

It's a New

IDEA

The Manual for
Parents and
Students About
Special Education
Services in Texas

2007

Revised and Updated August 2007

A joint project of:
www.thearcoftexas.org



www.advocacyinc.org



Table of Contents

| | |
|---|-----------|
| An Open Letter to Parents & Students | 2 |
| Words to Know | 3 |
| Laws, Rules and Regulations | 7 |
| Education Records | 9 |
| FORM 1: How to Keep a Parent's Notebook | 11 |
| FORM 2: Letter Requesting Records From School | 12 |
| FORM 3: Letter Requesting a Change in Your Child's Records..... | 13 |
| A Parent's Guide to the Special Education Process | 14 |
| Step 1: Referral | 16 |
| Step 2: Notice of Rights | 17 |
| Step 3: Full and Individual Evaluation | 18 |
| Is the Student Eligible for Special Education Under IDEA? | 19 |
| Who Is Eligible for Which Programs? | 20 |
| What Are Parent's Rights During Evaluation? | 21 |
| What Are Student's Rights During Evaluation?..... | 21 |
| What Can I Do if I Think the School's Evaluation is Incomplete?..... | 22 |
| What Can I Do if I Think the School's Evaluation is Wrong?..... | 22 |
| FORM 4: Letter Requesting Initial Evaluation..... | 24 |
| FORM 5: Letter Requesting Additional Testing..... | 25 |
| FORM 6: Letter Requesting an Independent Evaluation | 26 |
| FORM 7: Letter Requesting Re-Evaluation | 27 |
| Step 4: The ARD Meeting | 28 |
| FORM 8A: Before the ARD Meeting: A Parent Checklist | 30 |
| Step 5: The IEP | 31 |
| What is an IEP? | 31 |
| When is an IEP Required?..... | 31 |
| How is the IEP Developed? | 31 |
| FORM 8B: At the ARD Meeting: A Parent Checklist..... | 45 |
| Step 6: After the Meeting | 46 |
| FORM 9: Letter Requesting Review and Revision of the IEP | 47 |
| The Step You Hope You'll Never Have to Take: Resolving Disagreements | 48 |
| What Do I Need to Know About Due Process Hearings?..... | 50 |
| FORM 10: Letter Requesting Mediation | 54 |
| FORM 11: Due Process Complaint Letter..... | 55 |
| Texas Special Education Resources | 56 |
| State Agencies..... | 56 |
| Texas Disability Advocacy Organizations..... | 56 |
| Regional Education Service Centers (ESCs)..... | 58 |
| Legal Assistance | 59 |
| Advocacy, Inc | 60 |
| The Arc of Texas | 61 |

An Open Letter to Parents and Students

Dear Parent(s) and Student(s):

In 1975, Congress passed Public Law 94-142, now called the Individuals with Disabilities Education Act (IDEA), to assure all students with disabilities receive a free and appropriate public education (FAPE).

In 1997, Congress passed Amendments to the IDEA, reminding us that:

"Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living and economic self-sufficiency for individuals with disabilities."

In 2004, Congress again amended the IDEA, and once more raised the bar for expectations of students with disabilities. Congress found that:

"Implementation of the IDEA has been impeded by low expectations and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities. The education of children with disabilities can be made more effective by having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom to the maximum extent possible in order to meet developmental goals and to the maximum extent possible the challenging expectations that have been established for all children and be prepared to lead productive and independent lives."

This manual is designed to help you become familiar with the requirements of the IDEA so you can act as an equal partner in planning your child's education. You will learn, by using this manual and by working with school staff, how to plan an educational program that will lead to an independent and productive life for your child and yourself.



Words to Know

Educators sometimes use language that is difficult to understand. If, at any time, you see or hear words (like "assessment") or acronyms (like "ESY") that you don't understand, immediately ask school staff to explain them. As an equal partner in planning, you must understand all the information you receive in writing or hear in a meeting so you can decide what is best for your child.

Some words commonly used in educational planning are:

Accommodations

Adjustments made in how a student with a disability is taught or tested. Accommodations do not change what the student is taught or what he is expected to know. Common examples of accommodations are: highlighted textbooks, extensions of time for a student who writes slowly, or seating close to the teacher. Assistive technology is a common accommodation.

Adequate Yearly Progress (AYP)

Under No Child Left Behind, all schools, school districts, and states are required to show progress in: reading/language arts, math, and either graduation rates or attendance rates. There are consequences for failing to meet AYP criteria for two consecutive years.

Adult Student

Students age 18 and over are considered to be adult students unless the student's parent or other individual has been granted guardianship of the student under the Texas Probate Code.

Alternative Education Programs (AEPs)

Disciplinary programs operated by school districts for students who have committed a range of offenses specified in state law and/or in the district's Student Code of Conduct. AEPs operated by the school district are **DAEPs** (Disciplinary Alternative Education Programs). AEPs operated by the juvenile justice system are called Juvenile Justice Alternative Education Programs, or **JJAEPs**. Students with disabilities who are in DAEPs or JJAEPs are still entitled to special education services.

ARD Committee (Admission, Review and Dismissal Committee)

In Texas, the name for the group made up of a student's parents and school staff who meet at least annually to decide whether or not the student has an eligible disability and what special education and related services will be provided. Its major responsibility is the development of the individual education program (IEP) for students receiving special education. In Texas, the meetings of these committees are called "ARD meetings."

Assessment

Assessments are tests given to all students in the state to evaluate learning. The most common statewide assessment in Texas is the **TAKS** (Texas Assessment of Knowledge and Skills). Students receiving special education take the same state and district-wide assessments given to all students, unless their ARD committee determines a particular test is not appropriate. In that situation, the student will take another state-developed test.

Assistive Technology

An **assistive technology device** is any item, piece of equipment or product used to increase, maintain, or improve the functioning of a student with a disability. Assistive technology devices for students with disabilities include those used for seating and positioning, mobility, augmentative communication, computer access and instruction, environmental control, adaptive toys and games, visual and listening aids and self-care. **Assistive technology services** (including training) assist students with disabilities in the selection, acquisition or use of an assistive technology device. An assistive technology evaluation will determine if an assistive technology device and/or service is necessary to ensure the student will benefit from special education services.

Throughout this manual, the use of "he" and "she" will be alternated.



Behavior Intervention Plan (BIP)

A Behavior Intervention Plan, which is part of the IEP, identifies supports and services that will be provided to prevent inappropriate behaviors from occurring and to support desired behaviors.

Content Mastery

A type of service to provide extra help to students with disabilities outside the regular classroom. Content Mastery is defined and used differently from district to district. If content mastery is recommended for your child, always ask for a description of what services will be provided and where. The content mastery teacher must meet the Highly Qualified criteria for the grade and subject she is teaching

Early Intervening Services

IDEA 2004 allows schools to use up to 15% of IDEA funds for support services for students not identified as having a disability, but who need additional academic and behavioral supports to succeed in a general education classroom.

ECI (Early Childhood Intervention)

A statewide program for children from birth to age three who have developmental delays. ECI must make services available for every eligible child. Early intervention programs are required by Part C of the IDEA.

Education Service Centers (ESCs)

Education Service Centers are located in each of 20 geographic regions covering the state. Their main function is to provide training and technical assistance to the school districts located in their region. ESCs must also include parents in some of its training.

ESY (Extended School Year)

Education services provided in the summer (or over a holiday break) to some students with disabilities who require them as a part of their free appropriate public education. ESY services are to be provided in accordance with the IEP, and at no cost to the parents.

FAPE (Free Appropriate Public Education)

Special education and/or related services designed to meet the individual needs of each student at no cost to the parents, guaranteed to all students with disabilities by the Individuals with Disabilities Education Act (IDEA).

Highly Qualified Teachers

No Child Left Behind and IDEA require each state to require all teachers (including special education teachers) who teach in "core academic subjects" to be "highly qualified". For specific information about Texas requirements, go to: <http://www.tea.state.tx.us/nclb/hqteachers.html>

IDEA (Individuals With Disabilities Education Act)

The federal law requiring school districts to provide students with disabilities a free appropriate public education.

IEP (Individual Education Program)

The written plan that details the special education and related services that must be provided to each student who receives special education. Parents and school personnel work together to write the IEP at the ARD meeting. It must be reviewed, and revised if needed, at least every year.

LRE (Least Restrictive Environment)

The term used in the IDEA to refer to a student's right to be educated to the maximum extent appropriate with students who do not have disabilities, and as close to home as possible.

Manifestation Determination Review (MDR)

A review of the relationship between a student's disability and behavior that is the subject of disciplinary action.

Modifications

Modifications, unlike accommodations, change the level of instruction provided or tested. Modifications create a different standard for the student receiving them. The most common modifications are those made to the general education curriculum for a student with a cognitive disability. Curriculum modifications should be in the student's IEP.

OCR (The Department of Education's Office for Civil Rights)

The federal agency that enforces Section 504 of the Rehabilitation Act. OCR looks into complaints about discrimination based upon disability.

Parent

IDEA 2004 expanded the definition of parent to include: biological, adoptive or foster parents; guardians (unless the child is a ward of the state); individuals acting in the place of natural or adoptive parents such as grandparents, stepparents, other relatives with whom the child lives; individuals responsible for the child's welfare; and assigned surrogates.

PPCD (Preschool Program for Children with Disabilities)

Public school services for children between the ages of three and five who qualify for special education services. Students ages 3-5 can receive special education services and support in settings such as a regular preschool in the community, a Head Start program or a pre-kindergarten class. Options for 3 and 4-year olds cannot be limited to PPCD classrooms containing only students with disabilities.

Response to Intervention (RTI)

A process for providing increasingly intensive high quality instruction to students with learning problems **before** determining the student has a disability that requires special education services.

Scientifically-based Instruction

Instructional and curriculum practices based on sound methodology, supported by credible research. One component of scientifically-based instruction is that the research has been "peer reviewed." Requirements for scientifically-based instruction are in both the IDEA and NCLB.

Section 504

The common name for the federal law that prohibits discrimination against students with disabilities. Section 504 (of Public Law 93-112, the Rehabilitation Act of 1973) applies to any agency (including a school district) that receives federal money.

Special Education Rules and Regulations

The document produced by TEA that contains the state and federal rules and regulations Texas school districts must follow in providing special education services. In some cases, state rules give families additional rights beyond the federal law and regulations.

Supplementary Aids and Services

The term used in IDEA to describe those aids, services, and other supports provided in regular education classes, extracurricular activities, and/or non-academic settings, to enable a student with a disability to be educated with students who do not have disabilities. Schools must try supplementary aids and services before recommending removal of a student with a disability from a setting with non-disabled peers.

TEA (Texas Education Agency)

The state agency ultimately responsible for making sure every student with a disability receives a free appropriate public education.

Texas Essential Knowledge & Skills (TEKS) Curriculum

The state-mandated curriculum for each grade level in Texas public schools. TEKS should be considered the "general education curriculum" referenced in the IDEA. Parents should request (or download) a copy of TEKS for their child's age-appropriate grade level to use in developing their IEP.

Universal design

A way of designing products and services so they can be used by people with the widest possible range of abilities.

Laws, Rules and Regulations

In order to become an equal partner in planning your child's educational program, you need to know about the laws, rules and regulations that affect special education for students with disabilities.

Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) guarantees every eligible student a "free appropriate public education," sometimes called FAPE. The IDEA was most recently reauthorized by Congress in 2004. This manual incorporates changes to the law made in 2004 and the federal regulations that went into effect in October 2006. The regulations typically help to clarify or assist with implementation of the law. Though some provisions have changed, IDEA's basic requirements remain the same. The law says schools must:

- find and identify students who have a disability
- involve parents in decision-making
- evaluate (test) students in a nondiscriminatory way
- develop an individualized education program (IEP) for each eligible student, that includes measurable annual goals, including academic and functional goals, designed to enable the child to be involved in and make progress in the general education curriculum
- provide special instruction, related services and supplementary aids and services based on peer-reviewed research to the extent practicable
- provide services in the least restrictive environment
- maintain education records/files, and
- provide processes for resolving parent complaints and grievances

Special Education Rules and Regulations

This document, produced by the Texas Education Agency, can help parents understand the special education process. It tells how Texas will carry out the IDEA and explains how school districts are to provide special education services. It combines federal laws and regulations, state laws and rules (Commissioner of Education and State Board of Education rules). Because of its format, this document is often referred to as the "TEA Side-by-Side." You may request a copy from:

Texas Education Agency
 Division of IDEA Coordination
 1701 North Congress Avenue
 Austin, Texas 78701
 512-463-9414

You can also find it online at: www.tea.state.tx.us/special.ed/rules. Your local school district, special education director or Education Service Center also has a copy you can review. The Texas Education Agency produces two other documents about the rights of parents, the **Procedural Safeguards** and the **ARD Guide**. These must be given to every parent of a child receiving special education services. TEA contracts with Region 18 Education Service Center to maintain a web site that includes **The Legal Framework for the Child Centered Process**. These can all be found on the TEA website at: <http://www.tea.state.tx.us/special.ed>

Another source of information for parents about state and federal laws and regulations is **Texas Project First** - Created by parents, for parents...this web site is a project of the Texas Education Agency and is committed to providing accurate and consistent information to parents & families of students with disabilities. You can find it online at the TEA website and at www.texasprojectfirst.org



Section 504

Under Section 504 (of the Rehabilitation Act of 1973, 29 U.S.C.A. Section 794), no program or activity receiving federal money can discriminate against any qualified person with a disability. These regulations apply to all schools, including private schools, which receive or benefit from federal funds. Each school district is required to have a 504 officer. You can get more information on Section 504 from:

U.S. Office for Civil Rights, Dallas Office
1999 Bryan St. Suite 1620
Dallas, Texas 75201
(214) 661-9600
Web site: <http://www.ed.gov/OCR>
E-mail: OCR_Dallas@ed.gov

Some students who do not qualify for special education services under the IDEA get services under Section 504. Section 504 requires that all students have an equal opportunity to participate in activities and services at school, including: school clubs, athletic programs, social activities, transportation, health and counseling services and vocational programs. If you think your child might be eligible for services under Sec. 504 rather than under the IDEA, ask to talk to your school district's 504 officer.

