

PARENTS ARE THE KEY

A Manual about the
Rights and Responsibilities for Parents of
Children with Special Education Needs
in Delaware
Second Edition



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Message to parents

Dear Parents and Caregivers,

As you know, you are an important member of your child's educational team. You know your child best because you were his/her first teacher. Knowing your child as you do, you can provide critical information to plan for his/her future in school. In addition, you must gain the specific knowledge in order to make informed decisions regarding your child's education. By reading this guide, you are taking a step toward empowerment in your child's future. As a parent or caregiver of a child with a disability, it is important for you to understand the special education process. This manual provides an overview of special education services under the Individuals with Disabilities Education Act. I hope that you find it a useful tool in helping your child achieve success in school and in life.

Mary Ann Mieczowski

State Director of Special Education

Delaware Department of Education (DDOE)

Introduction

As a parent, you know your child in a way no one else does. You are an expert about your child and a key member of the team that plans your child's education. As the parent, *you are the key* to an appropriate education for your child! You have important and unique information to share about your child's needs and abilities, and you know what your child needs to learn to become an independent and productive adult.

You have the unique power to positively influence your child's educational outcomes! However, to be an effective advocate for your child, you must know your rights and your child's rights under the law, and you must be familiar with the education policies and processes in our state. Exercising these rights and fulfilling your responsibilities are important steps in supporting your child's educational journey. This manual offers an overview of the special education process and services in Delaware under the Individuals with Disabilities Education Act and corresponding Delaware law. It has been designed so that you can skip to the information that is important to you. For further information or individual assistance, contact the Delaware Department of Education (DDOE) or the Parent Information Center of Delaware (PIC). Contact information can be found in Appendix A.

We hope that you find this manual helpful and encourage you to tell us how we can improve it.

Marie-Anne Aghazadian, Executive Director
Parent Information Center of Delaware (PIC)

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Federal Regulations Implementing the IDEA 34 C.F.R. Part 300. (October 13, 2006 and December 31, 2008)

Parents Can be the Key – PACER Center

Better IEPs – Cynthia M. Herr & Barbara D. Bateman

From Emotions to Advocacy – Pamela & Peter Wright

National Dissemination Center for Children with Disabilities (NICHCY)

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Legend



Written document, letter or notice



Regulated time frame



Advocacy Tips



Definitions located in the glossary at the end of this manual

A note about gender:

For simplicity and consistency, this manual uses “he”, “him” and “his” to represent both males and females.

Background on Special Education

In 1975, the U.S. Congress passed Public Law 94-142, the first law passed to ensure children with disabilities have access to and derive benefit from a Free Appropriate Public Education or FAPE. This law is now called the Individuals with Disabilities Education Act (IDEA). Through the provision of special education and related services, the IDEA continues to give children with disabilities opportunities to achieve at high levels and to prepare for post-secondary career and college readiness and independence. The IDEA was amended in 1997, and again in 2004. The revisions to the law increased services to children with disabilities and strengthened the role of parents in the special education process.

Children with Disabilities Attending Public Schools: All public and charter schools in Delaware must follow the requirements of the IDEA, as well as, specific state regulations that clarify or enhance the provisions of the IDEA. *Delaware Regulations related to Special Education:* <http://regulations.delaware.gov/AdminCode/title14/900/index.shtml>

Children with Disabilities Placed by Their Parents in Private Schools: Children with disabilities who attend private schools at the choosing of their parents have no individual right to receive some or all of the special education and related services they would receive if enrolled in the public schools. However, each school district has an obligation to locate, identify and evaluate children with disabilities who are parentally placed in private schools located within the district, regardless of where the children live. School districts must also allocate proportionate amounts of special education funding to provide special education and related services to children with disabilities placed in private schools by their parents. The type, amount and delivery of services to be provided to some or all privately placed children are at the discretion of the school district and determined after discussion with the private school, the school district, and parents. A service plan establishes the conditions under which an eligible child is to receive services.

Who is considered a parent?

Under the IDEA, the parent of a child with a disability is:

- a biological or adoptive parent

- a guardian authorized to make educational decisions for the child (not the state, if the child is a ward of the state)
- a person acting in place of a biological or adoptive parent (such as a grandparent, stepparent or other relative with whom the child lives). A *Relative Caregiver Form* may be required and can be obtained from your school district.
- a person legally responsible for the child's welfare, or
- an Educational Surrogate Parent (ESP). An ESP is a trained volunteer who is appointed to advocate for a child who is in foster care, and whose parents are unable or unwilling to advocate for him.

The term "Parent" is used throughout this manual to refer to any of the above.

What is a Free Appropriate Public Education (FAPE)?

Children with disabilities are entitled to a Free Appropriate Public Education (FAPE).

Free means that special education and related services must be provided to eligible children at public expense, under public supervision and direction, and without charge to parents, except for fees that are charged for all children.

Appropriate means that children with disabilities have access to the general education curriculum with the special education, related services and supplemental (or extra) aids and services they require to advance appropriately toward annual goals. Children who receive special education and related services must also have opportunities to participate in other typical school activities that are appropriate to their individual needs.

Under the IDEA, an appropriate education:

- is designed to meet the unique educational needs of a child with a disability
- addresses both academic needs and functional needs
- is designed to provide access to the general curriculum and meets the grade-level standards established by the state
- is provided in accordance with an Individualized Education Program (IEP)
- is reasonably designed for the child to receive educational benefits
- provides significant learning to the child with a disability; and

- confers meaningful benefit on the child gauged to the child with a disability's potential

What are Special Education and Related Services?

Under the IDEA and Delaware law, special education means “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability...” (34 C.F.R. § 300.39; 14 DE Admin Code §922.30). It can be provided in the classroom, in a home, hospital or institution, or other settings based on the child's individual needs. Special education is to be provided by qualified, licensed personnel and may include special teaching techniques and materials. Sometimes, it may require the use of special equipment or facilities.

Related services are transportation and other developmental, corrective, or supportive services that may be necessary for a child with a disability to benefit from special education, including physical education. Other related services may include, but are not limited to, the following:

- Speech-language pathology and audiology services
- Physical and occupational therapies
- Recreation, including therapeutic recreation
- Counseling and psychological services, including rehabilitation counseling
- Parent counseling and training
- Orientation and mobility services
- Social work services in schools
- Medical services for diagnostic and evaluation purposes only
- Assistive technology devices and training
- Interpreting services
- School health and nursing services

Supplementary (or extra) aids and services that benefit your child should always be considered and must be provided to your child at no cost to you. Although the school may bill a third party medical insurance for these supplementary aids and services, they may not do so if it will cost you anything or impact your child's eligibility or continuity of other services under the insurance.

Special education, related services and supplementary aids or services must be relevant and based on peer-reviewed research to the extent practicable. Peer-reviewed means that the work, research or ideas have been researched and analyzed by experts in the field.

Who is eligible for Special Education and Related Services?

Under the IDEA, a child with a disability is one who has been determined to have a disability that adversely affects a child's educational performance. The determination is based on an educational evaluation conducted by the school with input from the parent. Although your child's special education services are based on his unique educational needs and not on any particular category, the IDEA suggests that states use thirteen disability categories for students deemed eligible for special education. A child may be identified in more than one category.

In Delaware special education categories are as follows:

- Autism - a developmental disability significantly affecting verbal and nonverbal communication and social interaction that is generally evident before age three. Other characteristics include repetitive activities and stereotyped movements, resistance to change in surroundings or daily routines, and unusual responses to sensory experiences. A child who shows a combination of these characteristics after age three can be identified as having autism.

Note: Asperger Syndrome and Pervasive Developmental Disorder-Not Otherwise Specified (PDD-NOS) are autism spectrum disorders that fall under the educational category of "Autism".

- Deaf-blindness - combined hearing and visual impairments which cause severe communication, developmental and educational needs that cannot be met in special education programs solely for children with deafness or children with blindness.
- Deafness - a severe hearing impairment that prevents a child from processing linguistic (or language) information through hearing, with or without amplification.
- Developmental Delay - applies to a young child who has a significant delay in one or more of the following developmental areas: cognition (the process of thought), communication, physical (gross and fine motor skills), social, emotional functioning and adaptive behavior (able to adjust to different environments). In Delaware, classification under Developmental Delay is from the third birth date until the ninth.

