, including short term instructional objectives related to meeting the child's needs that result from the disability, to enable involvement and progress in the general curriculum and meeting each of the other educational needs resulting from the disability. The annual goals should be related to the particular needs your child has. Put another way, annual goals should be developed around the needs that the evaluation process and other input have identified. Other pieces of the plan should then identify how those goals will be achieved through materials to be used, strategies, evaluative criteria, and services;
- d. A description of the specific special education and related services and supplementary aids and services based on peer-reviewed research to the extent practicable to be provided to your child, and a statement of program modifications or supports for school personnel that will be provided so that the child will be able to attain the annual goals, progress in the general curriculum, participate in extracurricular and non-academic activities, and be educated with all children;
- e. An explanation of the extent, if any, to which the child will not participate with non-disabled children in regular classes and activities;

- f. A statement of any individual modifications needed so that the student can participate in district or statewide assessments of student achievement, including if the decision is that the child will not participate, why the assessment is not appropriate for the child and how the child will be assessed;
- g. The date that services are expected to begin and anticipated frequency;
- h. The period of time through which the services will be provided;
- i. The location of services;
- j. How the child's progress toward the annual goals will be measured and how the child's parents will be regularly informed of the child's progress and the extent to which that progress will enable the child to achieve those goals;
- k. Beginning at age 14 (or younger, if determined appropriate by the IEP team) a statement of the courses of study needed to prepare for transition (e.g. advanced placement, vocational, languages for college bound students).
- l. Beginning at age 14 (or younger if appropriate), and updated annually, a statement of the necessary transition services your child needs, including interagency responsibilities. Transition services must assist a student in moving from school to post-school activities, including post secondary education, vocational training, integrated employment, or independent living. These services must be based on the individual student's needs. Students' interests and preferences must be taken into account, so their presence is important at the IEP meeting. Additionally, adult service agencies that will be providing services upon completion of school should be identified in the IEP.
- m. Beginning at least one year before a child reaches the age of majority, a statement that the child has been informed of her/his rights that will transfer to the child at the age of 18.

The importance of your child's IEP cannot be stressed too strongly. You should take care to review it carefully to make sure that every aspect of your child's program is reflected in it and that every service your child is to receive is carefully described. You should receive a copy of the written IEP at the meeting or if not, not later than ten (10) calendar days after the IEP has been developed or after you request a copy. (§300.322(f))

If you and the school district cannot develop an IEP that you think is satisfactory, you can request mediation or a hearing. The IEP must be implemented no later than ten (10) school days after the development of the IEP.

### **43. Will My Child's IEP Be Reviewed and/or Revised?**

Yes. The IEP must be reviewed at least annually on or about the anniversary date of the last IEP meeting. (§300.324(b)) You should receive notice of the meeting 10 school days before the meeting is held.

The focus of this IEP meeting will be slightly different from the very first IEP meeting. The IEP participants should look at your child's IEP to see if your child met the annual goals and objectives established. If not, it is appropriate to consider alternatives such as modification of the program to provide different or more intensive services, additional evaluations to see if your child's disability is correctly diagnosed, or a change of placement.

In reviewing the IEP, the team must determine whether annual goals are being met and revise it as appropriate to address any lack of expected progress toward annual goals, or progress in the general curriculum. The IEP team must consider the results of any reevaluation, information provided to or by the parents and the child's anticipated needs. The regular education teacher, as appropriate, shall participate in the review and revision. If an agency, other than the school district, fails to provide transition services described in the IEP, the district must reconvene the IEP team to identify alternative strategies to meet the transition objectives. (§300.324)

It is always a good idea to take each page and question on a step-by-step basis and to avoid talking very generally about your child's progress through the school year. Be wary if you attend an IEP meeting and you hear how poorly your child is doing but you do not also hear any recommendations for change in her/his program, or if you hear that your child is making progress but that progress isn't reflected in standardized testing or your child is becoming increasingly frustrated. If you are unsuccessful on your own in getting the school district to make some appropriate recommendations for change in your child's program, you should consult with another educator or advocate.

Once it is determined that your child requires special education services, an IEP should always be in effect. Until a new or revised IEP is implemented, the requirements of the present IEP should be followed, even if you move to another school district.