Americans with Disabilities Act (ADA)

The ADA is a federal law that gives people with disabilities, including students, protections like those provided to people on the basis of race, sex and national origin. All public schools must comply with the ADA. The ADA bans discrimination based on disability in the areas of public accommodations, state and local government services, employment, transportation and telecommunications.

For more information, go to <http://www.usdoj.gov/crt/ada/adahom1.htm>

No Child Left Behind Act of 2001 (NCLB)

NCLB is the title given to the last reauthorization of the 1965 Elementary and Secondary Education Act (ESEA). NCLB was signed into law by President George W. Bush in 2002. Its goal is to ensure that every child in America is able to meet its state's high learning standards. NCLB requirements and standards also apply to special education programs and services. When Congress reauthorized the IDEA in 2004, they aligned parts of these two federal laws.

For more information, go to: www.nochildleftbehind.gov.

Education Records

Your child's educational records and your own records are very important. You and school officials will rely on many kinds of records to plan and evaluate your child's program. The records may include:

- teacher notes
- progress reports
- report cards
- achievement tests
- discipline reports
- evaluations and reports done by the school district
- reports from medical doctors
- Individualized Education Programs (IEPs) and Behavior Intervention Plan (BIPs)
- Admission, Review and Dismissal (ARD) committee meeting reports
- graduation plan
- summary of performance

Form 1, on page 11, is a sample of how to keep a Parent's Notebook.

Keeping Your Own Parent Notebook

You probably have copies of many of the records listed above. If not, request copies of at least the most recent Full and Individual Evaluation (FIE), IEP, and ARD reports. Begin keeping records of conversations, phone calls, e-mails and other meetings together with copies of your child's past education records in a notebook. Having these records together and organized will help you to make sure your child receives the services he needs, monitor his progress, and to be an informed partner in developing the IEP.

For each conversation or meeting, write down the date and time of your conversation, the persons with whom you talked and the issues discussed. Follow up important phone calls with a letter, noting the date and time of the phone call, and summarizing the conversation and create a file to save all school related e-mails.

Keep copies of all letters and reports you receive and send. You may want to tape record meetings (especially ARD committee meetings) so you have a complete record of what happened. See www.wrightslaw.com for additional guidance on how to organize your child's records.

Form 2, on page 12, is a sample letter for requesting your child's records from the school.

How to Get Records

As a parent, you have a right to see and have a copy of all of the records about your child's education program. These may include copies of Full and Individual Evaluations (FIEs), IEPs, medical records, behavioral records and others. You also have the right to see the school's records about discipline, grades, progress reports and other activities that are part of the education program, as well as any records made by a private physician or other private professional (if these records become part of the school's education records).

To see your child's education records, first write a letter to the principal of his school. Ask for the list of all the different kinds of education records the school keeps or uses to educate your child and where records are kept. Then write a letter identifying which records you want to review.

Within 45 days, the school must arrange for you to see the records or give you copies. If an ARD meeting or due process hearing is scheduled in less than 45 days, the school must let you see the records before the meeting or hearing. The school can charge you for copies, but many schools provide the copies at no cost.

If you have trouble understanding anything in the records, ask for an explanation. The school



must respond to your reasonable requests for explanations of the records. You may take all the time you need to review and understand the records thoroughly. The school district cannot limit the amount of time you need to understand the records.

Confidentiality of Records

A student's records are private. School districts, with some exceptions, must get parental consent before showing the records to anyone not involved in the student's education. The school should have a list of the names and positions of school employees who can see your child's records without your consent.

Getting Records Changed

If you think something written in the education records is wrong or misleading, or violates your child's rights, ask school officials to change it. Within a reasonable time, they must decide whether they will make the change.

If school officials refuse to make the requested change, they must tell you they have refused and let you know about your right to a hearing. This hearing is different from the due process hearing mentioned elsewhere in this manual. If the hearing shows the records are wrong, school officials must change the records and let you know in writing what changes they made. If the hearing shows the school district does not have to change the records, they must allow you to add your own statement to the records explaining why you disagree or why you think the statements are unfair. The school district must keep your statement with the records. Whenever the school district shows the records to other people, they must also show your statement.

Form 3, on page 13, is a sample letter requesting a change in your child's records.

HOW TO KEEP A PARENT NOTEBOOK

Keep an accurate record of important meetings, phone conversations, e-mails and letters about your child in a notebook.

EXAMPLE:

Date/Time/Location:

January 3, 2007

3:00 P.M.

ARD committee meeting at Pittman Elementary School

Who:

- Mr. Langley, principal of Pittman
- Mrs. McMillan, special education director of (name of school district)
- Mr. Lloyd, Johnny's teacher at Pittman
- Ms. York, physical therapist
- Johnny Jones
- Mr. and Mrs. Jones

What We Talked About:

An IEP was developed for Johnny (see IEP in file). Johnny will continue in his current placement in the 5th grade at the Pittman School, but will no longer receive physical therapy. As parents, we disagreed and thought Johnny should continue to receive physical therapy. The school members of the ARD committee refused to agree to physical therapy because they did not have enough therapists and Johnny was a low priority for physical therapy.

Important Documents:

IEP

ARD committee meeting report

Tape of ARD committee meeting

FOR PARENTS

LETTER REQUESTING RECORDS FROM SCHOOL

(Be sure to keep a copy for yourself.)

Date

Name of principal
Name of school
Address of school

Dear (name of principal):

I am the parent of (name of student), a student at your school. Please inform me in writing of the types and locations of all education records collected, maintained or used for (name of student) by the school district. Please tell me where all these records are kept and whom I should contact so I can look at them. After looking at the list, I will let you know which records I wish to review.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

Your name
Your address
Your telephone number
Your e-mail address *(optional)*

FOR
RM
2

LETTER REQUESTING A CHANGE IN YOUR CHILD'S RECORDS

(Be sure to keep a copy for yourself.)

Date

Name of principal
Name of school
Address of school

Dear (name of principal):

I am the parent of (name of student), a student at your school. There is a statement in (name of student's) (name of record, e.g., "physical therapy evaluation performed by Mrs. Small on October 5, 2007") that I believe is (examples: misleading, inaccurate, in violation of my child's rights) because (give reasons).

I request that you change (student's name) records so they will no longer be (example: misleading, inaccurate, in violation of my child's rights). Please let me know if you will change my child's record or if it will be necessary to have a hearing to decide if the record should be changed. If it is decided that the record will not be changed, I plan to add my own statement regarding the record to my child's permanent record.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

Your name
Your address
Your telephone number
Your e-mail address (*optional*)

3

M

R

O

F

A Parent's Guide to the Special Education Process

Step 1: Referral

Is your child suspected of having a disability? If so, a parent, teacher, or other professional involved in the education of the student may refer the student to special education. The school will gather information to decide if the student should be evaluated (tested) for special education eligibility.

Step 2: Notice of Rights

At the referral process, and at other significant decision-making steps after the referral, the district must send you written information (called "notice") telling you about the actions the school wants to take (or is refusing to take) regarding your child's education and about your rights.

If the school does not think your child needs to be evaluated for special education, they must send you written notice that tells you why they made that decision and what you can do if you disagree. If the school does want to evaluate your child, they must give you written notice of your rights (procedural safeguards notice) and get your written consent. The evaluation process will not begin until you have consented in writing. If you do not consent to testing, the district may ask for mediation or a due process hearing to try and obtain your consent. However, they are not required to make any additional efforts to get you to consent to an evaluation.

Step 3: Full and Individual Evaluation

If the referral process indicates that a student may need special education and related services, the school must, after obtaining the parent's consent, do a full and individual initial evaluation (testing) to determine if the student has a disability and needs special education services. The school must complete the evaluation process within 60 calendar days from the date the school receives written consent for testing signed by the parent or legal guardian.

When the evaluation is completed, the school will contact you to schedule an ARD meeting.

Step 4: The ARD Meeting

The Admission, Review, and Dismissal (ARD) committee meets at least once a year to develop, your child's IEP. You are a member of your child's ARD committee. The first ARD meeting must be held no more than 30 days after completion of the initial evaluation. The committee will determine whether the evaluation shows a need for special education.

If the ARD Committee determines that your child has a disability and needs special education services, you will be asked to give your written consent for the school to provide special education. The consent you gave to have your child evaluated is not also consent for services.

The ARD committee will then develop your child's individual education program (the IEP). As long as your child receives special education, there will be an ARD meeting held at least once a year. There can be more ARD meetings during the year if needed. Some changes can be made in the IEP without an ARD meeting if both the parent and the school agree to the changes.

Step 5: The IEP

The Individualized Education Program (IEP) is a written plan, designed just for one student. It is an agreement between the school and parents on how the student will be educated. The IEP must be reviewed at least annually. The most important function of the ARD committee is the development of the IEP. Your participation and input is important. Remember, you know your child better than anyone else.



You will be asked to sign that you agree with the IEP developed by the ARD Committee. Before signing that you agree, read it again to be sure you understand what services your child will be receiving and when. Also, be sure to get a copy for yourself.

Step 6: After the Meeting

Read all progress reports, and other notes, sent home during the year.
Schedule parent-teacher conferences as needed.
Request additional ARD meetings, if needed.

Step 1: Referral

Students who may need special education come to the attention of school officials in a number of ways. For example, if parents take a child to school for the first time and tell school officials that he has unique needs because of a disability, the parent has referred the child to be considered for special education. If a student is already in school and the teacher thinks he may have special needs because of a disability and asks the school to consider him for special education services, the teacher has referred the student.

Most referrals occur when a teacher or parent thinks a student is not making adequate progress in school. A student should not be referred for special education if she has not first been provided good instruction in the subject areas in which she is having difficulty. If a teacher, or other person in the school, says your child needs special education, ask first to see the information (data) they are relying on to make that recommendation. Also, find out more about what other type of remediation, including more intensive instruction by highly qualified personnel, has been tried. The information gathered during the referral process is to determine whether the school will test a student to see if he has a disability and needs special education services.

If you, as the parent, are the one making the referral, be sure to put your request in writing. The 60-day timeline for an evaluation does not start until the school has received your written consent. To ensure a timely referral process, parents should put their request for an evaluation for special education in writing and request a meeting within 5 days to sign the consent forms.

If your child is receiving "early intervening services" (see Glossary), which are not special education services, you have the right to refer your child to special education at any time. If your child is receiving intensive instruction under a program of "Response to Intervention" (see Glossary) you still have the right to request a special education evaluation. The district cannot refuse to provide you with the forms you need to give your written consent for an evaluation. If necessary, you can make the referral without using the forms provided by the district.

Form 4, on page 24, is a sample letter requesting an initial evaluation.



Step 2: Notice of Rights

IDEA says the school district must give parents notice of their rights and must make sure they understand them.

Procedural Safeguards Notice

When a student is first referred for special education, the school district must give parents written information about their rights and options for resolving disputes. Texas schools use a document developed by the Texas Education Agency called "Notice of Procedural Safeguards: Rights of Parents of Students with Disabilities." The school district must give you this notice in the language you usually speak at home. If you cannot read or write, the school must give you the information orally, on cassette tapes, in Braille or in any other way that you can understand. The school officials must keep written records to show they gave you this notice. If you do not understand the meaning of the document, they must explain it to you.

Once the student begins receiving special education, the Notice of Procedural Safeguards must only be given to parents once a year, unless the parent requests an evaluation or files for a due process hearing. However, a parent can request another copy of the procedural safeguards notice at any time. The Texas Education Agency also has the Notice of Procedural Safeguards on its website.

In addition to the required Notice of Procedural Safeguards, the Texas Education Agency has developed a document called "A Guide to the Admission, Review and Dismissal Process." A parent whose child is new to special education services should receive the Guide at the same time as the Procedural Safeguards Notice.

Other Types of Notice

In addition to notice of your rights described above, IDEA also says the school must give you more specific notice about some actions. The school must give you specific notice, in writing, if they want to:

- decide whether your child has a disability, or change her disability category;
- conduct an evaluation;
- change the current IEP;
- change the placement; and/or
- change how your child is provided a "free appropriate public education (FAPE)."

If you, as the parent, request changes in any of the above areas, and the school refuses to make those changes, the school must provide you with written notice in response to your request. Written notice about actions the district proposes (or refuses) to make MUST include the following:

- the action the school wants to take (or is refusing to take);
- why the school wants (or refuses) to take that action;
- descriptions of any evaluations, tests, reports and other information supporting the school's position;
- sources for parents to contact for assistance in understanding what the law says;
- information about the parent's rights and how the parent can get another copy of the procedural safeguards notice;
- what other options the school considered and why those options were rejected;
- and
- a description of any other factors relevant to the school's decision.

If you receive notice from the school that does not contain the above components, ask the district to provide you with another letter containing all the required information. You need this information to participate as an equal partner in the decision-making process.



Step 3: Full and Individual Evaluation

If the referral process finds that a student may need special education services, the school must do a full and individual initial evaluation at no cost to the parent.

Evaluation answers the questions:

- Does the student have a disability?
- What are the student's educational needs resulting from the disability?

The school must get written consent from the parent before evaluating their child. The school district must complete the evaluation and have a written report **within 60 calendar days** after the district receives the parent's written consent to evaluate.

The parent's consent for an evaluation is not also consent for services or placement. You will be asked to consent for services after the evaluation.