- Emotional Disturbance - a condition where a child shows one or more of the following characteristics over a long period of time and to a marked degree: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems.
- Hearing Impairment - An impairment in hearing that is permanent or changing and is not considered “Deafness” as described above.
- Intellectual Disability – Significantly below average intellectual functioning during the developmental years of a child and exists with significant limitations in two or more areas of adaptive behavior or being able to adjust to different environments including communication, self-care, home and school living, social interaction, functional academics, self-direction and coping, health and safety, leisure, play and work. Within this category, the terms “Mild”, “Moderate” and “Severe” are used to describe the level of intellectual disability.
- Multiple Disabilities - combination of impairments (such as intellectual disability and blindness or intellectual disability and orthopedic impairment) that result in intense educational needs that cannot be met in special education programs solely for one of the impairments. The disabilities identified may be categorized into primary and secondary impairment.
- Orthopedic Impairment – a severe orthopedic impairment, including an impairment caused at birth, by disease or from other causes such as cerebral palsy, amputations, fractures and burns that result in chronic loss of joint motion.
- Other Health Impairment - Having limited strength, energy or alertness including heightened awareness to events in the environment that influence behavior. Can be due to constant or severe health conditions such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia (blood disorder), lead poisoning, leukemia, nephritis (inflammation of the kidney), rheumatic fever, sickle cell anemia (inherited blood disease), and Tourette syndrome (neurological disorder).

- Specific Learning Disability - disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language. May result in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. Can be due to perceptual disabilities, brain injury, minimal brain dysfunction (or impairment), dyslexia (learning disability that impairs reading), and developmental aphasia (an acquired language disorder).
- Speech or Language Impairment - communication disorder, such as stuttering, impaired speech or a voice or language impairment.
- Traumatic Brain Injury - acquired injury to the brain that is caused by an external physical force and results in a degree of functional disability or psychosocial (emotional and social) impairment. Traumatic brain injury applies to impairment in one or more of the following areas: cognition (thought process), language, memory, attention, reasoning, judgment, problem-solving, sensory, perceptual, physical functions, information processing and speech.
- Visual Impairment Including Blindness - vision impairment that, even with correction, interferes with a child's educational performance. The term includes both partial sight and blindness.

Your child's special education services are based on his unique educational needs and not on any particular category.

Who provides Special Education and Related Services?

In Delaware, infants and toddlers with disabilities or developmental delays from birth to three years of age receive Early Intervention Services from the Division of Public Health Child Development Watch program. Child Development Watch addresses the medical, rehabilitative and developmental needs of these infants and toddlers according to an Individualized Family Service Plan (IFSP). The IFSP is designed to support both the child and his family.

At three years of age, children with disabilities may be eligible for special education and related services as provided by their local school district or charter school. Some children are eligible for special education services at birth. Special education services may be provided to an eligible child until the child reaches his 21st birthday, or until the child graduates from high school with a regular high school diploma. A child who reaches his 21st birthday after August 31st may

continue to receive special education and related services until the end of the school year, including summer services through August 31st of the following year.

Identification and Educational Evaluation

How is my child identified as needing special education?

Child Find

Under a screening process called “Child Find”, each school district is required to identify, locate, and evaluate any child with a disability who lives within the attendance boundaries of public schools and who is in need of special education and related services. Even children with disabilities who attend private schools may obtain an educational evaluation from the school district where the private school is located.

Response to Intervention (RTI)

Effective 2008, Delaware elementary schools began establishing and implementing procedures to determine whether a child responds to scientific, research-based interventions for reading, mathematics and social studies. Response to Intervention (RTI) is a three-tiered approach used to identify children who are struggling academically. It ensures that each child receives the appropriate instruction and interventions before being identified as having a disability. The RTI process is designed to allow students to move between tiers of interventions based on the child’s progress measured against benchmarks. Benchmarks are the measurable steps necessary to reach a goal. Teachers are to keep careful data on whether or not students are making progress when intense or new methods, interventions or materials are used.

- Tier 1 consists of instruction a teacher delivers as part of a scientifically-based core curriculum to all students in the general education classroom. A child who doesn’t progress in Tier 1 even with extra help, will then receive additional Tier 2 methods/materials.
- Tier 2 instruction and interventions are provided in the general education classroom with an increased level of intensity, such as small group instruction. If a child does not meet benchmarks in Tier 2, or is likely to fail end-of-year benchmarks, an Intervention Support Team (IST) meets to review the child’s program and progress. The team then determines the need for additional assessments, changes to instructional/behavioral methods, or additional Tier 3 methods/materials.

- Tier 3 instruction and interventions are additional, provided by other staff, often in settings outside the general education classroom. If a child still does not progress, or is likely to fail benchmarks, the IST reviews the program/progress. The IST may refer the child for an initial educational evaluation to determine if the child has a disability and needs special education and related services.

Implementation, as well as progress monitoring, must be done according to strict timelines and guidelines. Although RTI is also used to determine the presence of a specific learning disability or intellectual disability, it does not replace a comprehensive educational evaluation.

Who makes the referral for an evaluation?

If your child has a disability, or is suspected of having a disability, and may need special education and related services, a referral for an educational evaluation should take place. A referral is a request to evaluate your child for the presence of a disability that prevents him from making progress in the general education curriculum without special help from the school. A referral can come from you, your child's teacher, a community service provider, or a professional. Whether your child attends a public or charter school, it is best to request the evaluation in writing and to address the referral to either your child's Principal, the school's/district's Special Education Coordinator or the school's Educational Diagnostician.

When is my child re-evaluated?

Reevaluation does not always mean more testing. If you have new information about your child, or are concerned that his needs are not being met, you may ask for a re-evaluation.

A number of measures show whether your child is making progress:

- Progress on IEP goals, benchmarks and short-term objectives;
- Tests teachers use with all children;
- Performance on district wide or statewide assessments such as the Delaware Comprehensive Assessment System (DCAS).

What takes place during an educational evaluation or re-evaluation?

People often think of tests when they hear the word evaluation. An evaluation for special education services involves more than just tests. Professionals may observe your child and use other methods, such as interviews or classroom work samples, to gather data and evaluate your child's ability in areas such as:

- Speech and language abilities
- Emotional and social functioning
- Potential or aptitude
- Academic achievement
- Sensory functioning (e.g., vision and hearing)
- Vocational interests and ability
- Motor skills
- Functional skills

An educational evaluation goes beyond identifying a disability. It shows what your child does well and where your child may need additional help, and provides answers to questions such as:

- Does your child have a disability that makes him eligible for special education and related services?
- What are your child's specific educational needs?
- What special education and related services, supplementary aids and services, or modifications would be appropriate to address your child's unique needs?

You and others who know your child well can also provide important information. You are encouraged to share:

- Information about any medical conditions that may affect your child's performance in school.
- Your own description of your child's abilities, challenges, and behaviors along with his general feelings about school.

Tests and assessments must be given:

- To your child individually.

- In your child’s native language or other mode of communication; and
- In the form most likely to give accurate information on what your child knows and can do academically, developmentally, and functionally (unless it is clearly impossible to do so).

Tests should not discriminate based on disability, race, language or culture. Only qualified professionals who have knowledge in the suspected area of disability may perform tests, observations and evaluations. This includes assessing your child’s general health, social and emotional wellbeing, overall intelligence, as well as his communication and motor abilities.



A child who isn’t learning or making progress isn’t necessarily eligible for special education services. For example, a child who hasn’t received quality instruction, or whose first language is other than English may need additional services other than special education

What is a Functional Behavior Assessment (FBA)?

Parents and school staff may request a Functional Behavior Assessment as part of an initial or re-evaluation when a child demonstrates problematic behaviors in school that interfere with learning and don’t respond to commonly used behavior interventions. The FBA is another approach that can be used to try to find out why a child demonstrates behaviors that are disruptive or harmful to the child or others. A number of factors are looked at during the FBA to see what factors trigger the behavior and what the child is attempting to communicate through the behavior in question. When performing the FBA, all biological, social, emotional and environmental factors related to the child should be considered. The FBA can help the IEP team understand why a child behaves in certain ways in school so they may devise effective supports and interventions.