### **44. Can I Request an IEP Review?**

Yes. If your child is doing poorly in school and her/his IEP is not scheduled for review in the near future, you need not wait. You should request an IEP review meeting. The meeting must take place within 10 school days of your request.

### **45. How Will My Child's Educational Placement Be Decided?**

A recommendation for a specific program placement is made by the IEP team based on the evaluations and the IEP that is developed for your child. The parent is a key member of the team making the decision. (§300.327)

#### **46. What Are the Criteria for Placement?**

The IEP Team, with your input, must carefully select a placement that will meet your child's needs and is the least restrictive environment (LRE) in the special education program continuum. The District must ensure that the parent is a member of the group making decisions about educational placement.

The least restrictive environment means that, as much as possible, your child must be educated with children without disabilities. The school district may remove your child from a regular educational environment only if the nature and severity of her/his disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (§300.114)

Your child's placement should be as near as possible to your home and she/he should attend the school which she/he would attend if not in special education, unless the IEP indicates otherwise. (§300.116)

Finally, in deciding what the least restrictive placement is for your child, the school district must consider any harmful affect on him/her or on the quality of service which your child needs. (§300.116)

#### **47. Is the Process Different for Non-Public School Placement?**

In general, non-public and state-operated programs in Rhode Island must meet the same standards as those established for public school programs and a child with a disability referred to such a placement by a school district has all the rights of a child with a disability who is served by a local school district. (§300.145- 300.147)

#### **48. Is My Written Consent Necessary for Placement?**

Yes, for initial placement and beginning Special Education services. At all other times your child's school must ensure that you, the parent, are part of any group that makes decisions about the educational placement of your child. (§300.327). The law requires the Special Education Director to send a notice after the IEP is developed. The notice should tell you the proposed location and the beginning date of your child's program, the details of the placement, the fact that your consent is required for initial placement, and a form for you to sign and return giving your consent. (§300.300) As allowed by law, many school districts meet their notice obligation by getting parental consent to initial placement at the IEP meeting.

Remember that, in any case, the school district is obliged to place your child in her/his proper placement and begin services no later than fifteen (15) school days after her/his evaluation is completed or within ten (10) school days of an IEP meeting. (§300.323)

#### **49. Will the School Day and School Year be the Same?**

It depends on the severity of your child's disability and her/his needs. Children with disabilities may be entitled to receive extended school day or school year services to meet their needs. During this additional time, the entire educational program may be required, or just some of the services to meet their needs (e.g. speech therapy or counseling), as determined by the IEP team.

#### **50. What If My Family Moves to Another School District?**

There should not be any interruption in the special education services provided to your child. The new school district must follow the existing IEP unless and until they properly develop a new one with you. (§300.323)

It is a good idea to contact the new school district in advance, let them know that your child is receiving special education services and request appropriate services be available as soon as your child enrolls in the school.

### **PROCEDURAL SAFEGUARDS**

#### **51. What Protections Do I have As a Parent of a Child with Disabilities?**

You have the right to be involved in any decisions the school district makes about your child's special education program and you can challenge any school district decision with which you disagree. You also have the right to written notice of decisions made by the school department, the right to review your child's records and the right to be present at any meeting held to discuss the program or placement of your child. (§300.500; 300.501)

#### **52. How Will I Know When the School District Makes a Decision About My Child?**

The school district must notify you whenever it proposes to take any action with regard to your child's special education. It must also notify you if it refuses to take action. Notice must be sent to you at least ten (10) school days before the proposed action and must be in your spoken language and must be written in language understandable to the general public. The notice must include sources for you to contact to obtain help in understanding your rights. (§300.503 (b))

#### **53. What Can I Do If I Disagree with an Action Taken by the School?**

It may be helpful to begin by discussing your concerns with the special education administrator with the authority to resolve the problem. If it is not resolved at that level it sometimes helps to

contact the special education director for your school district. If resolution isn't possible at that level, you can contact the RI Department of Education.

There are at least three ways to challenge an action or inaction of the school district. You can file a "special education complaint" with the Rhode Island Department of Education (RIDE). RIDE will investigate the complaint, issue findings, and if necessary, take action to ensure that the district complies with the regulations.