The evaluation is set of activities, not a single test. All evaluations must be done by a team of trained and knowledgeable professionals. The evaluation must cover all areas of suspected disability and be comprehensive enough to identify all the special education and related service needs of the student. The evaluation must gather relevant functional, developmental, and academic information, including information provided by the parent. The school must assure that the evaluation is administered in the language most likely to yield accurate information on what the child knows and can do academically, developmentally and functionally.

Under Texas law, you can ask the district to provide you with the names of any psychological tests they want to give your child, including an explanation of why they believe they need to give that test in order to develop your child's IEP.

Evaluation of Educational Needs

This part of the evaluation is to find out how well the student is doing in school compared to other students in the school district who are the same age or in the same grade. This part of the evaluation includes tests that measure his performance in areas like reading, mathematics and spelling. Testing procedures may need to be modified through the use of assistive technology so that the test accurately measures the student's knowledge.

The written report should tell you at least four things:

- present levels of academic achievement and related developmental needs;
- any problems he has with school subjects and skills;
- how he compares to other students of the same age and grade level in knowledge of the general education curriculum (TEKS); and
- the reasons for the problems in school, including relevant cognitive and behavioral factors.

If the report does not tell you all these things, ask the school district to give you that information.

A student cannot be determined to have a disability if his learning deficits are due to a lack of appropriate instruction in reading or math, or because of limited English proficiency.

Evaluation for Related and Other Special Services

The evaluation should also look at what additional services, or related services, are needed in order for the student to benefit from special education. The most common related services are:

You should make a special effort to help with the evaluation in every way you can. This might mean answering questions, helping the school get medical or other records and being sure your child understands and is ready for testing.



*If your child needs assistive technology, advise the evaluation team **before** the process begins, so your child can be evaluated by a professional experienced with assistive technology evaluation. (see glossary p. 3)*

occupational therapy, speech therapy, physical therapy, assistive technology, counseling, and transportation. There are others. Under current federal law, a student can not be found eligible for special education if he **ONLY** needs related services.

An evaluation for related services (except for transportation) should include specific recommendations for the type of services the student needs, how often he needs them, and the type of personnel who will be providing the services. There should also be measurable annual goals for related services.

The IEP will also need to specify when the related services will begin, how frequently they will be provided, where they will be provided, and when they are expected to end.

The IEP should also specify whether your child will be getting "direct" (hands-on) services from the therapist, or whether she will be getting only "consultative" services. In a consultative services model, the provider/therapist consults with the student's teachers on how they can better work with the student, but do not work with the student directly.

Understanding the Evaluation Results

Once the district completes the evaluation reports, they must give you a copy. You have a right to inspect and review the results of all evaluations administered to your child before the ARD meeting. Be sure to get explanations of any terms or statements in the reports you do not understand. Study the reports until you are satisfied they are accurate and complete. You need to understand the reports to take an active role in developing your child's IEP.

To help you understand the tests and what they mean:

- Meet with the person at the school who did the tests or someone who can explain them to you.
- Talk to other parents.
- Ask a professional who is not employed by the school to help you understand the tests, or tell you if more or different tests should be done. One good internet resource is www.WrightsLaw.com. At this site you can find a helpful article "Tests and Measurements for the Parent, Teacher, Advocate and Attorney".
- Get information about the suspected disability from a parent organization, an Education Service Center, or on the Internet.

The evaluation report will show whether a student's behavior is a problem at school. If so, the report should include recommendations on how to help the student so he can learn and get along with others. These recommendations must be considered as the ARD committee develops the IEP.

A good evaluation is an important step in the process of providing a student an appropriate education. Once the evaluation is completed, the school must include you in determining whether your child is eligible for services under the IDEA. In Texas, that determination is done by an ARD committee, which includes you. If your child is eligible, you and other members of the ARD committee will use the written report of the evaluation to decide what kinds of support he needs from special education. The district must also get your written consent before it can begin providing special education and related services.

Is the Student Eligible for Special Education Under IDEA?

If the full individual initial evaluation shows that a student has one or more of the following, an ARD committee will meet to determine if he is eligible to receive special education services under the IDEA. In Texas, students are assigned to one of the following categories:

- **Orthopedic Impairment (OI)**
- **Other Health Impairment (OHI)** - includes students with ADD or AD/HD, Tourette Syndrome, and Bipolar Disorder
- **Auditory Impairment (AI)** - includes students who are deaf or hard-of-hearing
- **Visual Impairment (VI)** - includes students who are blind or visually impaired
- **Deaf-Blindness (D-B)**
- **Mental Retardation (MR)**
- **Emotional Disturbance (ED)**
- ***Learning Disability (LD)**
- **Speech Impairment (SI)**
- **Autism (AU)** - includes Autism Spectrum Disorder (ASD)
- **Multiple Disabilities (MD)**
- **Traumatic Brain Injury (TBI)**
- **Non-Categorical** - for students ages 3-5 who may have mental retardation, emotional disturbance, a learning disability or autism. (This is a disability category only in Texas. Its intent is to prevent inaccurately assigning a very young child to one of these four disability categories.) Use of this category is optional

Definitions of these categories can be found in TEA's "Special Education Rules and Regulations." (See Laws, Rules and Regulations..., page 7.)

If the full and individual evaluation shows that the student does not have at least one of these, he is not eligible for special education under the IDEA. However, he may be eligible for services under Section 504 of the Rehabilitation Act.

Note: The district may ask you to consent for services after determining eligibility but before developing the IEP. If you are ready to sign the forms to consent to services, you may go ahead and do so at that time. If you refuse to consent to services prior to developing the IEP, the school is not required to proceed with developing an IEP. If you are unsure about consenting to special education services, rather than refuse to consent, tell the school you will decide after the development of the IEP whether to consent to services. If, after the IEP is developed, you decide not to consent to services, your child will NOT receive special education services. The school cannot ask a hearing officer to override a parent's refusal to consent to special education. If the student has a disability, and the parents refuse special education services, the school should provide Sec. 504 services to the student.

***NEW:** IDEA 2004 changed the way a student is determined to have a learning disability. A local school district cannot be required to first determine that the student has a severe discrepancy between his intellectual ability and his level of achievement. IDEA also now allows a local school district to consider whether the student has received a method of instruction known as response-to-intervention (RTI). The intent is to assure that a student is not labeled as having a "learning disability" until he has first been provided with quality educational instruction. There will be state rules governing the identification of a student as having a Learning Disability in effect for the 2007-08 school year. To see the specific state requirements, go to www.tea.state.tx.us/special.ed/

Who is Eligible for Which Programs?

Birth to Three

Early Childhood Intervention (ECI) funded programs provide services around the state for infants and toddlers (0-3) with developmental delays and their families. ECI does evaluations at no cost to determine eligibility and need for services.

If services are needed, an Individual Family Service Plan (IFSP) is developed with the family. Services are provided on a sliding fee scale, but no child or family will be refused services because they cannot pay.

Currently, ECI eligibility ends on the child's third birthday. Children who are likely to need special education services will be referred to the local school district prior to their third birthday so that the evaluation process can begin.

ECI programs are administered by the Division of Early Childhood Intervention in the state Department of Assistive and Rehabilitative Services (DARS).

For more information, go to: www.dars.state.tx.us/ecis or call 1-800-628-5115.

Three (3) through Twenty-One (21)

Services for eligible students who are three years old or who have not reached their twenty-second birthday on September 1 of the current school year are provided by local school districts.

The school district must begin serving your child on his third birthday. If they did not receive the referral in time to have the evaluation completed by his birthday, they can still deliver special education services while your child completes the evaluation process. If your child turns three during the summer, the ARD committee will determine whether services begin in the summer or at the start of the upcoming school year.

What Are Parents' Rights During Evaluation?

In the full and individual evaluation process, you have the right to:

- be given written notice before the school evaluates or refuses to evaluate your child
- be given information about the abilities, skills and knowledge to be evaluated
- give, or not give, your consent before the evaluation or reevaluation of your child
- be given a description and explanation of the procedures, tests (with examples) records or reports to be used in the evaluation
- review and understand all evaluation records before the ARD committee meeting
- have the results of all evaluations considered at the ARD meeting, including any independent evaluations parents get from professionals who don't work for the school
- be assured tests and other evaluation materials will be in the language most likely to yield accurate information on what your child knows and can do academically, developmentally, and functionally
- be assured no single procedure (such as an IQ test) will be used as the sole basis for determining your child's eligibility for special education services
- present a written complaint to the Texas Education Agency if you feel a federal or state rule concerning the evaluation process is not being followed
- request mediation or a due process hearing if agreement on evaluation procedures or results cannot be reached; and
- be given a copy of the evaluation report, including information used to determine eligibility for special education

What Are Students' Rights During Evaluation?

In the full and individual evaluation process, a student has a right to:

- be evaluated in all areas related to the suspected disability
- be tested with instruments that are valid and reliable
- be tested in a way that is not racially or culturally discriminatory; and
- be tested by qualified, trained and knowledgeable personnel

What Can I Do if I Think the School's Evaluation is Incomplete?

Ask for Additional Testing

If you feel the school's evaluation is incomplete and additional testing is needed, you can ask the school to do more testing.

Form 5, on page 25, is a sample letter for requesting additional testing.

What Can I Do if I Think the School's Evaluation is Wrong?

Ask for an Independent Evaluation

If you think the school's evaluation does not accurately measure your child's need for special education, you may get an independent education evaluation (IEE). Independent evaluations are done by qualified persons who are not employed by the school. You may ask the school how and where to get an independent evaluation or you may get the independent evaluation done by someone not recommended by the school, as long as this person is qualified to perform the evaluation.

Form 6, on page 26, is a sample letter for requesting an independent evaluation.

If you ask the school to pay for the independent evaluation, the school must do so unless the school asks for a due process hearing to show its evaluation was appropriate. If you want the school to pay for the independent evaluation, the testing you get must meet the same requirements the school uses. You should notify the school officials if you want an independent evaluation and you expect the school to pay for it. However, you do not have to tell the district why you disagree with their evaluation.

The ARD committee must discuss and equally consider independent evaluations, regardless of who pays for them, in any ARD committee decisions. They do not, however, have to accept any or all of the evaluator's recommendations.

Ask for a Reevaluation

The school must conduct a reevaluation if they determine that the educational or related services needs, including academic and functional performance of the student, warrants a reevaluation. They must also conduct a reevaluation if requested by the teacher or parent.

Form 7, on page 27, is a sample letter for requesting a reevaluation.

The parent or teacher cannot request a reevaluation more than once a year unless there is an agreement between the school and parent to do so. The school shall conduct a reevaluation at least every three years, unless the parent and school agree it is not necessary. If the school thinks the three year reevaluation is not necessary, but the parent does, the school must conduct the reevaluation anyway. If the student has not progressed in the general education curriculum as expected, or has not met other IEP goals, a new evaluation is probably necessary.

The school is required to get parental consent for both initial and reevaluations. A district may ONLY reevaluate a student without parental consent if parents fail to respond and the district can show that it has taken all reasonable measures to get consent. If the parent does not agree with the reevaluation the district may only reevaluate if the district requests a due process hearing. If the parent refuses to consent to a reevaluation the district is not required to request a due process hearing to override the parent's refusal to consent.

A new evaluation is also required before a change of placement unless the student is graduating under regular academic standards or is aging out of services. For a student graduating under their IEP, the evaluation will be included as part of the Summary of Performance. All special education students graduating will be provided with a summary of academic achievement and functional performance. This summary will include

recommendations to assist the student in meeting post-secondary goals, written recommendations from adult service agencies and the views of the parent and student.

Ask for a Due Process Hearing

If you believe the school's evaluation is inaccurate or incomplete, and you cannot resolve the issue with the school, you can challenge the evaluation in an impartial due process hearing. If you go to a hearing, you will need some proof or evidence showing what is wrong with the school's evaluation. For example, this proof could be a doctor's or psychologist's report or other independent evaluation.

LETTER REQUESTING INITIAL EVALUATION

(Be sure to keep a copy for yourself.)

Date

Name of principal
Name of school
Address of school

Dear (name of principal):

I am the parent of (name of student), a student at your school. My child's teacher and I have concerns that my child may have a disability and is in need of special education services. {or}

I am the parent of (name of child), a child that resides in your district that is or will be three years old on (birthdate). I believe my child may have a disability and is in need of special education services.

I am requesting a full individual evaluation of my child. I believe testing is needed in the area(s) of: (list areas of suspected disability needing testing).

I understand that the evaluation must be completed within 60 calendar days from the date I have signed consent for evaluation.

Please contact me within 5 days of this request to sign consent forms to evaluate my child. Thank you for your help.

Sincerely,

Your name
Your address
Your telephone number
Your e-mail address *(optional)*

FORM 4

5
FORM
FOR
E

LETTER REQUESTING ADDITIONAL TESTING

(Be sure to keep a copy for yourself.)

Date

Name of principal
Name of school
Address of school

Dear (name of principal):

I am the parent of (name of student), a student at your school. I have studied the reports of the school's evaluation of my child and feel she was not evaluated in every area of suspected disability. I believe additional testing is needed in the area(s) of: (list areas needing further testing).

I look forward to hearing from you within five (5) school days of the date you receive this letter if you do not plan to schedule an ARD meeting to consider my request. Otherwise, please contact me so we can arrange a time and place for the meeting. Thank you for your help.

Sincerely,

Your name
Your address
Your telephone number
Your e-mail address (*optional*)

LETTER REQUESTING AN INDEPENDENT EVALUATION

(Be sure to keep a copy for yourself.)

Date

Name of principal
Name of school
Address of school

Dear (name of principal):

I am the parent of (name of student), a student at your school. I disagree with the school's evaluation of (name of student), and I am requesting an independent evaluation.

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

I understand the school must pay for the independent evaluation unless it requests a hearing to prove that its evaluation was appropriate. I will send you the results of the evaluation. I understand it must be considered in any future decisions about my child's education.

Please send me the criteria and list or let me know within five (5) school days of the date you receive this letter if you intend to request a due process hearing.