A typical FBA includes a detailed description of the behavior in question, along with observations of the child at different times and in different settings. This is called an initial line of inquiry. Some questions considered in the FBA:

- What was happening in the child’s environment before the behavior occurred?
- What was the actual behavior demonstrated by the child?

- What did the child accomplish as a result of the behavior? For example, was the child removed from the classroom and, therefore, able to avoid reading aloud?
- What positive intervention strategies are being used to teach the child more appropriate behavior?

After the assessment has been completed, the IEP team members, including parents may use the data collected and decide to develop a Behavior Intervention Plan (BIP) or Positive Behavior Support Plan. A BIP may include positive strategies or interventions, program or curriculum modifications and supplementary aids and supports necessary to address the behavior(s) in question. Information gathered from the BIP can also be used to write behavior goals for the Individualized Education Program (IEP).

How can parents play a role in the evaluation process?

Parents are a child's first teacher and you know your child better than anyone else. You have important information (medical, developmental, emotional, and functional) to share. If you know your child is struggling in school, you may want to request an educational evaluation.



- *Make your request for an educational evaluation in writing. Email is an acceptable form of communication; although it is always a good idea to follow-up by phone to be sure your email was received.*
- *Be sure to keep a copy of your request for your records.*
- *It is very important that you keep records of all information concerning your child.*
- *A three-ring binder, box with dividers or electronic folder back-up is an easy way to keep track of your child's records.*

When does the school need my consent to perform an evaluation?

A school/district must receive your informed written consent before conducting the initial educational evaluation of your child and before conducting re-evaluations.



After the Principal, Special Education Coordinator or Educational Diagnostician have received a referral, he will ask for your informed written consent to conduct an initial evaluation. This means that the school will inform you why they want your consent, and ensure you understand and agree in writing to having your child evaluated.



Once the school/district has received your consent in writing, it must perform the evaluation within 45 school days or 90 calendar days. Typically, the school will review with you with an Evaluation Summary Report (ESR) that outlines the evaluation results and the eligibility determination.

A school/district is not required to have informed parent consent when:

- reviewing existing data as part of an evaluation or a re-evaluation;
- administering a test that is given to all children, unless consent for that test is required of all parents.

How will the school let me know about actions they are planning to take?

The school/district has to present parents with Prior Written Notice (PWN) anytime it wants to initiate an action to change or deny services to your child. The content of the Prior Written Notice must be understandable and provided in your native language or usual mode of communication, unless it is impossible to do so.

Prior Written Notice must include:

- A description of the action proposed or refused and an explanation of why the school/district proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record or report the school/district used as grounds for the action;
- Sources for you to contact, such as the Parent Information Center, if you need help in understanding the special education process;
- A statement that you have procedural safeguards (or rights) under the IDEA and how you can obtain a copy of those safeguards.

Prior Written Notice gives you, the parent, the opportunity to use your rights if you disagree with the action the school is proposing or refusing to take.



After receiving Prior Written Notice, you may: 1) Waive a 10-day waiting period and provide your written consent for the action proposed or refuse to happen immediately;

or 2) You may ask questions or explain your disagreement with the school within the 10 day waiting period. It is best that you share your disapproval in writing with the school. You also should propose further action(s) for the school to take.



If you do not respond to the school within 10 school days of receipt of the Prior Written Notice, the school has the authority to continue with the action proposed or refused (i.e. implement the IEP, move forward with a change of placement).

What if I disagree with the school's evaluation results?



If you disagree with the findings of an educational evaluation performed by the school, you have the right to request an independent educational evaluation (IEE). This request should be made in writing. Qualified professionals who are not employed by the school/district should conduct the evaluation.

When you request an Independent Educational Evaluation, the school has two choices:

- Provide the Independent Educational Evaluation at its expense:
- Initiate a timely due process hearing to show that its own evaluation is appropriate. If the due process hearing panel findings favor the school/district, you still have the right to seek an Independent Educational Evaluation but at your own expense.

If you obtain an Independent Educational Evaluation through the school/district, or you share one with the school/district obtained at your own expense, the school/district must review and consider the evaluation in any decision concerning the provision of special education to your child.

Eligibility

What happens after my child is found eligible for special education services?



Within 30 calendar days of finding that your child is eligible for special education and related services, the school/district assembles a team of knowledgeable individuals.

This team includes you and others who are knowledgeable about your child's disability and specific special education services and programs available to help your child. Team members review your child's evaluation data and any other relevant information, assess your child's strengths and needs, and work together to develop and Individualized Education Program.

Individualized Education Program

IEP team members

The IEP team is made up of the following members:

- You, the parent(s). The school/school district must ensure that you understand the IEP meeting process and, if necessary, must provide an interpreter for parents who are deaf, or whose language is not English
- At least one regular education teacher, if your child is, or may be, participating in the general education classroom
- At least one special education teacher or provider
- A representative of the school district who: is qualified to provide or supervise specially designed instruction to meet your child's unique educational needs; who is knowledgeable about the general education curriculum and available resources in the school district; and who has the authority to commit resources and can ensure that services included in the IEP will be provided.
- An individual who can explain the evaluation results and explain to the team how the evaluation information can be used to help your child make progress in school.

Additional members may include:

- Your child, as appropriate -- Beginning at the age of 14 or when your child enters 8th grade (or younger if determined by the IEP team), your child must be invited in writing to the IEP meeting. If your child does not attend the IEP meeting, the school needs to take steps to make sure that your child's preferences and interests are considered.
- A Career Technical Teacher or Coordinator whenever possible participation in a Cooperative Education Program will be discussed.
- Other individuals who may have knowledge or special expertise regarding your child, including related services personnel.

The school/district is responsible for inviting those individuals who should be a part of the IEP process. You may bring anyone you choose to the meeting, so long as that person has knowledge and expertise about your child. You should let the school know in advance if you plan to bring additional people to the IEP meeting.



IEP team members whose area of curriculum and instruction is **not** being modified or discussed may be excused from attending a meeting in whole or part if:

- You and the school agree that the member's attendance is not necessary, and
- The agreement between you and the school is in writing.



IEP team members whose area of curriculum and instruction **is** being modified, or discussed may also be excused from attending a meeting in whole or part if:

- You are fully informed and consent in writing, and
- The excused member submits in advance his input in writing to you and the rest of the IEP team.

What must the IEP team consider when developing the plan?

Based on various sources of data gathered, the IEP team will consider and provide statements or descriptions about:

- The strengths of your child and your desire to improve his education.
- The results of initial or most recent evaluations of your child and his academic, developmental and functional needs.
- How your child's disability affects his involvement and progress in the general education curriculum.
- Other educational needs of your child.
- Whether your child will participate with non-disabled peers in extra-curricular and non-academic areas of the day (such as lunch, recess, recreation activities or clubs).
- In the case of preschool children, how the disability affects your child's participation in appropriate activities in his natural environment (daycare, home or preschool).

Other factors the IEP team will consider:

- Your child's communication needs and opportunities for interactions with peers and professionals.
- In the case of a child who is blind or visually impaired, provision for instruction in Braille unless the IEP team, after sound consideration, determines the use of Braille is not appropriate for your child.
- In the case of a child with limited English proficiency, his language needs as they relate to the IEP.

- In the case of a child whose behavior prevents him or others from learning, the use of positive behavioral interventions, supports and other strategies to address the behavior.
- Your child’s need for assistive technology services and devices (See Appendix A for information about the Delaware Assistive Technology Initiative to find out the use and availability of assistive technology devices and services.)
- Interventions, supports and strategies for a child who has difficulty accessing and/or using grade-level textbooks and other core material in standard print format.

What is included in an IEP?