If you disagree with a decision made by the school district (e.g. you disagree with the proposed placement) you can also request mediation or a hearing. You can raise procedural problems in the mediation, or hearing process, too (e.g. failure to provide written notice).

You can request mediation by making a written request to the Commissioner of Education. If the school district agrees to mediation, an impartial person will try to negotiate a resolution.

Instead of or in addition to mediation, you can request a hearing to challenge any agency action with which you disagree. An impartial person will then decide whether the school district can go ahead with its proposed action.

#### **54. What Happens to My Child While I Challenge a School Action?**

If the school district is proposing a change in your child's IEP or placement and you challenge the decision, the school district generally cannot make the change until the conclusion of the hearing process. In the meantime, the school district must follow the old IEP and continue your child's placement, unless you and the school district agree to a change. (§300.518)

If you are proposing a change in your child's IEP or placement, the school district doesn't have to make the change until the conclusion of the hearing process or mediation. However, if a hearing officer rules in your favor, that decision can be implemented even if the school district appeals the decision.

#### **55. What is the RIDE Complaint Process?**

If you believe that the school district has violated any of the provisions of the Individuals with Disability Education Act (IDEA) or the State Regulations, you can file a "special education complaint" with the Rhode Island Department of Education. For example, if the district takes more than 60 calendar days to conduct an evaluation, or the child is not in placement within 15 days of an eligibility decision, a special education complaint can be filed. (§300.153)

You can file a complaint by filling out a complaint form and sending it Office of Special Needs, RIDE, 255 Westminster St., Providence, RI 02903 (401) 222-8999. A complaint form is included in this guide as an appendix and can also be downloaded from the RIDE website at:

RIDE will investigate your complaint and if the district has violated the laws, RIDE will order a remedy. That remedy can include compensatory services, reimbursement of costs that you paid to get a service the school should have provided, or requiring the school to take an action it has refused/failed to take. The complaint must be resolved by RIDE within 60 days of receipt. (§300.151-300.153)

## **56. What is Mediation?**

Mediation is a process for resolving disputes concerning your child's education that is less formal than a hearing. The goal of mediation is to get you and the district to agree to a solution to the problem. The hearing process is different. In the hearing process, both sides present their cases to the hearing officer and s/he decides which one is correct. A mediator will not decide who is correct, but will attempt to get the parties to agree upon a resolution to the dispute. If agreement is reached it will be written down by the mediator. This signed mediation agreement is enforceable in court.

Mediation is voluntary and both parties must agree to participate or the process cannot proceed. You can choose either mediation or a hearing as the first step in resolving a dispute. Keep in mind that all discussions that occur in mediation are confidential, and information from these discussions cannot be used as evidence in a later hearing or other legal dispute. (§300.506)

## **57. How Do I Request Mediation?**

To start the process, call the Rhode Island Department of Education's Office of Special Populations at (401) 222-8999 and say that you would like to request mediation.

The Department of Education will appoint a mediator who will contact the school district to get its consent to mediation. If the school district does not agree to mediation, you can pursue a hearing instead.

If the school district agrees to mediation, the Department of Education will appoint a mediator who will try to get you and the school district to agree to a solution to the dispute.

If you cannot agree to a solution, you can request a hearing to resolve the dispute.

## **58. How Do I Request a Hearing?**

If you feel you need a hearing to resolve your dispute with the school department, you probably should contact an attorney for assistance. The school department will be represented by its attorney. A parent who is successful in challenging a school department decision may be reimbursed for attorney's fees from the school district. (§300.517)



You can request a hearing by completing the Due Process Hearing Request Form (included in this packet as an Appendix and available for download on the RIDE website and mailing it to the Rhode Island Department of Education's Office of Special Populations, 255 Westminster Street, Providence, RI 02903-3400. You should also file a copy of this request form with the Superintendent of your school district. (§300.508-300.509)

The school district must inform you of any free or low-cost legal services available in your area. The District must also notify you that reasonable attorneys' fees may be recovered from the District as part of the costs if you are successful at the hearing. You are required to provide written notice to the school department describing your complaint and proposed solution. Failure to provide this notice can result in reduction or denial of attorney's fees even if you are successful at the hearing. Completing the RIDE form will ensure that you comply with this requirement.