Thank you for your help.

Sincerely,

Your name
Your address
Your telephone number
Your e-mail address *(optional)*

FORM 6

FOR

LETTER REQUESTING REEVALUATION

(Be sure to keep a copy for yourself.)

Date

Name of principal
Name of school
Address of school

Dear (name of principal):

I am the parent of (name of student), a student at your school. I recently reviewed my child's evaluation, and I believe a new evaluation is needed because _____.
It has been at least a year since I have requested a reevaluation.

I look forward to hearing from you within five (5) school days of the date you receive this letter if you do not plan to schedule an ARD meeting to consider my request. Otherwise, please contact me so we can arrange a time and place for the meeting.

Thank you for your help.

Sincerely,

Your name
Your address
Your telephone number
Your e-mail address (*optional*)

Step 4: The ARD Meeting

The Admission, Review, and Dismissal committee, usually called an ARD meeting, meets at least once a year to develop, review and revise your child's IEP. You are a member of your child's ARD committee. The ARD Committee should work collaboratively with a goal of reaching agreement by consensus.

Notice of the ARD Meeting

Current rules say the school must give you written notice at least five (5) school days before the ARD meeting so you can prepare. When a meeting is called with less than 5 days notice, the parents have the right to waive the 5-day notice requirement and attend the ARD meeting if they want. The notice should include the purpose, time and place of the ARD meeting and a list of the people attending.

If you want to go, but the date, time or place is not convenient for you, ask the school to reschedule the meeting. The school must attempt to schedule the meeting at a time and place agreeable to you and school officials. If you cannot attend the ARD meeting, the school must use other methods, such as telephone conference calls or video conferences, to give you a chance to participate. However, the school district can hold the ARD meeting without you if you don't attend and don't reschedule.

At the meeting, you have a right to have an interpreter (e.g., American Sign Language or Spanish) paid by the school. If you need an interpreter, you must be sure to tell the school before the meeting.

You may want to meet with your child's teacher(s) or related services provider before the meeting to discuss possible IEP goals and to learn more about the curriculum for your child's grade level.

For Students Who Are 17+ Years of Age

By age 17, the school district must notify both the student and the parent that all rights given to the parent by IDEA, except the right to receive notice, will transfer to the student at age 18. This notice must be reflected in the student's IEP.

For Students Who Are 18+ Years of Age

At the time the student reaches the age of 18, the school district must notify in writing the adult student and parent that the parent's rights have been transferred to the student. This notice must include contact information for the student and parents to use in obtaining additional information. The school district must continue to provide parents with notice of the ARD meetings. However, under current Texas special education rules, the notice is **NOT** an invitation to attend the ARD meeting. The parent will no longer have the right to attend the ARD meeting, but can be invited to attend by the school district or the student. If invited to attend the meeting, the parent is **NOT** the educational decision-maker.

A parent wishing to continue being the education decision-maker can seek guardianship. The student could also give the rights over to the parent with a Power of Attorney.

For many students all the parent needs to do to participate in the ARD meeting after their child turns 18 is to simply ask if they want you to attend the ARD meeting with them. If your child agrees then just tell the school that your child invited you to the meeting. The invitation is not required to be a formal written invitation. If you prefer to have the invitation in writing, simply ask your child to sign a statement that they have invited you to attend the ARD meeting.

If your child does not want to invite you to the ARD meeting, you can still ask the school to invite you.

Form 8A, on page 30, is a checklist that will help you prepare for the ARD meeting.



Many schools continue to see the benefit of parent participation in the meeting and will invite the parents to attend the meeting.

Parents should not feel pressured by the school to obtain a guardianship of their child just to attend the meeting. Parents and students can work together as a team at the ARD meeting.

It is important for students of transition age (age 14 and older) to attend their IEP meetings so they can be prepared to plan for their transition from school to work and for the transfer of rights when they turn age 18. Students must learn to participate in the meeting and learn to speak up for themselves and to make decisions about their life. This is referred to as Self Advocacy. Training and support to help a student learn to be a self advocate should be considered in developing the student's IEP. Self advocacy does not mean that a student no longer needs support or advice from their parents or other people who care about them. It does mean that they have the right and the opportunity to say what is important to them and what they want and that the other team members respect their opinions and ideas. An important phrase in the self advocacy movement is "Nothing About Us Without Us". To learn more about self advocacy go to the website for Texas Advocates at www.texasadvocates.org and the national organization Self Advocates Becoming Empowered at www.sabeusa.org.

Members of the ARD Committee

The ARD committee must have, at a minimum, the following members to develop, review or revise an IEP:

- the student's parents;
- the adult student (age 18 or over)/ or a younger student when appropriate;
- the student must be invited if the meeting will be discussing post secondary goals or transition services to meet those goals (transition goals must be included in the IEP by age 14);
- a representative of the school district who is qualified to provide or supervise special education, knows the general curriculum, and knows about the resources available in the district;
- at least one special education teacher or service provider; who meets the requirements for a Highly Qualified Teacher;
- at least one regular education teacher who is responsible for implementing the student's IEP; if the student is or may be in regular education;
- someone who can interpret evaluations as they apply to a student's instruction;
- others, invited by the parents, the adult student or the school, who have knowledge or expertise about the student, including related services personnel as appropriate; and
- a representative of the Part C provider (Early Childhood Intervention or ECI) on the request of the parents must be invited to the meeting if your child is entering school from an ECI program.

You have the right to invite other people. For example, you may bring someone who has worked with your child in another setting, or you may bring a friend or parent advocate along for support. Because the role of the committee is to develop a plan for just your child, the intent of the membership requirements is to have members in attendance who are familiar with your child.

If your child is entering school from an ECI program, an invitation to attend the first ARD committee meeting must be sent to ECI upon request of the parent. An ECI staff person who knows your child can provide important information to the team. The school district can also request ECI attendance at the meeting.

There are additional requirements for membership that may apply in certain situations. These requirements sometimes change. You may want to look at the TEA document "Special Education Rules and Regulations" for the most current list.

NEW: An ARD committee member *may not be required to attend* all or part of the meeting if the parent and the school agree in writing that person's attendance is not required because that person's area of the curriculum or related services is not being modified or discussed. A member of the team *may be excused from attending* all or part of the meeting even when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent and the school agree in writing and the member provides written input to the parent and the ARD Committee prior to the meeting. Although "prior to the meeting" is not defined in federal or state law or regulation parents should request that the information be provided to them with sufficient time to review the information and ask questions of the ARD committee member who has been excused from attending the meeting.

Parents should not feel pressured to agree to excuse someone they believe should be there.

BEFORE THE ARD MEETING: A PARENT CHECKLIST

(Be sure to keep a copy for yourself.)

- Read your notice to see what issues will be discussed and who will attend.
- Be sure enough time is allotted for the meeting.
- If necessary, request the meeting be rescheduled at a time you can attend or when more time can be allotted for the meeting.
- Ask the school to invite any representatives of outside agencies (e. g., ECI, DARS, DADS, etc.) you think should attend.
- Ask the school for copies of any relevant information you do not already have, including:
 - Latest evaluation and any new testing the school has done;
 - Teacher progress notes (if necessary, talk with the teacher(s) and others for information on the student's progress);
 - TEKS for your child's age-appropriate grade level;
 - Student Code of Conduct; and
 - Blank IEP forms/any drafts of IEPs the school may have done.
- Gather any reports you have from outside therapists, tutors, consultants or doctors.
- Make a list of your child's gifts and talents.
- Read the TEKS and list the ones you think your child could learn "as is" or with modifications. The TEKS can be found on line at <http://www.tea.state.tx.us/teks>.
- Make a list of the instructional/behavioral modifications and accommodations you know work best for your child
- Make a list of other things you would like your child to learn during the year.
How is this going to help her? _____
Will she be able to participate more fully in school life? _____
Will she become more independent? _____
How will her life change or improve? _____
- Review the lists and mark 4-5 things you think are most important for your child. These will be the basis for developing her IEP goals during the ARD meetings.
- Make a list of her areas of functioning that would increase with assistive technology (communication, mobility, etc.). Be prepared to make requests for assistive technology if it is needed.
- Make extra copies of each list to bring to the meeting.
- Decide who you will bring to the ARD meeting.
- Decide if you want to meet with the teacher(s), diagnostician or related services provider before the ARD meeting.
- If you want to tape record the ARD meeting, gather the equipment.

FOR
M
8
A

Step 5: The IEP

What is an IEP?

The Individualized Education Program (IEP) is a written plan, designed just for one student. It is an agreement between the school and parents on how the student will be educated. Although the IEP is not as detailed as a teacher's lesson plan, it must contain measurable annual goals in each area of need. The IEP states what special education and related services and supplemental aids and services the school will provide, and when and where those services will be provided. The IEP must consider and address the academic, developmental, and functional needs of the student. Services must be based on peer-reviewed research to the extent practicable.

All decisions in your child's IEP must be individualized; that is why it is called an Individualized Education Program. Individualized means that the plan is made especially for him and is tailored to meet his needs. Your child's special education needs are likely to be different from those of another student, even one with the same disability. His IEP should reflect those differences and not be exactly the same as that of any other student.

When is an IEP Required?

The IDEA requires a student to have an IEP before he receives special education and related services. If a student needs to begin school before his evaluation is completed, a temporary IEP (usually called an interim IEP) can be developed and used while the evaluation is being completed.

If a special education student transfers from one Texas school district to another or from another state, the new school district must, in consultation with the parents, provide special education services comparable to those described in the IEP from the previous school until the new school either, (for transfers from one Texas school to another) adopts the IEP from the previous school or develops, adopts and implements a new IEP. Or for transfers from another state the new school either conducts their own evaluation (if the new school district determines that a new evaluation is necessary) and develops, adopts and implements a new IEP if appropriate. The new school must promptly request the child's records and the previous school must promptly send the child's records.

For children coming from a Part C program (ECI), the school shall consider the student's Individual Family Service Plan (IFSP) and may use the IFSP as the IEP if agreed to by the school and the parents.

How is the IEP Developed?

Following are the steps the ARD Committee will typically follow:

1) Opening Remarks and Introductions

All ARD committee members and others in attendance introduce themselves and explain their relationship to the student. It is helpful to know if those in attendance have actually worked with your child. Be sure to introduce anyone you may have brought with you to the meeting. A written agenda may be given out.

Ways You Can Participate:

Read the agenda and add any items you want to discuss.

2) Reviewing Present Level of Academic Achievement and Functional Performance

The committee reviews the most recent evaluation information and summarizes the student's strengths and needs including how the child's disability affects the child's

Although the forms and agendas for ARD meetings sometimes vary, each meeting should follow a basic set of steps. This section outlines what you can expect and offers some suggestions for ways you can participate.



involvement and progress in the general education curriculum (TEKS). This and any information about her performance in the general curriculum will be the basis for developing her IEP goals. ARD committees must also review each student's present level of "functional" performance, which includes areas other than academics. This is an opportunity to review how the student is functioning socially and behaviorally.

If the student has been eligible and receiving services for some time, the ARD committee also reviews the student's progress on each IEP goal and discusses the special education and related services she has been receiving.

The committee uses this information to write a statement on the IEP describing her current levels of academic achievement and functional performance. Review this statement and be sure you think it is accurate before proceeding.

Ways You Can Participate:

- Share your ideas about her progress. Show pictures or other documentation about what she can do outside of school, including assistive technology solutions that are helpful. Remind the team you want your child's program to help her use and build on her strengths and abilities. The IDEA requires the ARD committee to address each child's strengths. You are the best source of this information.
- Share any reports you have from outside therapists, tutors, consultants or doctors.
- Make sure you understand whether your child has made progress on her IEP goals as a result of the services she has received. (go to www.wrightslaw.com to read the articles, Your Child's IEP and Progress in the General Education Curriculum and Game Plan: Write Smart IEP's)
- Ask questions if something is not clear. At this point, you should have a clear picture in your mind about how your child is doing in school.

3) Developing Measurable Annual Goals, both academic and functional

Goals are statements about what your child will learn during a school year. Each goal must be measurable. That is, it should state clearly and objectively how you and the school will know if he has reached that goal.

IEP goals must be designed to:

- meet the child's needs caused by her disability so she can participate in and progress in the general education curriculum (academic); and
- meet each of the child's other needs caused by her disability that affect her ability to learn (functional).

During this part of the process, the ARD committee decides whether the student will address all, most or part of their grade level TEKS (the curriculum adopted by the State Board Of Education for each grade level). Any modifications needed to the curriculum should be written in the IEP.

School staff may have met before the ARD meeting, either with or without you, to write a draft of proposed goals. Schools may send a copy of the draft to you before the meeting. If you did not receive a draft IEP ask at the beginning of the meeting if a draft exists. If so, ask for a copy and read it then.

During this part of the meeting, the committee develops a clear picture of what the student will be doing and learning over the school year. The ARD committee must say how the child's progress will be measured, what type of support she will need to reach each goal and who will provide each service. Goals must be measurable.

The IEP should contain goals not only for academics, but for all services a student needs including behavioral intervention, related services, Extended School Year Services (ESY),

Career and Technical Education (CATE), and vocational programming. IDEA specifically requires IEPs to include both academic and functional goals.

The IEP must also tell how progress on his IEP goals will be measured and reported to you. For most students, receiving a typical report card is not an adequate progress report.

The IEP you develop must end with a clear statement of the special education and related services, as well as the supplementary aids and services that must be provided to the student. The statement should also include program modifications or supports that will be provided to enable the child to participate in extracurricular and other non academic settings.

NEW: IDEA 2004 adds an important new requirement that the services provided to a special education student must be "based on peer-reviewed research to the extent practicable."