Delaware school districts use a standard IEP form for speech only, preschool children, school age (kindergarten – 7th grade) and transition students (who are 14 years old or in 8th grade). The special education teacher or service provider may bring a completed draft IEP to the meeting. A draft IEP should be clearly marked as a “draft” document so that the team can make additional changes and revisions when they meet. Following is a link to Individualized Education Program (IEP) forms from the Delaware Department of Education

The IEP for your child must include:

- A description of your child’s unique educational needs and characteristics (this includes academic and functional needs);
- A statement about the special education services provided to your child. This should include any specialized services such as accommodations and modifications that will be needed;
- The frequency, duration and location of services, aids and modifications;
- Your child’s present levels of educational performance (PLEP) in terms of academic achievement and functional performance;
- Measurable annual academic and/or functional goals. Each goal should have a condition, behavior and criterion and be measurable. Each measurable annual goal

should answer the question, “Are the services and supplemental aids we are providing working for this student?”;

- A description of the benchmarks (or steps) needed to measure the annual goal. Benchmarks should be directly related to the PLEP and the statement of special education services.

The progress your child is making toward each annual goal is measured against steps or benchmarks needed to reach the goal. Benchmarks are generally written to coincide with common school progress reporting schedules. Progress reports about your child are to be shared at least as often as they are with all students. These narrative progress reports should be shared with you on schedule and indicate whether your child has:

- Mastered the annual goal = M
- Made sufficient progress to meet the annual goal = S
- Not made sufficient progress to meet the annual goal = N

The IEP meeting is an appropriate time for you or other IEP team members to discuss concerns about progress and to review data to help the team make decisions that help your child.

Additional considerations:

- Special transportation needs
- Participation in statewide or alternate assessments
- Adherence to the school code of conduct

Special Education services during the summer

Participation in Twelve-Month Programs

Parents of children with certain disability categories may choose to have their child attend a 12-month program. Disability categories eligible for a 12-month program not to exceed 217 school days are: Severe Intellectual Disability; Moderate Intellectual Disability; Orthopedic Impairment; Traumatic Brain Injury; and Deaf-Blind. The Autism category is eligible for a 12-month program not to exceed 241 school days.

Extended School Year (ESY) Services

The IEP team determines whether your child needs extended school year (ESY) services.

ESY are special education and related services, provided according to the child's IEP and at no cost to the parent. The IEP team must give full consideration to the educational needs of your child and decide that, without educational services over the summer months, a free appropriate public education would be jeopardized.

In making the decision, the IEP team considers the following questions:

- Regression and recoupment - Regression means a decline in skills due to an interruption in programming. Recoupment period is the amount of time your child needs to re-learn skills following that interruption. Are regressions and/or recoupment in critical skills so significant as to prevent educational progress during the regular school year?
- Vocational Opportunities - For students of transition age whose IEPs include vocational and/or employment goals and objectives, would paid employment be significantly jeopardized if training and job coaching were not provided over the summer months?
- Degree of Impairment - Given the nature or severity of your child's disability, will he fail to make appropriate and meaningful progress on IEP goals during the school year without the Extended School Year (ESY) services over the summer?
- Breakthrough Opportunities - Would your child lose a newly acquired skill without Extended School Year (ESY) services?



Additionally, the IEP team may determine the justification for any additional special or unusual circumstances. The IEP team determines the setting where extended services will be provided and the school district must provide you with Prior Written Notice of their decision.

The school/district provides free transportation to children who receive Extended School Year services. These services do not prevent your child from participating in additional summer school programs with or without accommodations.

In cases where parents do not agree with the IEP decision on Extended School Year services, they may use the procedural safeguards outlined in this booklet.

Transition IEPs

What are Post-Secondary Goals?

Beginning with the earlier of the first IEP to be in effect when the child turns 14 or enters the 8th grade, the IEP must include additional elements to support your child to successfully transition from high school to the adult world. The Transition IEP may be developed at an earlier age for your child if you and the IEP team find it appropriate.

A transition IEP should include appropriate, measurable post-secondary goals in the areas of:

- Post-School Employment
- Post School Education or Training
- Independent Living if determined to be needed by the IEP team. It is recommended that each student have at least one goal in this area

Measurable post-secondary goals are:

- Statements that express what a child would like to do after high school based on his strengths, preferences and interests. This information is documented earlier in the “Data Considerations” section of the IEP form.



Measurable postsecondary goals are written using results-oriented terms such as “will be enrolled in...”, “will work at...” or “will live with a friend...”. Descriptors such as full-time and part-time are also helpful.

- To be based on age-appropriate transition assessments.



Information about your child’s strengths, preferences, interests and skills may be gathered from formal and informal transition assessments including: surveys, interviews, questionnaires and vocational tests. You should ask your child’s teacher about the work he has completed on his Student Success Plan (SSP). The SSP is a web-based career exploration program being used by high school students to explore career interests and make future plans.

Each year the IEP Transition Team should reassess and refine your child’s post-secondary goals. Initially, it is appropriate to write broad descriptions of your child’s, preferences, strengths, interests and vision of his future. By your child’s last IEP the goals should be specific and measurable to one year past beyond high school.

What are Courses of Study?

Transition IEPs must also include courses of study which determine what instruction and educational experiences will assist your child in preparing for the transition (or movement) from secondary education (high school) to post-secondary education or work. Courses of study should:

- Focus on all courses and educational experiences.
- Reflect how the educational program can be planned and relate directly to the child's goals beyond high school.
- Show how they are connected to the post-secondary goals.
- Be reviewed and updated annually.



The process for developing the courses of study should assist you and your child in selecting courses that are meaningful and will motivate your child to complete his education.

What are Activities and Services?

The IEP team should identify activities and strategies that can help your child to successfully move (or transition) toward his post-secondary goals. Along with identifying activities and strategies, the IEP team has the responsibility of inviting the Division of Vocational Rehabilitation (DVR), Developmental Disabilities Services (DDDS) and other agencies, as appropriate. It is also the responsibility of the IEP team to ensure coordination among all responsible parties. The IEP team should consider the following questions:

- What services, supports or programs will your child need in order to achieve desired post-school goals?
- What services, supports or programs will help ensure success as your child enters the adult world?
- How can your child be linked to the needed post-school services, supports or programs before leaving the high school setting?

Each year, activities and strategies must be reviewed and revised by the IEP team to reflect what your child has accomplished, as well as to identify any new or future needs or emerging strengths, preferences or interests.

Additional Considerations:

- When the school plans to invite an agency to participate in the IEP meeting, the school/district is required to obtain parental consent before the invitation is sent to the agency.
- The school must have an “Interagency Release of Information” form on file in order to share information with an appropriately identified agency (such as DVR, DDDS).
- At least one year before the age of majority (18 years old in Delaware), the school/district must inform the student that the parental educational rights under IDEA will transfer to him (unless a legal guardian has been appointed).

Tips for having your child participate in the IEP meeting:

Beginning with the earlier of the first IEP to be in effect when the child turns 14 or enters 8th grade (or younger if determined by the IEP team), your child must receive a written invitation to their IEP meeting. If your child does not attend the IEP meeting, the school needs to take steps to ensure that your child’s preferences and interests are considered.

It is important that your child not only be invited, but also actively participate in the meeting. Here are some steps to take with your child prior to an IEP meeting. These suggestions should become part of a routine as you prepare your child to plan for the future.

- ✓ Let your child know who will be attending the meeting and that the meeting will be at the school. Mention that there will be a many adults in the room and that the teachers will talk about him and how he is performing in his classes.
- ✓ Explain that the purpose of the meeting is for you, teachers and others who care to come up with ideas and ways to help him be successful in school. Your child should be a part of the planning because it is about him and his future. Explain that he is a member of the IEP team (just like a football or soccer team).
- ✓ Share information about your child’s disability or learning differences in an informative and comfortable manner. All of us have strengths and abilities that help

us to learn, as well as challenges. It is important that your child is able to identify how he learns best and knows about learning and personality styles. Share stories of how you learn and retain information.