### **59. Who Will the Hearing Officer Be?**

The Commissioner of Education has a list of approved hearing officers and will appoint someone from this list.

The hearing officer must be impartial. The hearing officer should be someone with little or no contact with you or the school district. She/he should not be an employee of the school district or someone with any personal or professional interest in the outcome of the hearing (e.g. she/he cannot be the school superintendent). (§300.511(c))

### **60. What are My Rights at the Hearing?**

You have the right to represent yourself or to be represented by an attorney or by any person with knowledge or training with respect to special education or children with disabilities. You have the right to a public or private hearing. Before the hearing, you can inspect your child's records and get a copy of the records. You can present the records or other documents at the hearing.

You can have witnesses testify and you can cross-examine the witnesses who testify for the school district. Before the hearing, you have the right to see any written evidence the school district will submit at the hearing. You must also disclose what you plan to submit at least five business days before the hearing. (§300.512)

NOTE: The hearing process is not explained in detail in this manual. Since the process can be complicated and often involves the testimony of expert professional witnesses, it is strongly advised that parents have the assistance of a lawyer or trained advocate at the hearing and through any appeal process.

### **61. How Long After I Request the Hearing Will I Get a Decision?**

In most instances you should receive a written decision within 45 calendar days after the 30 days that start with the receipt of your request for a hearing, unless the hearing officer has extended the timelines. (§300.515) Those first 30 days are used to try to resolve your hearing through a meeting called a Resolution Meeting. (§300.510)

### **62. What if I Lose the Hearing?**

You can appeal from the decision of the hearing officer by filing a civil action in a federal or state court. If you have not already contacted an attorney, it is advisable to do so, as filing a legal action is complicated, and, again, the school department will be represented in any court action. (§300.516)

### **63. What If Information In My Child's Records Is Inaccurate?**

You can ask the school district to correct any information in your child's record which you believe is inaccurate, misleading, or which violates your child's privacy. If the school district refuses, you may request a hearing. The hearing officer will decide whether the records should be amended. If the hearing officer decides the records do not need to be amended, you still have the right to put your statement correcting the information in your child's file. (§300.618-300.620)

### **64. What Happens When My Child Turns 18?**

When your student with a disability reaches the age of majority, 18 in Rhode Island, all of the rights that you had under the IDEA are transferred to her/him. These include the right to be present at meetings where decisions will be made, the right to consent to services, evaluations, etc. The school district is required to notify you and your child of the transfer of these rights. (§300.520) If you do not feel your child will be able to make education decisions alone at age 18, contact an attorney to explore a guardianship or power of attorney.

## **DISCIPLINE**

### **65. Can My Child Be Expelled from School?**

No. Rhode Island law does not allow for expulsion from school. Any suspension from school must have a definite beginning and a definite ending date.

## **66. Can My Child With a Disability Be Suspended From School?**

Children with disabilities may be suspended from school for up to ten days per year. If a child is suspended beyond this ten day limit, his/her school must provide educational services consistent with the child's IEP, which may include placement at another educational facility, called an Interim Alternative Educational Setting. (§300.530(d)). Any school removal after ten days of suspension is considered a change in placement. (§300.530(d))

An exception to this rule is that if school personnel determine that a child with a disability presents an immediate threat to him/herself or others, the child may be removed from school for the remainder of the school day regardless of how many days the child has already been suspended. (§300.530 (a) (2)) The school may request an expedited hearing and ask the hearing officer to order the student removed from school for no more than 45 days. (§300.101(d)(3)(iii))

Another exception to this rule is for a student who brings drugs or weapons to school or who seriously injures another person at school. That child's placement may be changed immediately to an Interim Alternative Educational Setting for no more than 45 days. (§300.530(g))

## **67. What Is an Interim Alternative Educational Setting?**

The Interim Alternative Educational Setting is determined by the IEP team and must be selected so that the student may continue to progress in the general curriculum and must continue to receive the services and modifications in the IEP that will enable her/him to meet the goals set out in the IEP.