Though the term "peer-reviewed research" is not defined in the IDEA, it is assumed to be similar to the requirement in No Child Left Behind that instruction be based on "scientifically-based research." (Remember, NCLB also applies to special education programs.) The intent is clearly to require schools to have credible research behind the choices they make on how to instruct students. If you are told the school intends to use a particular teaching strategy, ask them to describe the peer-reviewed scientifically-based research that supports this particular technique. In the past, ARD committees often refused to discuss "methodology" by saying that how the student was taught was solely at the discretion of the school district. Under this new requirement, ARD committees will have to discuss methodology in order to determine whether the instruction the school is proposing meets the standard of peer-reviewed scientific research. To learn more about scientifically-based research, go to: <http://www.ed.gov/nclb/methods/whatworks/research/index.html>. For information about sound research-supported practices, go to the website of the What Works Clearinghouse at <http://www.whatworks.ed.gov>.

NEW: What Happened to Objectives?

If your child has previously received special education, you are used to IEPs that contain both goals and objectives. Short term objectives (sometimes called "benchmarks") are small, measurable steps leading to reaching each IEP goal.

When Congress reauthorized the IDEA in 2004, they eliminated the requirement for short term objectives for the majority of students receiving special education. Most IEPs are now required to have only annual measurable goals. Short term objectives must only be written for those students who take an alternative assessment aligned to alternate achievement standards. In Texas this assessment is called the TAKS - Alternative, rather than the TAKS test.

Just because short term objectives are no longer required for some students does not mean they cannot be written if the ARD committee thinks they are needed. If you think one of your child's IEP goals should contain short term objectives as a way to help you better monitor his progress, you should certainly ask the ARD committee to write them.

Since short term objectives are no longer required for all students, annual goals must be more comprehensive than many have been in the past. IEP goals must be measurable and include both academic and functional goals. They can no longer be just broad statements of what a student will accomplish during the school year.

Ways You Can Participate:

- Share notes you made on the Parent Checklist;
- Talk about what you want for your child when she leaves school. Make sure the goals you include will lead to the outcomes you want for her as an adult.
- Ask what students without disabilities her age will learn and how she might also learn that information. (Note: You can get the information in advance by looking at the TEKS for her grade level.)

- If the school has developed a draft of proposed goals ahead of time, remember they must include your input. The IEP should not be written in advance so that your participation is only to come to the meeting and sign it. Talk about all the goals suggested by you and school staff. Help the team decide which ones should be included, keeping in mind the long-term outcomes you want for your child.
- As you review the proposed goals, remember that the IEP must be designed to meet your child's needs and that you and the school staff make up the ARD committee. Your job is to revise, add or delete goals until the IEP reflects the most important goals your child should achieve in the coming year.
- Ask questions if you do not understand how your child's progress will be measured, what services she will receive during the school day, who will provide each service, and how much time each day she is with students who do not have disabilities.

4) Deciding on Related Services

Many students who receive special education also need related services in order to benefit from the educational program. A student can not receive related services unless he has been found eligible for special education.

Though there are others, the most common related services are:

- Assistive technology;
- Speech therapy;
- Physical therapy;
- Occupational therapy;
- Psychological services;
- Social work;
- Counseling;
- Special transportation;
- Audiological services
- Orientation and mobility training;
- Rehabilitation counseling;
- School nursing services and school health services; and
- Interpreter services.

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

The list of related services is not exhaustive and may include other developmental, corrective or support services. For example, in order for a student to successfully use assistive technology in the educational process, he will need training in its use. The staff may also need training in order to correctly use an assistive technology device.

Ways You Can Participate:

- Make sure related services, supports or modifications needed to implement the IEP goals are discussed.
- Review all evaluation reports to see which related services are being considered for your child.
- Find out before the ARD meeting if you will need a doctor's letter or other medical referral before the school will provide a particular related service.

Lack of money or personnel cannot be used as reasons to deny the student any related services she needs to benefit from her educational program. If the district lacks the

necessary personnel, they can contract with outside professionals to provide related services.

5) Considering Other IEP Elements That May Apply to Your Child

The ARD committee must also discuss the following special factors when applicable:

Extracurricular Activities

The local district's policy on participation in extracurricular activities also applies to students who receive special education, unless exceptions or changes in the policy are made for a student in the IEP. If that is done, the IEP should include the information on which the decision was based.

Statewide Assessments

For current information about statewide assessments go to:
www.tea.state.tx.us/student.assessment/

Students in Texas public schools are required to take tests of basic academic skills throughout much of their time in school. The major test at this time is the Texas Assessment of Knowledge and Skills (TAKS). The TAKS measures a student's progress in the state curriculum (Texas Essential Knowledge and Skills or TEKS). The subjects tested, and in which grade students are tested, changes from year-to-year. Therefore, at or before your child's annual ARD meeting, ask the school to tell you what standardized tests are currently required by the state for your child's grade. Your child should be able to take the TAKS using the same accommodations used with her in the classroom during instruction. The students IEP must include a statement of any individual appropriate accommodations necessary to measure the academic and functional performance of the student. State testing requirements apply to students receiving special education unless specifically altered by their ARD committee. For some students the ARD committee may determine that another state developed assessment is required.

At the ARD meeting you will discuss what tests your child will take. The TAKS tests are appropriate for most, but not all, special education students. Students receiving special education will take the TAKS, unless their ARD Committee determines the regular TAKS tests are not an appropriate way to measure their learning. Some students will take the TAKS in some subjects, but not in others. The decision must be made on an individual basis.

If the ARD committee decides a student should take an alternative assessment, they must state the reasons the student cannot take the regular assessment, and why the alternative assessment they selected is appropriate. Be sure the ARD committee discusses the accommodations your child will receive during testing and includes them in the IEP.

NEW: To be in compliance with federal law Texas had to change the names and structure of the statewide assessments for students with disabilities. The TAKS - Inclusive (TAKS-I), the State Developed Alternative Assessment (SDAA) and the Locally Determined Alternative Assessment (LDAA) are no longer available. Beginning with the 07-08 school year, Texas students with disabilities will take one of four statewide assessments based on the decision of the ARD committee:

- 1) **TAKS** - TAKS, the Texas Assessment of Knowledge and Skills, is the statewide assessment for all students in Texas based on the Texas Essential Knowledge and Skills (TEKS), unless the ARD Committee determines the student will take another state developed assessment,
- 2) **TAKS - Accommodated** - TAKS - Accommodated provides accommodations for the special education student but otherwise is the same as the TAKS test,

All students, including all special education students, are required to take TAKS or one of the other state developed assessments.

- 3) **TAKS - Modified** - TAKS - Modified is a grade level, TEKS based test that has been modified to make it simpler for students with more severe disabilities than students taking TAKS Accommodated but less significant disabilities than students taking TAKS Alternative; or
- 4) **TAKS - Alternative** - TAKS - Alternative is an alternative test based on alternative achievement standards for students with the most significant cognitive disabilities.

Assistive Technology

The ARD committee must consider whether a student requires assistive technology devices and services. (See Glossary)

Autism

Texas rules currently require that IEPs consider, and when needed, address: extended educational programming; prioritized behavioral objectives; daily schedule reflecting minimum unstructured time; in-home training or viable alternatives; pre-vocational and vocational needs of students age 12 or older; parent training; and suitable staff-student ratio.

Note: Revised IEP considerations for students with autism spectrum disorders will be in effect for the 2007-2008 school year. For details of the revised IEP considerations go to www.tea.state.tx.us/special.ed

Transition

Transition services are those services and activities provided to students that specifically help them to move successfully from public school to life after public school. Transition activities should help your child make a successful transition to post-secondary education, employment, and/or independent living. These services should be very individualized for your child and his likely needs as an adult. Transition services must be based on your child's strengths, preferences and interests. The student himself must be invited to participate in the IEP meeting when transition services are discussed.

Current Texas rules require that transition must be addressed in the IEP for the school year during which the student turns 14 or younger if determined appropriate by the ARD committee. Parents may request that transition services be addressed in the IEP prior to age 14. For a transition-age student, the IEP must include: measurable postsecondary goals that are based on assessments related to training, education, employment and, for some students, independent living skills. The IEP should also identify those courses a student should take in order to reach his transition goals. Transition goals should be reviewed and updated as needed at the annual review of the IEP.

The Education Service Centers have staff with expertise in transition planning. If you need help identifying needed transition services for your child, request that the school bring in someone from their ESC with expertise and experience in transition planning. Two sources for information online are from the Technical Assistance on Transition and Rehabilitation Act (TATRA) at <http://www.pacer.org/tatra/list/signup.asp>, and the National Center on Secondary Education and Transition at <http://www.ncset.org>.

SPECIAL NOTE TO FAMILIES ABOUT POST-GRADUATION SERVICES

Depending on the nature and extent of your child's disability, you may want to access community-based services and supports after graduation. Such services might include in-home supports, out-of-home residential services, mental health services, habilitation or other services. These services may be made available through state or local offices of the Texas Department of Aging and Disability Services, the Texas Department of Assistive and Rehabilitative Services or the Texas Department of State Health Services.

Many of these programs have long waiting lists. In some cases, individuals must wait seven or more years to access services.

In Texas, there are more specific guidelines for the content of IEPs for students with autism spectrum disorders.

To see the most up to date state rules about transition go to www.tea.state.tx.us/special.ed.

Parents of students receiving special education supports should become familiar with the services that are available through state and local agencies. If they believe that these programs may be needed in the future, parents should take steps now to contact the responsible agency and, if necessary, sign up for the waiting lists. Parents should do so prior to beginning formal transition planning even though they may not need services until graduation.

Take action now to ensure that your son or daughter can access needed community supports after graduation. For more information about state supported services, check:

- Department of Aging and Disability Services (DADS) www.dads.state.tx.us
- Department of Assistive and Rehabilitative Services (DARS) www.dars.state.tx.us
- Department of State Health Services (DSHS) www.dshs.state.tx.us

Extended School Year Services (ESY)

The ARD committee should also discuss whether a student requires an extension of the school program during the long holidays and/or the summer. Some students cannot get an appropriate education without receiving services during long holiday breaks and/or the summer. Others forget what they have learned about academics and/or behavior and take a long time to "recoup" these skills once school starts again in the Fall. Others need services such as physical therapy-during the summer so they do not lose the progress they have made during the school year.

Most districts use recoupment time as the basis for a decision on providing ESY services. However, if the loss of acquired critical skills would be particularly severe or substantial, or if the loss of skills could cause physical harm to the student or to others, ESY services should be provided even without consideration of how much recoupment time would be needed if services weren't extended. Many schools require documentation or proof of an extended recoupment time in order for the student to receive ESY services. Both the school and the parent should keep documentation at home and school of the skills a student loses while they are not in school and the time a student needs to regain skills when they return to school. The students need for ESY services should not be penalized because of the school's failure to keep accurate documentation.

The decision about ESY should be made at the ARD meeting and measurable goals and objectives (objectives are required for students who take the TAKS-Alternative statewide assessment) written into the IEP. If you request them, the ARD committee must consider ESY.

Termination of Services/Graduation

Texas law requires students who do not pass the TAKS or who are unlikely to receive a diploma within 5 years of entering high school to have a "personal graduation plan" that includes a variety of steps that must be taken to improve the student's academic performance. The requirement for a personal graduation plan also applies to students who receive special education. This law allows, but does not require, that a special education student's IEP be used as the student's personal graduation plan.

A district can stop providing special education when:

- the student no longer meets the age requirements. (A student is entitled to services through the end of the school year in which she reaches her 22nd birthday)
- the student is eighteen years old and decides on her own to withdraw from school
- the student graduates.

Graduation criteria can be found in TEA's "Special Education Rules and Regulations." Participation in the graduation ceremony without receiving a diploma does not affect eligibility for future services from the school district.

NEW: A new law, referred to as Scooter's Law (SB 673), was signed by the Governor and went into effect in May 2007. This law states that students with disabilities who will graduate under their IEP (not regular academic standards) and have been in high school for four years can participate in the graduation ceremony with their peers at age 18 and continue to be eligible for special education services until they graduate or age out. The law says that students can only participate in one graduation ceremony. This gives the option to the special education student who will be graduating under their IEP to decide when they want to participate in the graduation ceremony, at age 18 with their grade level peers or when they leave school sometime after age 18.

IDEA requires that before graduation, including aging-out of eligibility, the school district must provide the student with a document, called a "Summary of Performance," that summarizes his academic achievement and functional performance.

Discipline/Behavior

Discipline

If your child exhibits behaviors that interfere with her learning, or are disruptive to other students the IEP must address those behaviors. The ARD committee must identify appropriate positive behavioral interventions and supports, and other strategies, to address each behavior.

You can ask for a "functional behavior assessment" (FBA) to determine why and when she is displaying the inappropriate behaviors and how best to respond. With that information, the ARD committee can develop a "behavior intervention plan" (BIP) which becomes a part of her IEP. The plan should identify the supports and services she needs so she doesn't display the inappropriate behaviors - not just a list of consequences for misbehavior.

If at any point a student violates a school rule that results in a determination that the behavior was related to the student's disability, the ARD committee must conduct a functional behavior assessment and develop a behavior intervention plan. If an FBA has previously been conducted, and the student already has a BIP, the ARD committee must review the plan and modify it as needed.

It is extremely important that the ARD committee discusses and plans for any behaviors you think might cause your child to get in trouble at school. In Texas, parents are asked to sign a statement that their child will comply with the district's "Student Code of Conduct." This applies to your child too, so be sure and read it thoroughly and discuss anything in the code that might be difficult for your child to follow. The IEP should note any exceptions to the Code of Conduct.

When Can Your Child Be Disciplined?

There is much controversy about how and when a student with a disability can be disciplined. The IDEA contains specific procedures that must be followed when making decisions about discipline. There were significant changes made in IDEA requirements about discipline in 1997, and again in 2004. Most parents and advocates believe the changes made in 2004 in the area of discipline are not in the best interests of students with disabilities.