- ✓ Encourage your child to make a list of 3-5 questions to ask at the meeting. Examples include: How many more credits do I need to graduate? Do I need to take another math class? Can I visit a job site? Who can help me complete an application for a training program? How can I learn to use public transportation?
- ✓ It is important that your child learn to ask for help in school in ways that he can use when he gets a job or continues his education after high school. Encourage your child to make a list of 3-5 ways to ask for extra help when needed. Examples include: In math class, what should I do if I don't understand the work? When I get angry or upset, how can I take a break? How long can I take a break when I feel overwhelmed? What should I do if I know I am going to be late? How should I ask for help when I feel confused?
- ✓ Help your child explore areas of interest and career possibilities. Review your child's Student Success Plan (SSP) together. Talk about your own job and allow your child to interview you. Explore volunteer opportunities in the community with your child (such as the local animal shelter or other non-profits).
- ✓ Take every opportunity to encourage your child to be curious and to learn more. For example, when shopping, point out to your child that some jobs require people to wear uniforms, some employees work shift work, some jobs require a college degree, etc. Allow your child to observe your own work environment or that of another family member or friend.
- ✓ Ask your child to name 3 jobs that are of interest and then name a person who has that job. Can your child talk to or interview that person? Can your child "shadow" that person for an hour? Can your child find out information about the job in a magazine or on the internet?
- ✓ Provide opportunities for your child to practice their role in the meeting. Some students find it helpful and fun to role play the meeting with other family members or

friends. Talking to a mirror or speaking into a tape/digital recorder is a useful way for your child to become more comfortable with expressing himself. If your child likes to use technology, have him develop a Power Point presentation that he can be used at the meeting. This is not only helpful as a visual tool, but it allows the team to see first-hand your child's abilities.



A child of any age may attend all or part of his IEP meeting. Having your child participate in the IEP meeting can be very empowering to him and very helpful to the IEP team. Doing so will help your child to learn advocacy skills and strategies and being an active team member will remind the IEP team that the child's voice is important and must be considered for a successful plan to be developed.

Transfer IEPs

For students who transfer from one Delaware public or charter school to another, or for a child who transfers to Delaware from an out-of-state school:

- The child is temporarily placed in an educational setting that seems to meet the child's needs. This setting must be agreed upon (in writing) by both the parents and the receiving school.



The school must hold an IEP meeting within 60 days of the child's first attendance to either adopt the current IEP or to develop a new IEP.

How can I contribute to the IEP process?

Before the meeting

Following are suggestions that will help improve the IEP process:

- ✓ Make a list of items you would like to discuss with the team. Prioritize your list. It is helpful to share a copy of that list with the team before the IEP meeting.
- ✓ Bring as much information about your child as possible, including information provided by your child's teacher or other service providers about academic strengths, other skills or abilities, as well as his areas of need.
- ✓ For annual IEP meetings, you should check the previous year IEP and progress reports to see if your child met his projected goals.
- ✓ Review any evaluation results.
- ✓ Also review your child's school records. To do so, contact the school (preferably in writing or email) and ask them to make your child's records available to you. The school should meet your request within 45 days and give you permission to make copies. You can ask the school to correct or remove information that you think is incorrect or misleading.
- ✓ In addition to consideration of your child's strengths and areas of need, share with the team other concerns you may have about your child's social, organizational and study skills, along with accommodations and modifications that could help your child.
- ✓ Some parents find it helpful to observe their child in the classroom to see how they learn best—such as being placed in a highly structured environment, having assignments read to him, or enjoying projects— all of this is important for the teacher to know.
- ✓ If your child is transitioning from the early intervention Child Development Watch program to a private preschool or a school-based preschool, you have the right to request that the Family Service Coordinator attend your child's first IEP meeting.

Whenever possible, take a relative, a friend, another parent, or a special education advocate to the IEP meeting. However, it is common courtesy to let the school know prior to the IEP meeting. Some parents have found that bringing a snack to the meeting is a great icebreaker.*



*PIC staff will attend meetings with parents whenever possible and/or help parents prepare for the meeting. Parent Consultants do not serve as case managers or personal advocates. Instead, they provide one-to-one guidance and support. They are here to empower the parents and caregivers who can make the greatest impact on a child's life.

At the meeting

Following are suggestions that will help improve the IEP process:

- ✓ Ask questions if you don't understand the answers; ask again until you feel comfortable.
- ✓ Provide pertinent information about your child (such as medical information, how your child behaves at home, concerns about your child's progress, etc.)
- ✓ Respect the perspectives of others.
- ✓ Be aware of the school's limitations, such as classroom size, availability of school personnel and time
- ✓ Stay on topic during the meeting. Use information, not emotions, when making decisions and agreeing to recommendations.
- ✓ Carefully read the IEP and be sure that everything the team discussed and agreed to is included.
- ✓ Prior Written Notice will be provided to you either at the IEP meeting or a few days later. This notice includes a description of the action proposed or refused and an explanation of why the school proposes or refuses to take the action. If you are comfortable with the IEP that was developed and reviewed at the meeting, you may sign the IEP. This will indicate that you participated in the meeting and that you agree with the plan.



If you are unsure, have questions or disagree with some or all of the IEP, you should let the school/district know which portions of the IEP you disagree with, and how you would like the team to address your concerns. It is best that you state your

disagreement in writing.

If you don't let the school know that you have concerns, then the school will assume you agree and will implement the IEP as written.

Can the IEP be changed?

Changes to the IEP may be made either by a meeting of the IEP team, or by amending the IEP without a meeting of the entire IEP team. You and the school may also agree to use alternative means of meeting such as video conferencing and conference calls.



Upon request, you must be given a revised copy of the IEP with the changes.

Educational Placement

Where is the IEP implemented?

All children with disabilities must receive special education services in the Least Restrictive Environment (LRE). This means that your child must be educated, to the maximum extent appropriate, with children who do not have disabilities. Schools must apply the LRE requirement when planning services or programs for children with disabilities. To be sure all children with disabilities receive services with the fewest restrictions possible, a variety of settings or placements must be available at each grade level.

Special education and related services for children ages birth-to-three years may be provided in places where infants and toddlers without disabilities typically spend time such as in your child's home or child care center. After your child turns three years of age, services may continue to be provided in similar community settings including private preschools or programs like Head Start or a state-funded pre-kindergarten.

Schools may also provide preschool services within school settings. As a general rule, school districts must consider the Least Restrictive Environment (LRE) for all children who have disabilities, so as to offer them opportunities to interact with typically developing peers.

Special education for school-aged children may be provided in a number of settings:

- **Regular classroom setting** - Your child receives instruction in the regular classroom 80% of the day or more. This includes pull-out related services and team classrooms. (In team classrooms, a general education and special education teacher co-teach both general and special education students).
- **Separate special education classes and regular classroom setting** - Your child receives instruction in the regular classroom between 40% and 79% of the day.
- **Separate special education classes in an integrated setting** - Your child receives instruction in the regular classroom less than 40% of the day.
- **Separate school setting** - Your child receives instruction in a separate day school or residential facility for more than 50% of the school day.
- **Homebound or hospital setting** – Your child, for health or other reasons, cannot attend any of the above described settings.

- **Correctional facility setting** – Your child needs to be placed in short-term detention or correctional facilities.

The IEP team determines an educational placement for your child that is

- Based on the IEP;
- As close to your home as possible;
- In the Least Restrictive Environment (LRE) that will not have a potentially harmful effect on your child or the quality of educational and related services; and
- Reviewed at least annually.

The starting point for delivery of educational programs and services is an age-appropriate regular classroom with needed modifications and accommodations to the general curriculum. Removal from that environment must not be based on:

- Availability of services or funds;
- A medical diagnosis or educational category;
- Administrative convenience;
- Availability of transportation; or
- Needed modifications to the general education curriculum.

School Discipline Procedures

What happens if my child violates the school code of conduct?