The Interim Alternative Educational Setting must include a behavioral assessment and services and modifications necessary to address the behavior that resulted in the placement so that it does not recur. (§300.530(d))

## **68. How Will I Know My Child Has Been Suspended?**

Schools are required to provide written notice to a parent when a child is being suspended. You may also receive a telephone call from the school, but the written notice should be provided on the day that the decision is made to suspend a student. (§300.530(h))

## **69. What If the School Tries to Suspend My Child For More than Ten Days?**

Before a school can suspend a child with a disability for the eleventh day, there must be a "manifestation" meeting, to which you must be invited, to determine whether the misbehavior for which the student would be suspended is related to her/his disability. If the misbehavior is related to the disability, the student may not be suspended. (§300.530)

## **70. What Is a Manifestation Determination?**

The IEP team (including the parent) must meet, consider all relevant information in the student's file, including the child's IEP, teacher observations, and relevant information provided by the child's parents, and then determine:

(1) if the child's conduct was caused by or directly and substantially related to the child's disability; OR

(2) if the conduct was the direct result of the school's failure to implement the IEP.

If the answer to either of these questions is yes, the conduct is considered to be a manifestation of the child's disability. Additionally, if the answer to question (2) is yes, then the school must take immediate steps to effectively implement the child's IEP. (§300.530(e))

## **71. Can the Misbehavior Be Addressed So It Doesn't Continue?**

Absolutely. Every child needs to feel consequences for inappropriate behavior. However, those consequences should be designed to teach the student what is acceptable behavior as well as to avoid misbehavior in the future. In order to determine what triggers the misbehavior and to develop a plan to change that behavior, the school department must conduct a functional behavioral assessment (FBA).

If a behavioral intervention plan had been previously developed, it should be reviewed by the IEP team and modified as necessary to address the behavioral problem.

Once the FBA is done or revised, the IEP team should meet to develop a behavioral intervention plan which would be part of the IEP. Behavioral interventions should include positive reinforcement of acceptable behavior as well as any appropriate negative consequences for misbehavior. The child should be returned to the school from which he was removed unless the parents and the school agree to a new school placement. (§300.530(f))

## **72. What Happens If the Team Determines That the Misbehavior Is Not Related to My Child's Disability?**

If the Team determines that the misbehavior for which the child will be suspended is not related to the disability, the child may be suspended but must continue to receive the free appropriate public education described in her/his IEP. The IEP team must decide how those services will be provided during the term of any suspension. A student may be assigned to an Interim Alternative Educational Setting for not more than 45 days. (§§300.532(c),(d); &300.101(a))

A parent is entitled to an expedited hearing to challenge the decision and the child would remain in the interim alternative educational setting pending the hearing decision. (§300.532(c); §300.533)

### **73. Can the School Suspend My Child While an Initial Evaluation is Pending?**

Students who have been referred for special education evaluation and those whom the school knows or should have known to have a disability, have the same protections as those who have already been found eligible. (§300.534(a))

The school district is presumed to know that the child has a disability if the parent has expressed concern in writing to school personnel that the child is in need of special education or if the parent has requested an evaluation; or if the teacher of the child or other school personnel have expressed concern about the child's behavior or performance to the director of special education. (§300.534(b))

## **CHILDREN PLACED IN PRIVATE SCHOOL BY PARENTS**

### **74. Can a child with a disability receive special education services if the parent(s), not the school district, place the child in a private school?**

Yes. The school district where the child lives is responsible for evaluating the child to see if s/he is eligible for special education and for providing special education and related services if s/he is eligible. This is true even if the child is attending a private school outside the school district where the child lives. The parents must ask the school district to provide these services (in other words, to provide a free appropriate public education). Otherwise the school district is not required to do so. (§300.129; RI General Law 16-24-1)

## Sample Request for Referral for Special Education

Ms. Jane Doe  
Director of Special Education  
Somewheresville Public Schools  
Somewheresville, RI 00021

Re: Student's Name  
Student's Date of Birth

Dear Ms. Doe:

My daughter/son, \_\_\_\_\_, is currently a \_\_ grade student at the \_\_\_\_\_ School in Somewheresville.

My child is having problems with \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_. (Provide details of the educational problems)

These problems are interfering with my child's ability to learn and I believe that s/he may be in need of special education. Therefore, I ask that you consider this letter a request for an initial referral for evaluation of my daughter/son in order to identify \_\_ (name) \_\_ as a child with a disability pursuant to the State Regulations Governing the Education of Children with Disabilities.