In addition, there are state laws governing discipline (in Chapter 37 of the Texas Education Code). State laws apply to students with disabilities unless the law conflicts with the IDEA or with a student's IEP.

Following is basic information about the discipline process for students with disabilities. It does not include all information you need if your child has discipline problems at school. You can get additional information about discipline requirements under state and federal

law by calling the TEA Parent Information Line (1-800-252-9668), by accessing the TEA special education website (www.tea.state.tx.us/special.ed), or by calling Advocacy, Inc. (1-800-252-9108). Advocacy, Inc. has on its website (<http://www.advocacyinc.org>) an interactive document on school discipline. This document will guide the user step-by-step through the disciplinary process. It has been updated to include changes made by IDEA 2004 and its regulations.

The Basics Of School Discipline:

Individual Discretion

School administrators are now allowed under IDEA to use discretion on whether or not to change the placement of a student with a disability who violates the student Code of Conduct. This means the principal (or other administrator) no longer must apply a local "zero tolerance" policy to a student with a disability, but can use discretion because of the impact of the student's disability. This will hopefully decrease the number of students with disabilities sent to DAEPs because the administrator says he has "no choice."

Manifestation Determination

Before taking disciplinary action that results in a student with a disability having her placement changed for more than ten days, the school district must first determine whether the behavior was a manifestation of her disability.

It is now more difficult to find a student's misbehavior was a manifestation of his disability. The new standard is that the misbehavior must have been "caused by" or had a "direct and substantial relationship" to the child's disability, or was the "direct result" of a school district's failure to implement the IEP. Manifestation determinations are still not required for removals of less than 10 consecutive school days.

The full ARD committee does not have to meet to conduct a manifestation determination. However, if the behavior is found NOT to be related to the disability, the full committee would have to meet to make any change in the student's placement. If the behavior is found to have been directly related to the behavior, the student must be returned to the placement she was in when the behavior occurred, unless the parent agrees the student should go to another placement as part of a modification of his behavioral intervention plan.

Educational Services in Disciplinary Settings

Students in disciplinary settings are still entitled to special education services needed to continue participation in the general curriculum, and to progress toward meeting his IEP goals.

Removals for up to 45 days

Previously removals were allowed for up to 45 days for offenses involving drugs and weapons, regardless of whether the offense was a manifestation of the student's disability. IDEA 2004 adds the infliction of "serious bodily injury to another person" as an additional offense for which a student can be removed for up to 45 days. Also, 45 days now refers to "school days" rather than "calendar days."

"Stay Put"

When a parent files for a due process hearing to challenge a disciplinary action, the student will remain in the disciplinary setting pending the hearing decision, or the end of his disciplinary placement. Previously, "stay put" left the student in the placement he was in before the disciplinary removal. This new definition of "stay put" is only applicable to disciplinary removals.

Expedited Hearings

In discipline cases, the student is entitled to an "expedited" hearing within 20 school days

after the hearing is requested. The hearing officer must issue a decision within 10 school days after the hearing.

Behavior

Behavior intervention and disciplinary techniques that cannot be used.

State legislation, and subsequent rules adopted by the Texas Education Agency, prohibit students in Texas public schools from being placed in a locked space or room (regardless of the size of the room) as a behavior intervention or disciplinary technique. This includes spaces that are not locked, but from which the student cannot get out, such as a room in which the door is blocked by a piece of furniture.

Students cannot be physically restrained, except in an emergency situation. If physical restraint is used, written documentation of its use, including information on why the student was restrained and for how long, **MUST** be sent to the parent. There is also required training for any school staff who might use physical restraint. If your child is physically restrained, be sure you get (and keep) the required documentation. Since it is only to be used in an emergency, use of restraint should be infrequent. Restraint should not be included in a student's IEP or BIP as a planned or "therapeutic" intervention.

Time-out can be used, but if used repeatedly to decrease or increase a particular behavior it must be a part of the student's IEP or BIP and must be used in conjunction with an array of positive behavioral interventions. A school district cannot place a student in timeout by using physical force or threatening to use physical force.

Finally, no technique may be used that demeans a student or deprives her of "basic human necessities" (such as eating or using the bathroom).

If you know the ARD committee will be discussing the use of restraint and/or time-out (seclusion is prohibited), you should read the state rules before the meeting. Schools cannot avoid following these rules by getting parent permission to use prohibited practices. These rules apply to all students, including those in "behavior management classes" or other behavior programs.

Braille

A student who is blind or visually impaired, must be provided instruction in Braille and the use of Braille unless the ARD committee determines after an evaluation of her reading and writing skills and needs that instruction in Braille or the use of Braille is not appropriate. Additional state requirements for students who are blind or visually impaired can be found in the Texas Education Code at TEC 30.002.

Communication Needs

The ARD committee must consider the communication needs of a student who is deaf or hard of hearing. Specific consideration must be given to opportunities for communication with other students and staff in the child's language and mode of communication, as well as for direct instruction in the student's language and communication mode. In 2004, "interpreter services" were added to the IDEA as a related service.

Limited English Proficiency

The IEP of a student with limited English proficiency must address how his/her language needs relate to achieving the goals on the IEP. Students eligible for bilingual classes and programs can receive special education services in those settings.

Transportation

Special transportation is actually a related service, but is often discussed at ARD meetings separately from other related services, such as speech or physical therapy. The ARD committee makes the initial decision as to whether a student is eligible for special transportation and the

“To the maximum extent appropriate, children with disabilities are educated with children who are not disabled, and special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs ONLY when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”

***- Public Law 105-17
June 4, 1997***

type and kind of special transportation that will be provided. The district cannot deny any student services in the IEP because the parent cannot provide transportation. This includes 3-5 year olds who are not attending the school's preschool program, but need special transportation in order to receive speech therapy from the school district.

The ARD committee should first talk about having the student use the transportation services used by non-disabled students. If a student is unable to use regular transportation services, the ARD committee must consider special transportation. State laws that limit transportation to students who live a certain distance from the school do not apply to students for whom an ARD committee has determined a need. Also, transportation must be provided for special education students placed in DAEPs if the ARD committee determines it is necessary.

6) Deciding on Placement in the Least Restrictive Environment

After ARD committee members agree on the IEP, the next step is to determine placement or where the special education and related services will be provided. Parents must be a part of any decision on placement.

Laws and regulations require placement decisions to:

- be made at least once every year;
- be based on the student's individual needs;
- take into consideration any harmful effects to the student; and
- be made based on evaluation information and not on disability label or staff convenience.

In addition, first consideration should be given to placements that are:

- as close to home as possible;
- at the school the student would attend if not disabled; and
- in regular classes with the supplementary aids and services the student needs.

Placement in the LRE

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

Many important court decisions and rulings have clarified the meaning of LRE and have made the legal preference to educate students with disabilities in general education settings even stronger. In order to be successful in the least restrictive environment, students are to be provided supplementary aids and services. This may include assistive technology that compensates for limits in functioning and allows students to perform educational and social activities in a general education environment.

School districts may use a variety of ways to achieve the goal of placing students in the LRE. Terms you may hear in the discussion of placement are "inclusion," "mainstreaming," and "integration." These terms are not used in the federal law, but are commonly used by educators. Regardless of the words you hear, remember the placement of your child should provide as much opportunity as possible for your child to be educated with his non-disabled peers.

Questions for Placement in the LRE:

- Can the student learn the same curriculum (general curriculum or TEKS) as other students her age with only occasional in-class or consultative services from special education? If yes, place in age-appropriate regular classes.
- Can she participate in the same learning activities as the other students with accommodations for her disability? If yes, list accommodations needed on IEP, place in age-appropriate regular classes and implement needed accommodations. (See "Glossary" for definitions of Accommodations and Modifications)

- Does she need any "supplemental aides and services" (e.g., behavior interventions; one-on-one instruction, physical assistance) in order to remain in the regular classroom? If yes, IEP should list those supplemental aids and services and how they will be provided in the regular classroom.
- Can she participate in the same learning activities as the other students IF modifications are made to those activities because she is learning at a lower grade level than the other students? If yes, list the modifications she needs on the IEP, specify who is responsible for making those modifications, and place in the regular classroom with needed special education support.
- Does she need any services that cannot be provided in the regular classroom setting at this time? If yes, IEP should specify her removal only for those activities.

To assure your child's placement in the LRE, ARD committee members should begin by considering placement in an age-appropriate regular class(s) at the student's home school. The discussion should include which accommodations, modifications and/or supplementary aids and services (behavior interventions, paraprofessional, assistive technology, equipment, environmental modifications, etc.) could allow the student to remain in the regular classroom and make progress in the general curriculum.

If placement in a regular education classroom is rejected, the committee must document why the regular education placement, even with the use of modifications and supplementary aids and services, is not appropriate. A student—even one with significant disabilities—cannot be removed from the regular education classroom solely because she needs modifications to the general curriculum.

Ways You Can Participate:

Discuss all supports, modifications or assistive technology your child needs to reach her IEP goals and be involved in and progress in the general curriculum.

Examples include but are not limited to:

- specific learning and teaching strategies
- adapted expectations, curriculum or materials
- help from a paraprofessional aide
- therapies that can be provided in the regular classroom
- adaptive equipment; and/or
- assistive technology devices, (simple or high-tech)

Ask questions like:

- What is needed to implement the IEP in regular classes?
- How would the student's daily schedule look?
- When would the student and/or teacher need these supports?
- Who is available to provide them?
- Who is responsible for any modifications of the curriculum?

Remind committee members that your child cannot be excluded from regular classrooms because she needs:

- related services
- special equipment
- modifications to the general curriculum
- more intensive services (smaller student/teacher ratio)
- assistance of a paraprofessional
- a physically accessible classroom or building

Dual Enrollment for 3 and 4 year olds

Districts are required to also provide services in integrated environments for 3 and 4-year olds, just as they are for older students. The school district must make available other school district programs, such as pre-kindergarten, to children with disabilities for whom that classroom would be appropriate. Parents offered only a separate special education class for their 3 or 4-

Remember

In Texas, the General Education Curriculum is the TEKS.

Remember

Special education is a service, NOT a place.

year old, should ask for the district to tell them its other placement options that are in integrated settings. One way districts can meet this requirement is to place a child in a community preschool setting, such as Montessori, and provide services such as occupational or physical therapy the child needs but can't get at the private program. Another way, used by some school districts, is to place district special education staff at some preschools in the community.

Sometimes parents want their child in a specific preschool program (such as one close to their house or one attended by their other children) and are willing to pay for it so the child can go there. Those parents can choose to "dually enroll" their children in the private school of their choice and then enroll in the public school for special education services. Parents who choose this option will have to pay for the private placement. Only the special education services provided by the district must be at no cost. Therefore, most parents will choose to make the district fulfill its obligation to provide services in the "least restrictive environment." You can file a complaint with the Texas Education Agency if your local school district does not offer an education program for 3 and 4 year olds with disabilities with their non-disabled peers. However, for parents who want to do so, selecting their own placement and paying for it is an important option for them.

A child who is "dually enrolled" is enrolled in both a private school and a public school at the same time. Typically, the child attends the private program for all or most of the day, but receives needed special education services from the school district. Dual enrollment is available only for children ages 3 and 4. This is a choice allowed by Texas in its special education rules. It is not a federal requirement.

Contracting Placements

When the school district cannot meet a student's educational needs in its own program, it can contract with a non-public school approved by TEA. The district should not contract for any part of a student's education if it can meet the needs in its own program. The ARD committee must decide whether to contract for services from another program or district. Even if the district contracts with a non-public school, the district's responsibility for the student continues.

Residential Placement

ARD committees will consider residential placements if the district cannot provide the services locally and the student cannot benefit from education without the support provided in a residential facility. A residential facility is one in which the student will both live and go to school. If the ARD committee determines a student needs 24-hour residential placement, the district must provide it at no cost to the parent. Residential placement must be reviewed and re-approved annually. The school district can contract with either a public or private residential program approved by TEA. The school district has to provide for a residential placement only with parental consent and only if:

- It is necessary in order for the student to receive an appropriate education; and
- The need for the residential placement to receive an appropriate education is related to the student's disability.

Many students who live in residential settings can and should go to school in the local district. However, if a student in a residential placement receives education services at the facility, the facilities, equipment and programs must be adequate to carry out the IEP.

Note: If a student is at risk of, or considering residential placement, you may want to contact your Regional Education Service Center regarding non-educational community based support services. Funding for these services is subject to appropriations provided by the state legislature.

Private School Placements

You should know that if you place your child who is eligible for special education under

IDEA in a private school, she is not entitled to receive the same level of services she would receive in the public school. However, the public school must provide some services to students placed by their parents in private schools. Changes in IDEA 2004 will likely result in an increase in services provided by public schools to students in private schools. The public school must now work with any private schools within their district's boundaries to identify students with disabilities and to develop a process so those students can meaningfully participate in special education and related services.

Before you place your child in a private school, observe the classes yourself. Ask specific questions about the types of services the school will provide and about the types of certifications held by the teachers. If you take your child out of the public school and place her in another program because you believe the school district is not meeting her educational needs, you may be reimbursed for the cost of the placement. However, this will require a due process hearing and/or court action if the school district refuses to pay for the placement. The reimbursement may be reduced or denied if you did not inform the school in advance, or in other specific circumstances.

7) Coming to Mutual Agreement

Once the IEP is written, all members of the ARD committee who are part of the decision-making team will sign it and indicate their agreement or disagreement. If any member disagrees, a statement of the disagreement and reasons for it should be attached to the IEP.

If a parent or the adult student disagrees with one or more required elements of the IEP, the district must offer a recess of **no more than 10 school days** (with some exceptions for disciplinary ARDs). The committee members must also agree on a date, time and place to finish the meeting. (Note: The provision for a 10 day recess is a state, not federal, requirement.)

During the recess, both district and parent/student members of the ARD committee must think about other possible choices, gather more data, work on documentation and/or get other people involved.