If your child (with a disability) violates the school code of conduct, a school may remove your child from the general education classroom setting. Depending on the nature of the offense and the length of the removal, specific steps need to be taken and parents must be informed of certain actions. The following describes specific situations and actions that may be taken by a school:

- 1. Your child is removed from school – for not more than 10 consecutive (in a row) school days** -- The school should notify you in writing that your child has been removed. Your child continues to have the right to receive special education services according to his IEP, ONLY if educational services are also provided to children without disabilities who are removed during this same time. The school district may remove your child to: an appropriate Interim Alternative Educational Setting (IAES) as described below, another setting or the district may suspend your child. This is not a change of placement so a manifestation determination as described below (on p. 38) is not required.
- 2. Additional removals of not more than 10 consecutive (in a row) school days for separate incidents (incidents that do not represent a pattern)** -- If there are additional removals of not more than 10 consecutive school days for separate incidents of misconduct, the school should notify you in writing that your child has been removed from school. Your child continues to have the right to receive special education services according to his IEP ONLY if educational services are provided to children without disabilities who are removed during this same time. The district may remove your child to: an appropriate Interim Alternative Educational Setting (IAES) as described below (on p. 37), another setting or they may suspend your child. This is not a change of placement so a manifestation determination (see p. 38) is not required.
- 3. Your child is removed from school - for MORE than 10 consecutive (in a row) school days.** A parent must receive a Prior Written Notice (explained earlier on p. 16) within 5 school days of the school's decision to suspend your child beyond 10 days and therefore change your child's placement for discipline reasons. Parents must also receive a copy of their procedural safeguards (described later). The school district may remove your child to: an appropriate Interim Alternative Educational Setting (IAES) as described below, another setting (such as homebound

instruction), or the district may suspend your child. Your child must continue to receive services that will enable him as described to continue to participate in the general education curriculum (even in a setting other than school) and progress toward meeting IEP goals. Within 10 school days of the decision to change your child's placement, the IEP team must conduct a manifestation determination. This is described on p. 38. Essentially, you and relevant members of the IEP team will examine your child's disability and his violation of the code of conduct. Depending on the outcome of the manifestation determination, the IEP team will review or conduct a Functional Behavioral Assessment (described earlier), and review and/or develop a Behavioral Intervention Plan.

Case-by-Case Determination – School personnel may consider any unique circumstances on a case-by-case basis in determining if a change of placement is appropriate. School authorities may use their discretion in allowing for removals for unique circumstances, only once other disciplinary procedures have been met.

Special Circumstances – School personnel may remove your child to an Interim Alternative Educational Setting (IAES) for up to 45 school days regardless of whether the behavior is a manifestation of the disability if the child:

- Carries a weapon to or possesses a weapon at school, or is found to have a weapon at school, on school grounds or at school functions
- Knowingly possesses, uses, sells or solicits illegal drugs, or a controlled substance while at school, on school grounds or at school functions
- Has inflicted serious bodily injury (as defined in the glossary) on another person while at school, on school grounds or at school functions.

What is an Interim Alternative Educational Setting (IAES)?

An appropriate Interim Alternative Educational Setting (IAES) depends on the circumstances of each individual situation. An IAES must be selected so as to enable your child to continue to participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in your child's IEP.

What is considered a suspension from school?

An out-of-school suspension means that your child has been removed or “suspended” from school and is not able to appropriately participate in the general education curriculum or continue to receive services specified in the IEP.

An in-school suspension is not considered a suspension or removal from school as long as your child is afforded the opportunity to appropriately participate in the general education curriculum, receive the services specified on his IEP, and continue to participate with non-disabled peers to the extent he would have in his current placement.

A suspension due to behavior on a bus is treated as a suspension or removal from school, unless the school provides a transportation alternative to and from school.

What is a Manifestation Determination?

Within 10 school days of a decision to change placement, you and relevant members of the IEP team must review all pertinent information such as: the IEP, the Behavior Intervention Plan, your child’s behavior as it relates to his disability, teacher observations and information provided by you, the parent(s). You and relevant members of the IEP team must also review the school’s implementation of your child’s IEP. The purpose of the manifestation determination is to determine if your child’s violation of the school code of conduct:

- Was caused by, or had a direct and substantial relationship to the child’s disability
- Was a direct result of the school’s failure to properly implement the IEP

If relevant members of the IEP team determine that your child’s misconduct ***WAS a manifestation*** of the disability, the school must take the following three steps:

1. Review and/or revise the current Functional Behavior Assessment (FBA) or conduct a new FBA;
2. Develop and implement a Behavioral Intervention Plan (BIP) or review an existing BIP;
3. Provide appropriate services as determined by the IEP team.

If relevant members of the IEP team determine the conduct was *NOT a manifestation* of the disability, the following may happen:

- The school may discipline your child and apply any relevant disciplinary procedures the same manner and for the same duration as procedures that would be applied with a child without disabilities; and
- Your child must continue to receive services to the extent necessary to enable your child to appropriately participate in the general curriculum and appropriately advance toward achieving the goals in your child's IEP.

If your child's misconduct is a result of the school's **failure to implement the IEP**, the school must take immediate steps to ensure that his IEP is implemented.

Can I get an expedited hearing for my child's placement?

In the event you disagree with any decision by the school about your child's removal to another setting, or the result of the manifestation determination, or if you believe that the current placement is very likely to result in injury to your child or others, you may appeal the school's decision by requesting a due process hearing. The Delaware Department of Education (DDOE) must then appoint a hearing officer who will make a determination regarding such an appeal. The hearing officer will determine if:

- The removal was in violation of school personnel authority, and return your child to the pre-removal setting or,
- The current placement is likely to result in injury to your child or others, and order a change of placement to an appropriate Interim Alternative Educational Setting (IAES) for not more than 45 school days.

Procedural Safeguards

Procedural safeguards outline the legal responsibilities of both parents and schools/districts under the IDEA (Federal law) and Title 14 of the Delaware Code of Regulations (State Regulations) regarding the education of eligible children with disabilities.

The school must provide you with a copy of your procedural safeguards:

- Once a year;
- At each IEP meeting convened for your child;
- Upon receipt of the first state complaint or due process complaint in a school year (described below); and
- Upon your request.

Following is a link to the Delaware Department of Education Procedural Safeguards page:

What can I do if I don't agree with the school?

As parent(s), you have the right to disagree with the school's/district's decisions concerning your child's right to a Free Appropriate Public Education (FAPE).

Such disagreement(s) may be that:

- You refuse to consent for an evaluation;
- You don't agree with the school's/district's evaluation findings;
- You disagree with the IEP in part, or as a whole;
- You believe your child is not receiving appropriate special education and/or related services;
- You think that your child is not making reasonable progress;
- You think your child requires additional services;
- You think that your child's educational placement is not appropriate.

When you and the school disagree, it is important to first try to resolve differences informally. However, if you continue to disagree with the school's recommendations, you or the school district can use one or more of the following options:

Facilitated IEP Meeting

You and the school may decide to use a neutral third party who is trained as a meeting facilitator. This is a useful service when the IEP team is unable to agree on one or more issue concerning your child's Free Appropriate Public Education. The meeting facilitator directs the team to focus on the purpose of the meeting by encouraging consensus building strategies such as active listening and shared decision making.

Mediation

Mediation is a more formal method used to resolve disagreements among parents and relevant IEP team members. Mediation is voluntary and can be requested by a parent or the school/district. Although it is not required, a Request for Special Education Mediation form may be used to request mediation. This useful form can be obtained from the DDOE.

Mediation cannot be used to deny or delay your right to a due process hearing, or any other rights you have under the IDEA.

Just as with facilitated IEP meetings, a neutral third party trained as a mediator facilitates the meeting to help both parties clarify issues and address differences in a more collaborative way. The mediator is not a decision-maker; rather, the mediator helps parties find an agreeable solution to both sides. You may bring a person of your choice to the mediation. The school must ensure that a person who has the authority to make decisions, commit resources and agree to services attends the mediation.

If mediation results in a formal agreement, the agreement is legally binding and must be implemented by the school.

All information discovered during mediation remains confidential and cannot be used as evidence in any (subsequent) due process or civil proceeding.

State Complaint Procedure

A state complaint is a claim that a school district is out of compliance with state and federal special education law. Some examples include:

- The school is not providing services agreed upon in the IEP;

- A teacher fails to provide the accommodations as part of the IEP;
- A parent is told the school does not provide extended school year (ESY) services.
- The school is not providing Prior Written Notice.



Any individual or organization may file a complaint on behalf of a parent or to point out issues of non-compliance by the school.



You may file a written complaint or complete the Special Education Complaint form. Either the written complaint or state form should be addressed to the State Director of Special Education at the Delaware Department of Education (DDOE). Keep a copy for your records and also send a copy to the school/district.



The complaint must allege a violation that occurred within one year of the date the Delaware Department of Education (DDOE) receives the complaint.



Within 60 days following the receipt of the complaint, the DDOE will investigate the complaint. The DDOE will also offer the option of resolving your complaint through the voluntary mediation process. You and/or the school/district may be contacted to provide additional information or to answer questions. The DDOE will then issue a “finding” based on its investigation. If the findings indicate non-compliance on the part of the school/district, the DDOE will ask for corrective action within a certain time frame.