I specifically consent to this evaluation and ask that you notify me of what tests and assessments will be conducted. I want to attend any meetings held to discuss this referral and ask that you call me at \_\_\_\_\_ to let me know when the meetings will be held.

Thank you,

Cc: School Principal  
Classroom Teacher

## Sample Request for Independent Evaluation

Date

Ms. Jane Doe  
Director of Special Education  
Somewheresville Public Schools  
Somewheresville, RI 00021

Re: Student's Name  
Student's Date of Birth

Dear Ms. Doe,

This letter is to request an independent evaluation of my daughter / son, (student's name), at district expense, pursuant to Section 300.502 of the Regulations of the Board of Regents Governing the Education of Children with Disabilities.

I disagree with the evaluation conducted by the school department and feel that the evaluations do not adequately assess (student's name)'s present educational needs.

Please provide me with your written agency criteria for independent educational evaluations, if such criteria exist. Please respond timely as required by Section 300.502.

If you have any questions regarding the contents of this letter, please do not hesitate to contact me.

Sincerely,

Invincible Parent





## Sample Special Education Complaint Letter

Date

Compliance Officer  
Office of Special Needs  
RI Department of Education  
255 Westminster Street, 4<sup>th</sup> Floor  
Providence, RI 02903

Re: Student's Name  
Date of Birth

Dear Madam/ Sir:

Please consider this to be a Special Education Complaint pursuant to Section 300.153 of the Regents' Regulations Governing the Education of Children with Disabilities, concerning the Somewheresville School Department's violation of state regulations.

(DESCRIBE THE PROBLEM, HOW THE DISTRICT VIOLATED SPECIFIC REGULATIONS AND WHAT RIDE SHOULD ORDER THE DISTRICT TO DO TO RESOLVE THE PROBLEM)

Please contact me if you need more information or to discuss this matter.

Sincerely,

Invincible Parent

Cc: Special Education Director

## Sample Request for Mediation

Commissioner  
RI Department of Education  
255 Westminster St.  
Providence, RI 02903

Re: Student's Name  
Student's Date of Birth

Dear Commissioner,

Pursuant to 300.506 of the Regents' Regulations Governing the Education of Children with Disabilities, I write to request mediation with the Somewheresville School Department. I disagree with the school department's decision to \_\_\_\_\_.

Please have the mediator contact me at \_\_\_\_\_ or in writing at (home address).  
Thank you for your prompt attention to this matter.

Sincerely,

Cc: Somewhereville's Special Education Director

**Rhode Island Department of Elementary & Secondary Education**

**SPECIAL EDUCATION REQUEST FOR IMPARTIAL DUE PROCESS HEARING**

# Instructions

This form is to be completed by the person requesting a due process hearing on matters regarding the education of a child with a disability under the federal Individuals With Disabilities Education Act (IDEA) and Rhode Island Special Education Regulations. For information on the appropriateness of this request or to file for mediation and/or pursue alternative dispute resolution options, please consult the Rhode Island Department of Education web site at [www.ride.ri.gov](http://www.ride.ri.gov) or call the Rhode Island Department of Education, Office of Special Populations at (401) 222-8999. Please complete all requested information and mail this completed form to:

**Rhode Island Department of Education  
Office of Special Populations  
255 Westminster Street  
Providence, RI 02903**

A copy of this request **MUST** be filed with the Superintendent of the School District.

**Failure to completely fill out this form may result in a reduction of any attorney's fees to which the parent may ultimately be entitled.**

**PERSON FILING REQUEST:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_ Street  
City/Town State Zip Code

**TELEPHONE/FAX/CELL:** \_\_\_\_\_

**STUDENT'S NAME:** \_\_\_\_\_ **DATE OF BIRTH:** \_\_\_\_\_

**SCHOOL AND GRADE LEVEL:** \_\_\_\_\_

**ATTORNEY OF RECORD** (if represented): \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_  
Street City/Town State Zip Code

**Specific complaint:** (You may attach additional sheets if needed)

**Proposed resolution of the complaint:** (You may attach additional sheets if needed)

**Signature:** \_\_\_\_\_ **Print Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_