If, after the recess, parent or student members of the ARD committee still do not agree, school members can use the IEP they think is best. A second statement about the disagreement must be written into the IEP, and members who disagree must be allowed to write their own statements.

Ways You Can Participate:

- Review the checklist following this section, to see if all issues have been discussed. If all are in agreement with the IEP and the recommended placement, sign and indicate your agreement, then congratulate the team (including yourself) on a job well done!
- If you disagree with any required elements of the IEP, the school must offer you a recess of no more than 10 school days. You and other ARD members must agree on a time, date and place for the next meeting;
- During the recess, you must gather more information, think of new options, work on documentation or get other people involved; and
- Keep in mind that if you are not in agreement with the student's IEP or placement after the recess, the school can implement the IEP unless you file for a due process hearing.

8) Closing the Meeting

At the close of the meeting, review the completed IEP and minutes. **Do not sign your agreement with the IEP until you have read it.** Sometimes things are discussed, but never written into the plan. You can ask to take the IEP home for further review and sign in it later.

Parents or adult students who disagree with an IEP element or with proposed placement should sign that they attended the meeting, but indicate in writing their disagreement.

Form 8B, on page 45, is a checklist you can use to make sure all the IEP elements have been included.

B 8 M R O F

Ask for a copy of the IEP. You are entitled to a copy of all the IEP either at the ARD meeting or within a reasonable time thereafter.

If needed, ask to have the IEP translated into your native language. For parents who speak only Spanish, the district **MUST** provide the parents with a written copy, or audiotape, of the IEP in Spanish. For parents who do not speak English or Spanish, the district must make a good faith effort to provide the parents with an IEP translated in their native language.

If your child has multiple teachers who will be implementing parts of her IEP, ask the ARD committee to identify who will be responsible for seeing that each teacher has a copy of her IEP.

AT THE ARD MEETING: A PARENT CHECKLIST

Be sure the IEP for your child includes:

- a statement of progress your child has made on her previous IEP goals;
- information about current academic achievement and functional performance;
- a statement of how the disability affects the student's involvement and progress in the general curriculum (TEKS);
- measurable annual goals based on peer-reviewed research;
- short-term objectives for student's taking the alternative assessment (TAKS - Alternative);
- method for measuring progress toward goals and how and when progress will be reported to you;
- special education and related services to be provided;
- positive behavior strategies and/or a behavior intervention plan (Note: This is now required if your child's behavior interferes with his learning or the learning of others.);
- modifications of the curriculum (TEKS) (such as a different instructional level) your child needs to participate in the same learning activities as other students her age;
- supplemental aids and services your child needs to participate in regular education classes and activities.
- supports and training to be provided for school personnel;
- specifics about each instructional and related service, including date services begin, minutes per session, frequency of sessions, location of services, and the position (e.g., "special education teacher," "physical therapist," etc. rather than someone's name) responsible for each service in the IEP. You should also clarify whether your child will be receiving "direct" or "consultative" services;
- special materials, equipment, resources and/or assistive technology needed and when they will be made available;
- a statement of ANY academic or extracurricular activity in which your child will NOT participate with non-disabled students, and the reasons why;
- a determination if she will take TAKS or another state developed assessment;
- any accommodations she needs to take the TAKS (or other required assessment),
- a statement of any exceptions to the district policies such as participation in extra-curricular activities and the student Code of Conduct, and the reasons for the exceptions;
- transition services to be provided beginning in the school year in which your child turns 14 or younger if determined appropriate;
- goals for ESY from the current IEP; and
- signatures of the ARD committee members and statements of your agreement or disagreement with any part of the IEP.

Step 6: After the Meeting

Ways to Stay Involved:

You have just spent a great deal of time and effort developing an appropriate IEP for your child. Now you want to make sure that it is implemented and your child is progressing in the general curriculum and receiving all of the services in his IEP. Be sure to:

- give positive feedback to teachers and administrators about things that work well for your child during the school year
- become involved and visible by volunteering in the classroom, library, or other school program; attend school functions; join the PTA and participate in site-based management teams and meetings and special events
- communicate regularly with teachers throughout the year (notebooks, phone calls, e-mails, meetings and conferences)
- share articles and other resources of interest with teachers and other school personnel
- attend joint training with school staff
- read the progress reports you are sent by the school. Bring questions, concerns and/or praise to parent/teacher conferences; and
- ask to have the IEP revised as needed
 - IEPs must be reviewed at least once a year. However IEPs can be revised whenever needed
 - the team must revise the IEP if the student does not make expected progress toward annual goals or in the general curriculum or if the student makes so much progress that new ones need to be developed
 - additional meetings will also be needed if there is new information, such as a reevaluation, that would affect his IEP

IDEA allows some changes in the IEP to be made without an ARD meeting. Changes outside the ARD process are intended for changes that are not controversial and do not need to be discussed. The only requirements for amendments to the IEP without an ARD meeting are that the school and the parent agree and that the amendments be in writing. If you are asked to agree to a change you don't agree with, or don't understand, you should ask for an ARD meeting. If the IEP is changed without an ARD meeting, the school must provide you with a copy of the revised IEP at your request.

Form 9, on page 47 is a sample letter requesting review or revision of the IEP.



LETTER REQUESTING REVIEW AND REVISION OF IEP

(Be sure to keep a copy for yourself.)

Date

Name of principal
Name of school
Address of school

Dear (name of principal):

I am the parent of (name of student), a student at your school. I recently reviewed my child's IEP which was developed in (month and year), and I believe it is (out-of-date, incomplete, based on insufficient evaluation information, etc.) because (state your reasons). I request a new meeting be held as soon as possible to review and, if necessary, revise (name of student)'s IEP. Please contact me within 10 days so the meeting can be scheduled at a mutually agreeable time and place.

Thank you for your help. I look forward to hearing from you soon.

Sincerely,

Your name
Your address
Your telephone number
Your e-mail address *(optional)*

9
FORM
FOR
E

The Step You Hope You'll Never Have to Take: Resolving Disagreements

In school districts where there is open communication, a willingness by parents and school officials to compromise, an emphasis on the student's needs, and a commitment to follow the special education process, most problems can be resolved locally. However, sometimes parents and school personnel cannot agree on some part of a student's educational program.

If you disagree with a decision made by the ARD committee, you need to decide whether to accept the other position or seek a third party to settle the disagreement. Although you may not be satisfied with school officials' final offer, you may not be ready for an impartial due process hearing. Other steps can be taken to settle disagreements. You can use TEA's mediation or complaints management systems together with, or instead of, a due process hearing or a lawsuit.

For information about the complaints management, mediation, and due process hearing systems in Texas, you can go to the TEA website (www.tea.state.tx.us/special.ed/medcom/pubs.html).

TEA Complaints Management System

If you believe the school district is violating the educational rights of your child, you can file a complaint with TEA. Under federal regulations, TEA must investigate any complaint that a school district is violating any requirement of the IDEA, including the identification, evaluation, or placement of a special education student, or any violation of a student's right to a free appropriate public education. TEA is required to make sure the district complies with the law. Your complaint must be filed within one year of the alleged violation.

You can call the TEA Parent Information Line at **1-800-252-9668**, or the TEA Division of IDEA Coordination (512-463-9414), for help in writing your complaint. Advocacy, Inc. also has a handout on its website about filing a TEA complaint. Your complaint must be in writing and should contain, information as specific as you can provide about the alleged violation. Include your name, the name of your child, the name of the school he attends, the school district, your address and a phone number where TEA can reach you during the day. Complaints must be signed and a copy of the complaint must be sent to the local school district. Mail or fax TEA's copy to:

**Texas Education Agency
Division of IDEA Coordination
1701 North Congress Avenue
Austin, Texas 78701
Fax: 512-463-8254**

You also have the choice of using a form on TEA's website to file your complaint. You can find a link to the form, in both English and Spanish, at: www.tea.state.tx.us/special.ed/medcom/compform.html

TEA must review, investigate, and resolve complaints within sixty (60) calendar days.

TEA Mediation

Mediation can be a way for parents and school districts to work out disagreements without a due process hearing. Mediation is an informal and voluntary process conducted by an impartial mediator. There is no cost to either the parent or the school district. You can bring an attorney to



mediation, but it is not required. If you choose to bring an attorney, you are responsible for that cost. You have a choice about whether to:

- ask for mediation
- accept mediation if TEA offers it to you; and
- accept or reject the proposal developed during mediation

Requests for mediation should be made in writing to TEA. Be sure to include in your request for mediation: your child's name and grade, the name of the school district (or charter school), a brief description of the issues you would like mediated, and how you can be contacted. Your request can be mailed for faxed to:

**Texas Education Agency
Division of Legal Services
1701 N. Congress Avenue
Austin, TX 78701-1494
Fax: 512-475-3662**

If both you and the school district agree to the mediation, TEA will assign a mediator and you will be contacted to schedule a time for the mediation.

If mediation is successful, the mediator writes up the agreement that you and the school officials sign. That agreement is a legally binding document. The agreement must also state that the discussions at the mediation are confidential and cannot be used as evidence in any due process hearing that might follow.

There is also information about mediation and other dispute resolution processes available from the Consortium for Appropriate Dispute Resolution in Special Education (CADRE). CADRE is a national project funded by the U.S. Department of Education. Their publications are available on their website at: <http://www.directionservice.org/cadre>. One of the publications available at this site is titled "Special Education Mediation: A Guide for Parents."

U.S. Office for Civil Rights (OCR) Complaint

If you believe the school has violated Section 504 of the Vocational Rehabilitation Act, you may file a complaint with the United States Department of Education's Office for Civil Rights (OCR). OCR is the federal agency primarily responsible for enforcing Section 504.

There is information about Sec. 504, including a comparison of the requirements of Sec. 504 to those of the IDEA, on TEA's website at: www.tea.state.tx.us/special.ed/sec504.

If you are not sure whether an OCR complaint is appropriate, or if you don't believe you know how to write a complaint, you can call OCR at 214-661-9600. Advocacy, Inc. also has a handout on its website about filing an OCR complaint.

OCR complaints should be mailed to the regional Office for Civil Rights:

**Site Director
U.S. Office for Civil Rights, Dallas Office
1999 Bryan Street, Suite 2600
Dallas, Texas 75201
Email: OCR_Dallas@ed.gov**

*Form 10, on page 55,
is a sample letter
requesting mediation.*

What Do I Need to Know About Due Process Hearings?

If at all possible, you should try to reach agreement with the school about your child's education. However, if you have a dispute that you and the school district cannot resolve, you may ask for an impartial due process hearing. If you disagree with the IEP or have any other complaint concerning your child's education, you have a right to a due process hearing before an impartial hearing officer. You have a right to a final decision from the hearing officer within 45 days after compliance with the resolution meeting requirement.

Asking for a due process hearing is a very important decision. Due process hearings are expensive and stressful. School districts win many more hearings than do parents. It is a good idea to carefully consider the other steps you can take to solve a problem before you request a hearing. You can try other remedies (see previous sections on Mediation and Complaints) instead of, or in addition to, an impartial due process hearing.

If you file for a due process hearing, you will be contacted by TEA and offered mediation. Whether you accept that offer, or go directly to a due process hearing, is your choice. However, if you choose not to accept mediation, the school district may require you to meet with an impartial party who will encourage the use and explain the benefits of mediation.

Representation by an Attorney

Before you ask for a due process hearing, you must decide whether to hire an attorney to represent you. Although some parents have represented themselves successfully, or used a lay advocate, it is very difficult to win without an attorney. The due process procedure used in Texas is similar to going to court. The hearings follow special rules that apply only to due process hearings, as well as use the Texas Rules of Evidence and the Texas Rules of Civil Procedure, which are very formal and difficult to understand. The school district's attorney knows these rules and will use them.

Also, at the hearing, a court reporter makes an official record. This means a court reporter will prepare a transcript of all the witnesses' testimony. The court reporter will put this transcript and all other evidence (such as evaluation reports and IEPs) into the official record of the hearing. If your case eventually goes to court, this record will be a large part of what the judge will use to decide the case. If your evidence is presented correctly at the hearing, it will not have to be presented again in a formal trial. It is difficult for a parent or lay advocate to know how to present evidence correctly. The best way to protect your rights, and those of your child, is to have an attorney at the due process hearing.

If you represent yourself and lose your due process hearing, you will want an attorney if you appeal your decision in Federal court. Even if you win the hearing, the school district may appeal the decision, at which point you will also want an attorney. It is more effective if the attorney who will represent you in court has worked with you during the due process hearing and really understands your case. Try to have an attorney before you ask for a hearing. Though a recent US Supreme Court decision allows a parent to represent their child in federal court in IDEA cases, we strongly suggest you have an attorney since the school district will have one.

Finding an Attorney

Of course, cost is a factor in your decision to use a lawyer or to ask for a hearing. IDEA 2004 requires each school district to inform you of any free or low-cost legal assistance that might be available in your area. If they have not, you should ask the school officials for this information.

In Texas, it is unfortunately very difficult to find an attorney who will take a special education case. Special education cases are typically complex and difficult, and attorneys are aware they cannot be awarded attorney fees unless they win the case.

Many parents have learned through contacts in their local parent and advocacy organizations of attorneys willing to take cases for a reasonable fee. Check with your local parent and/or advocacy organizations for suggestions.

Advocacy, Inc., a statewide legal rights advocacy system, provides legal services to people with disabilities and takes some special education cases within priority areas. Call 1-800-252-9108 to find out if they can take your case. If they cannot take your case, ask for a copy of their list of private attorneys who take special education cases.

Another place to find information about attorneys and advocates is the Council of Parent Attorneys and Advocates at www.copaa.org and the Texas Organization of Parents, Attorneys and Advocates at www.topaa.org.