Due Process Hearing

If you are unable to resolve differences with your school/district, you may request a Due Process Hearing from the Delaware Secretary of Education. You request this by writing a letter or completing a form called the Due Process Complaint form. Although it is not required that this form be used, it may be helpful to you.

The due process complaint may not relate to issue(s) more than two years old.

What is the responsibility of the school?

Within 15 days of receiving notice of your Due Process Hearing request, the school must convene a Resolution Meeting to discuss the facts and try to resolve issues. The resolution meeting must include:

- Parent(s)
- Relevant IEP team members; and
- An agency representative with decision-making authority.

Note: An attorney for the school/district may not be present, unless the parent's attorney is also present.

If resolution is reached, both parties sign a legally binding agreement. If resolution is not reached within 30 days of the school/district's receipt for the Due Process Hearing request, the request remains active and a hearing will take place.

Both parties can agree in writing to waive a Resolution Session. Both parties can also agree to waive the Resolution Session and use Mediation.

What is the responsibility of the Delaware Department of Education (DDOE)?

Upon receipt of your Due Process Hearing request, the Delaware Department of Education (DDOE) will automatically offer you the option of resolving your complaint through the voluntary Mediation process.

At the same time, the DDOE will appoint a three person hearing panel and schedule a date for the Due Process Hearing. The hearing panel will consist of an attorney, an educator knowledgeable in the field of special education, and a lay person with demonstrated interest in the education of children with disabilities.

Should you not want to try Mediation, or if the Mediation process does not result in a satisfactory resolution, then the Due Process Hearing will proceed.

Where will my child attend school during a Due Process Hearing?

Unless you and the school district agree otherwise, your child will stay in his current educational placement for the duration of the Due Process Hearing. This is called a “stay put”.

Should the Due Process request relate to an admission application to a public school, your child will then be placed in such a school, with your approval, until the completion of the Due Process Hearing and proceedings.



A Due Process Hearing is a legal process that should be weighed carefully by both parents and schools/districts. Before requesting a hearing, you should discuss your concerns with a special education advocate or attorney. Ask your school district and the DDOE for a list of free or low-cost attorneys. Although parents may represent themselves (pro se) it is wise to hire an attorney who is well trained in special education law.

A Due Process Hearing must be conducted in accordance with hearing rules and procedures. After the hearing, the panel issues a written decision containing findings of fact and conclusions of law.

At the discretion of the court, prevailing parties in a Due Process Hearing may be compensated for attorney’s fees.

Can the Due Process Hearing panel’s decision be appealed?

Delaware is a “one tier” state, which means that it offers only one level of administrative hearings. Parents can appeal the Due Process Hearing decision by filing a civil action in Federal District Court or in Delaware Family Court. Such an appeal must be filed within 90 days of the due process panel’s decision.

Appendix A. Useful resources

Delaware Department of Education (DDOE)

Information about education services and initiatives in Delaware including special education practices and regulations. Up-to-date information such as school/district profiles and activities, IEP forms and more. All can be downloaded from the website.

John G. Townsend Building

401 Federal Street

Dover, DE 19901-1402

302-735-4000 Voice

302-739-4654 Fax

<http://www.doe.k12.de.us>

Parent Information Center of Delaware, Inc. (PIC)

Information, education, advocacy, support, problem-solving and referrals for families of children with disabilities and special needs.

PIC Main Office

404 Larch Circle

Wilmington, DE 19804

302-366-0152 Voice

302-366-0276 Fax

1-888-547-4412 Toll free for families

e-mail: picofdel@picofdel.org

<http://www.picofdel.org>

Child Development Watch (CDW) Birth to Three Program

Services for children ages Birth-to-Three with developmental delays or disabilities. A family guide to services is available.

New Castle County

1901 N. duPont Highway

New Castle, DE 19720

302-255-9135 Voice

302-255-4407 Fax

<http://www.dhss.delaware.gov/dph/chs/chscdw.html>

CDW-Kent/Sussex Counties

18 N. Walnut Street

Milford, DE 19963

302-424-7300 Voice

1-800-752-9393 Toll Free

CDW Spanish Assistance

Statewide 1-800-221-2266

Delaware Assistive Technology Initiative (DATI)

Information about assistive technology devices and equipment.

College of Education and Human Development

University of Delaware

461 Wyoming Road

Newark, DE 19716

302-831-0354 (Voice)

800- 870-DATI (3284) (Voice/TTY)

302-831-4690 (Fax)

Disabilities Law Program (DLP)

This program is part of Delaware's Community Legal Aid Society, Inc. and provides advocacy services to Delaware residents with physical and mental disabilities.

New Castle County:

100 West 10th Street, Suite 801

Wilmington, DE 19801

302-575-0690 Voice & TTY/TDD

1-800-292-7980

<http://www.declasi.org/index.php/disabilities-law-program>

Disabilities Law Program-Kent County:

840 Walker Road

Dover, DE 19904

302-674-8503 Voice & TTY/TDD

1-800-537-8383

Disabilities Law Program-Sussex County:

Georgetown Professional Park

20151 Office Circle

Georgetown, DE 19947

302-856-3742 Voice & TTY/TDD

1-800-462-7070

Governor's Advisory Council for Exceptional Citizens (GACEC)

Policy guidance with respect to special education and related services for children with disabilities in Delaware. Parents of children with disabilities are the majority membership of the council.

516 West Loockerman Street

Dover, DE 19904

302-739-4553 Voice

302-739-6126 Fax

<http://gacec.delaware.gov/aboutagency.shtml>

<http://www.deldhub.com>

U.S. Department of Education (USDOE)

Information about the IDEA and best practices in special education.

Office of Special Education Programs Office of Special Education and Rehabilitative Services

400 Maryland Avenue, S.W.

Washington, DC 20202

202-205-5507 Voice

<http://idea.ed.gov/>

NICHCY National Dissemination Center for Children with Disabilities

Information and handouts about disabilities, special education, research-based instructional materials and more.

1825 Connecticut Ave., NW, Suite 700

Washington, DC 20009

1-800-695-0285 Toll free

202-884-8200 Voice

<http://www.nichcy.org/>

Special Education Partnership for the Amicable Resolution of Conflict (SPARC)/University of Delaware

Conflict Resolution Program/Institute for Public Administration

College of Human Services, Education & Public Policy

177 Graham Hall

Newark, DE 19716

302-831-8158 Voice

302-831-0450 Fax

www.ipa.udel.edu/crp

Technical Assistance Alliance for Parent Centers

Listing of Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) funded through the U.S. Dept. of Education under the IDEA. PTIs and CPRCs provide information and training to parents of children with disabilities and professionals who work with them.

1-888-248-0822

<http://www.taalliance.org/>

Appendix B. Glossary of Terms

Age of Majority – The age when a child is legally considered an adult - in Delaware that age is 18. Under IDEA, at least one year before a student reaches the age of majority, the student’s IEP must include a statement that the student has been informed of his or her rights and that the rights will transfer (from the parent) to the student on reaching the age of majority. Parents must also be notified that all rights will transfer to their youth.

Behavior Intervention Plan (BIP) – A plan that is developed based on data or information gathered about a child’s behavior (from a Functional Behavioral Assessment). The BIP should include positive strategies or interventions, program or curriculum modifications and supplementary aids and supports necessary to effectively change or modify disruptive or maladaptive behaviors.

Case-by-case determination – School personnel may consider any unique circumstances on a case-by-case basis in determining whether a change of educational placement is appropriate for a child with a disability who violates the school code of conduct. School authorities may only exercise their discretion on a case-by-case basis to allow removals for unique circumstances if other disciplinary procedures have been satisfied.

Charter School – School that receives public money, and develops a formal agreement or “charter” with the Delaware Department of Education (DDOE) or specific school district. The “charter,” includes a description of how the charter school will be held accountable for improving student performance and achieving the goals of the charter. Charter schools in Delaware must adhere to the mandates set forth under the IDEA.

Child Development Watch (CDW) – Delaware’s statewide early intervention program for children ages Birth to Three. CDW provides services that promote growth and development for infants and toddlers with, or at risk for disabilities or developmental delays.

Child with a disability – A child evaluated under the IDEA and determined to be eligible for special education and related services because of having a disability that adversely affects the child’s educational performance (as defined by an educational classification such as autism, emotional disturbance, mental disability, etc.).

DE Comprehensive Assessment System (DCAS) – State assessment program that replaced the DE Student Testing Program (DSTP) as of spring 2009.

Disability Classification – Classification selected by IEP team when team determines that child is eligible for special education and related services. Classifications: Autism, Deaf-Blindness, Developmental Delay, Emotional Disturbance, Hearing Impairment, Learning Disability, Intellectual Disability, Orthopedic Impairment, Other Health Impairment, Speech and/or Language Impairment, Traumatic Brain Injury, Visual Impairment and Preschool Speech Delay for 3 and 4 year olds only).

Due Process Hearing – A legal process for resolving a disagreement between parents and a school concerning any aspect of a Free Appropriate Public Education (FAPE) guaranteed children with disabilities under the Individuals with Disabilities Education Act (IDEA).

Early Intervening Services – School districts may use up to 15 % of their allotted special education funds to provide targeted services to children who may be at risk of being referred for special education services. These are children who are having learning difficulties and may need additional academic and behavioral support to succeed in school.

Early Intervention Services – Early intervention services are designed to identify and meet a child’s needs in five developmental areas (hearing, seeing, talking, moving, or learning). In Delaware, Child Development Watch provides screenings, evaluations, assessments, services, coordination and Individualized Family Service Plan (IFSP) development.

Educational Diagnostician (ED) – School personnel who often facilitates an IEP meeting and might evaluate a child’s academic ability, personality, behavioral factors and ability to process information.

Educational Evaluation – Formal and informal assessments and observation data collected and analyzed to determine if a child has a disability per the IDEA.

Educational Surrogate Parent (ESP) – A person appointed by the Delaware Department of Education (DDOE) to represent a child who receives, or may be in need of, special education and related services. The ESP is to be included in all educational decision making pertaining to special education and related services when a parent is unavailable or unable to do so.

Evaluation Summary Report (ESR) – A report that documents educational evaluations and eligibility decisions.

Extended School Year Services (ESY) – Special education and related services that are provided to a child with a disability beyond the normal school year and in accordance with the child’s IEP. Using criteria described in the IDEA, the IEP team determines whether a child qualifies for such services.

Facilitated IEP Meeting – A process whereby a trained neutral third party facilitator is used to improve collaboration between parents and IEP teams. A facilitator helps keep IEP team members focused on the development of the IEP while addressing conflicts and disagreements that may arise during the meeting.

Free Appropriate Public Education (FAPE) – Provision of special education, related services, special aids and services to eligible children with disabilities as per the Individuals with Disabilities Education Act (IDEA).

Functional Behavioral Assessment (FBA) – A process using interviews, rating scales and direct observations to determine and analyze the cause or function of a behavior and its antecedents and consequences, before developing interventions or strategies to address the behavior.

Independent Educational Evaluation (IEE) – An evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child. A parent

has the right to one independent evaluation at no cost each time the school conducts an evaluation with which the parent disagrees.

Individualized Education Program (IEP) – A document developed and written by a team that describes the special education, related services, modifications, accommodations and supplementary aids and services for a child ages 3-21 who is eligible to receive a Free Appropriate Public Education (FAPE) as per the IDEA.

Individualized Family Service Plan (IFSP) – A plan developed and written by a parent and a team for a child aged Birth-to-Three. The IFSP puts in writing the child's strengths and needs, family priorities, and the goals the parent would like to achieve. It outlines the early intervention services to be delivered to the family and child.

Individuals with Disabilities Education Act (IDEA) – The federal law that mandates a Free Appropriate Public Education (FAPE) and early intervention services to eligible children with disabilities from Birth to age 21.

Interim Alternative Educational Setting (IAES) – An appropriate Interim Alternative Educational Setting (IAES) depends on the circumstances of each individual case. An IAES must be selected so as to enable the child to continue to participate in the general education curriculum (although in another setting) and to progress toward meeting the goals set out in your child's IEP.

Manifestation Determination – When a child with a disability violates the school code of conduct that results in a change in placement, a manifestation determination must be conducted (within 10 school days of the change of placement) by relevant IEP team members and the parent. This review of information is to determine if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability, or whether the conduct is the direct result of the school's failure to implement the child's IEP.

Mediation – A voluntary process conducted by a trained third party to help parents and school districts solve problems about a child's provision for special education and related services together in a safe, productive and neutral environment. If the mediation results in a written agreement, that agreement is legally binding for the school/district.

National Instructional Materials Access Center (NIMAC) – Federally-funded, national electronic file storage area that makes National Instructional Materials Accessibility Standard (NIMAS) files. The creation of these various specialized formats makes material accessible to and supports diverse learners with print disabilities.

Parent – An IDEA parent is defined as: a biological or adoptive parent of a child; a guardian appointed by the court; an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent or other relative with whom the child lives and for whom a Relative Caregiver's School Authorization form is on file); an individual who is otherwise legally responsible for the child's welfare; or an Educational Surrogate Parent (ESP) appointed by the Delaware Department of Education (DDOE).

Parent Centers – Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) are funded by the U.S. Department of Education under the IDEA. PTIs and CPRCs in each state provide training and information to parents of children with

disabilities and to professionals who work with them. This assistance helps parents to participate more effectively with professionals in meeting their children's educational needs. The Parent Centers work to improve outcomes for children with all disabilities ages birth-26 years. The Parent Information Center of Delaware is Delaware's federally funded Parent Training and Information Center (PTI).

Peer-Review – Is a process of subjecting work, research or ideas to the scrutiny or careful examination of others who are experts in the same field.

Positive Behavior Support (PBS) – A school-wide approach to promoting positive behavior and academic, social and emotional development by teaching and recognizing positive behavior and correcting misbehavior. The PBS approach uses a combination of comprehensive and intensive interventions and supports. Delaware PBS schools adopt a problem-solving process using data-based decision making for addressing behaviors and implementing interventions and providing on-going support to students and staff.

Prior Written Notice (PWN) – Written notice provided to a parent when the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a child, or the provision of a Free Appropriate Public Education (FAPE) to a child.

Related Services – Transportation and developmental, corrective, and other supportive services that are required to assist a child with a disability to benefit from special education services.

Relative Caregiver Authorization Form – The Delaware Relative Caregivers' School Authorization Affidavit is required for a relative caregiver who is raising a child without legal custody or guardianship to register a child for public school. The Relative Caregiver is then the legal contact for the school and can make school-based decisions regarding but not limited to special education. This form can be obtained from a school or from the Delaware Health and Social Services office.

Resolution Session – A meeting with the parent and relevant IEP team members convened within 15 days of receiving notice of a parent's due process complaint, but before a due process hearing. The purpose of the meeting is for the school and the parent to have an opportunity to resolve the dispute.

Response to Intervention (RTI) – RTI is a research-based approach for helping struggling students. The process is used to determine whether poor academic progress is due to instruction, curriculum or the presence of a disability. Delaware has very specific guidelines about RTI outlined in their Special Education Regulations.

School Psychologist – School personnel who might evaluate your child's intellectual ability, learning aptitudes, personality and emotional development.

Serious Bodily Injury – The legal definition as used in special education is “bodily injury which involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss of impairment of the loss of a bodily member, organ or mental faculty”. This term may be used in discussions about school discipline.

Social Worker – School personnel who is working with a child and their family and may provide social and developmental history at the IEP meeting.

Special Education – Specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability.

State Complaint – A written complaint filed with the Delaware Department of Education (DDOE) alleging that a school district is out of compliance with state and/or federal special education regulations.

Student Success Plan (SSP) – User-friendly, web-based career exploration program. Students in 8th, 9th and 10th grade are using the SSP in school to explore career interests and develop long-range plans around employment, college and living in the community.

Transition Services – Additional components to the IEP for students age 14 (in Delaware) and older that include: the child's strengths, interests and preferences related to postsecondary goals; high school courses of study needed to assist the child in reaching those goals; and plans for employment, education and training after exiting high school.

Universal Design – Principle of designing and making accessible curricula, products and services that are usable by people with the widest range of functional capabilities.