Requesting a Hearing

IDEA 2004 expands the information that must be included when requesting a due process hearing. The party requesting due process (typically a parent or the parent's attorney) must provide what is called "due process complaint notice" to the other party (typically the school district) and to TEA. This notice must include:

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

If the parent files, then the school will review the complaint. If the school does not think the complaint sufficiently meets the due process complaint requirements, they must notify the hearing officer and parent in writing within 15 days of receiving the complaint. The hearing officer will notify the parent within 5 days if he thinks the complaint is sufficient or not. If the hearing officer determines the due process complaint is not sufficient, the hearing officer can allow the parent to amend the complaint.

In addition if the school has not already done so they must send you a response within 10 days of receiving your due process complaint that includes:

- an explanation of why they proposed or refused to take the action described in the complaint
- a description of other options considered and the reasons why those options were rejected
- a description of the evaluations, assessments, records or reports used as a basis for their action; and
- a description of the factors that are relevant to the school's proposal or refusal*

***Note:** It is important that your due process complaint address all of the issues you are disputing. At the hearing you will not be able to bring up an issue that was not included in your complaint unless the school agrees.

In Texas a request for a due process hearing must be filed within one year of the date the parent or school knew or should have known about the action that forms the basis of the complaint. Current Texas law only allows you to go back one year instead of two. The timeline does not apply if the school misrepresented to the parent that it had resolved the problem, or if the school withheld information from the parent that it is required to provide, such as failing to provide written notice or a procedural safeguards notice.

Use the TEA form to request a due process hearing or refer to Form 11, on page 55, a sample letter requesting an impartial due process hearing.

There are two ways you or your attorney can file for a due process hearing - by drafting your own due process complaint or by using TEA's form. The TEA form is available at: www.tea.state.tx.us/special.ed/hearings/duepro.html.

The Due Process Complaint letter or the TEA form available online must be sent to the school district superintendent and to:

**Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701**

The Texas Education Agency (TEA) will send you a letter telling you the name of the hearing officer they have assigned to your case. The hearing officer will schedule the hearing for a date that is within a few weeks of the date TEA receives your complaint. For this reason, it is a good idea for you and your attorney to prepare your case before you request the hearing. However, this is not always possible. If you do not think you can be ready in time for the hearing, your attorney can request an extension of time from the hearing officer. The hearing officer will usually grant reasonable requests for extensions of time. The school district may also ask for an extension of time.

If you have additional questions about the due process hearing process, you can call TEA's Office of Legal Services at: 512-463-9720.

NEW: Resolution Meeting

This is another, and very important, requirement of IDEA 2004. Before conducting a due process hearing the school must convene a meeting with the parents and the relevant members of the ARD committee who have knowledge of the facts in the due process hearing complaint. The meeting must include a school representative who has decision-making authority and must be held within 15 days of receiving the complaint. The school may not bring an attorney to the meeting unless the parent is bringing an attorney.

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

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

Time and Place of the Hearing

After the completion of the Resolution meeting timeline (30 days after receiving the complaint), the hearing should immediately proceed at a time and place set by the hearing officer. If the hearing is set at a time that doesn't work for you, ask to have it changed. You or your attorney should immediately tell the hearing officer of the time conflict and your preferred time.

Decision of the Hearing Officer

At the end of the hearing, the hearing officer will usually work out an agreement with the two sides for a date on which a decision will be due. Usually the hearing officer will allow each side to submit a brief (that is, a written summary of the arguments and authorities for their case) before the decision is due. After the hearing and after all parties submit their briefs, the hearing officer will issue a written opinion deciding the dispute.

A hearing officer's decision of whether a student received FAPE must be based on substantive grounds. Substantive violations are those by which a school failed to provide special education and related services required under IDEA. A school's failure to meet the procedural requirements of IDEA, such as failing to provide appropriate notice or to have all of the required members at the ARD meeting, are not typically considered substantive violations. In rare cases, a hearing officer may find that procedural violations significantly impeded a student's ability to receive FAPE, significantly impeded the parents' opportunity to participate in an ARD meeting, or caused a deprivation of educational benefit to the student.

If you win, you may be entitled to recover attorney's fees. If a hearing officer determines an appropriate IEP would have provided services for which you have already paid, you can ask the hearing officer to order reimbursement for those expenses. Typical examples are extended school year (ESY) and related services (such as physical therapy). You should discuss these issues with your attorney.

New provisions in IDEA 2004 allow the hearing officer to require the parent or the parent's attorney to pay attorney's fees to the school district award if the parent's complaint was frivolous, unreasonable or without foundation and/or if the complaint was presented for an improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation.

Appeal to Court

If you or the school district do not agree with the hearing officer's final decision, either party may appeal to state or federal court. The appeal must be filed within 90 days from the date of the decision. If you do not already have an attorney, you will need one for the appeal.

Placement During Due Process Hearings and Court Appeals

If you choose to challenge the school's evaluation, program or placement in a due process hearing, the IDEA requires the student to remain in the current placement during the hearings and appeals. This is often referred to as the "stay put" provision of the law.

NEW: In discipline cases where a student has already been removed from the classroom for an interim period, the "stay put" provisions do not apply. You also may be entitled to an expedited hearing. (See section on discipline/behavior).

LETTER REQUESTING MEDIATION

(Be sure to keep a copy for yourself.)

Date

Texas Education Agency
Division of IDEA Coordination
1701 North Congress Avenue
Austin, Texas 78701

Dear Texas Education Agency:

I am the parent of (name of student), a student who receives special education. I am writing this letter to request TEA mediation of my dispute with the _____ Independent School District concerning the education of my child. It is my hope that mediation will resolve this disagreement so it will not be necessary for me to request an impartial due process hearing.

(Tell in this paragraph why you are requesting mediation. Briefly describe the facts and tell how and why you disagree with the school.)

Sincerely,

Your name (required)
Your address (required)
Your telephone number (required)
Your fax number (optional)
Your email address (optional)

cc: Superintendent of your school district (optional)

FORM 10

FORM

Due Process Complaint Letter

(Remember, you can use a form on TEA's website instead of writing your own letter to request a due process hearing. You must send your request to both the superintendent and TEA.)

Date

Name of Superintendent

____ ISD

School district mailing address

Dear Superintendent _____ and Texas Education Agency:

I wish to request a hearing before an impartial hearing officer in order to challenge the failure of the _____ Independent School District to provide an appropriate education program for my child (student's name and address), a student receiving special education at (name of school).

(Tell in this paragraph why you are requesting a hearing. It is important to tell all the reasons why you are requesting a hearing. Briefly describe the facts and, as specifically as possible, tell how and why you disagree with the school. Make sure you describe the problem as it relates to what the school wants or doesn't want to do).

I believe the problem can be resolved by (include ways you think the problem can be solved.)

Sincerely,

Your name

Your address

Your telephone number

Your fax number (optional)

Your email address (optional)

CC: Texas Education Agency

Office of Legal Services

1701 North Congress Avenue

Austin, Texas 78701

Texas Special Education Resources

State Agencies • Disability Organizations • Education Service Centers • Legal Assistance

State Agencies

Department of Aging and Disability Services (DADS)

701 W. 51st Street
Austin, Texas 78751
512-438-3011
www.dads.state.tx.us

Department of State Health Services (DSHS)

1100 West 49th Street
Austin, Texas 78756-3199
888-963-7111; 512-458-7111
www.dshs.state.tx.us

Department of Family and Protective Services (DFPS)

701 West 51st Street
Austin, Texas 78751
800-252-5400 (Hotline for Abuse of Children & Elderly or Disabled Adults)
www.dfps.state.tx.us

Health and Human Services Commission (HHSC)

4900 North Lamar Blvd.
Austin, Texas 78751-2316
512-424-6500 / TTY 512-424-6597
www.hhsc.state.tx.us

Texas Education Agency (TEA)

1701 North Congress Avenue
Austin, TX 78701
512-463-9734 main number
800-252-9668 Parent Information Line
(includes complaint management)
512-463-9414 Division of IDEA Coordination
www.tea.state.tx.us/special.ed

Department of Assistive and Rehabilitative Services (DARS)

4800 North Lamar Blvd., 3rd Floor
Austin, Texas 78756
512-377-0800
www.dars.state.tx.us

Texas Council for Developmental Disabilities (DD Council)

6201 East Oltorf, Suite 600
Austin, Texas 78741
800-262-0334; 512-437-5432 (voice)
512-437-5431 (TTY)
www.txddc.state.tx.us

Texas Disability Advocacy Organizations

ADAPT

1640A E. 2nd St., #100
Austin, Texas 78702-4412
512-442-0252
www.adapt.org

Advocacy, Inc.

7800 Shoal Creek Blvd., Suite 171-E
Austin, Texas 78757-1024
800-252-9108; 512-454-4816 (voice or TTY)
www.advocacyinc.org

Any Baby Can - Austin

512-454-3743
1-800-672-0238
www.abcaus.org

Any Baby Can - San Antonio

210-227-0170
www.anybabycansa.org

The Arc of Texas

8001 Centre Park Drive, Suite 100
Austin, TX 78754
800-252-9729; 512-454-6694
www.thearcoftexas.org

Attention Deficit Disorder Association (ADDA) of Texas Southern Region

12345 Jones Road, Suite 287-7
Houston, Texas 77070
281-897-0982
www.adda-sr.org

Autism Society of America

for listings of Texas chapters visit
www.autism-society.org

Texas Disability Advocacy Organizations, continued

Brain Injury Association of Texas

1339 Lamar Square Drive
Suite 103
Austin, Texas 78704
512) 326-1212; 800-392-0040
Fax: (512) 326-8088
www.biatx.org

Center on Disability and Development

Texas A&M University
Dept. of Educational Psychology
4225 Texas A&M University
College Station, TX 77842-4225
(979) 845-4612
<http://ucd.tamu.edu>

Texas Center for Disability Studies

The University of Texas
J.J. Pickle Research Campus
10100 Burnet Rd., Bldg. CMS #137
Austin, TX 78758
512-232-0740
<http://tcds.edb.utexas.edu>

Coalition of Texans with Disabilities (CTD)

316 West 12th Street, Room 405
Austin, Texas 78701
512-478-3366 (voice or TTY); 800-998-3363
www.cotwd.org

Deaf-Blind Multi-handicapped Association of Texas (DBMAT)

www.dbmat-tx.org

Family to Family Network

13150 FM 529, Suite 106
Houston, TX 77041
713-466-6304
www.familytofamilynetwork.org

Family Support Network

219 North Main Street, Suite 203
Bryan, TX 77803
979-845-4612
Fax: 979-845-5492

Mental Health Association in Texas (MHAT)

1210 San Antonio St., Ste. 200
Austin, Texas 78701
512-454-3706
www.mhatexas.org

Parents Supporting Parents Network of the Rio Grande Valley

601 North Texas Blvd.
Weslaco, Texas 78596
888-857-8688; 956-447-8408
www.pspofrgv.org

Partners Resource Network, Inc.

Partners Resource Network's federally funded parent training and information centers are PATH, PEN, & TEAM
www.partnerstx.org

PATH Project

1090 Longfellow Dr., Suite B
Beaumont TX 77706-4819
800-866-4726 (Texas Parents only)
409-898-4684
www.partnerstx.org/projects/path/path.htm

PEN Project

1001 Main St. Suite 804
Lubbock, TX. 79401
Phone 806-762 -1434
Toll Free 877 -762-1435
www.partnerstx.org/projects/pen/pen.htm

TEAM Project

3311 Richmond Avenue, Suite 334
Houston, Texas 77098
713-524-2147
Toll Free 877-832-8945
www.partnerstx.org/projects/team/team.htm

Learning Disabilities Association of Texas

1011 West 31st Street
Austin, Texas 78705
800-604-7500; 512-458-8234
www.ldat.org

National Alliance for the Mentally III (NAMI Texas)

611 South Congress, Suite 430
Austin, TX 78704
800-633-3760; 512-693-2000
www.namitexas.org

Special Kids, Inc. (SKI)

Serves Houston Independent School Districts:
South, South Central & Central
P.O. Box 266958
Houston, TX 77207-6958
713-734-5355 Office
www.specialkidsinc.org

Texas Disability Advocacy Organizations, continued

Texas Autism Advocacy
www.texasautismadvocacy.org

Texas Parent to Parent
 3710 Cedar Street, Box 12
 Austin, TX 78705
 512-458-8600; 800-896-6001
www.txp2p.org

United Cerebral Palsy of Texas (UCP/TX)
 1016 La Posada, Suite 145
 Austin, Texas 78752
 800-798-1492; 512-472-8696
www.ucptexas.org

Uniting Parents
 301 S. Polk, Suite 740
 Amarillo, TX 79101
 806-337-1700
 888-892-2273
www.cohs.net/up.htm

Regional Education Service Centers

Texas has 20 Education Service Centers (ESCs) which serve school districts and parents within defined boundaries. Their job is to provide training and technical assistance to districts and parents in a variety of areas, including special education.

Several ESCs provide statewide technical assistance on specific areas regarding the education of students with disabilities. All ESC web sites can be accessed through the TEA site (www.tea.state.tx.us).

Region 1 ESC
 1900 West Schunior
 Edinburg, Texas 78541-2234
 956-984--6000

Region 6 ESC
 3332 Montgomery Road
 Huntsville, Texas 77340-6499
 936-435-8400

Region 11 ESC
 3001 North Freeway
 Fort Worth, TX 76106-6596
 817-740-3600

Region 2 ESC
 209 North Water Street
 Corpus Christi, Texas 78401-2599
 361-561-8400

Region 7 ESC
 1909 N. Longview Street
 Kilgore, TX 75662-6827
 903-988-6700

Region 12 ESC
 2101 West Loop 340
 Waco, TX 76702-3409
 254-297-1212

Region 3 ESC
 1905 Leary Lane
 Victoria, Texas 77901-2899
 361-573-0731

Region 8 ESC
 2230 North Edwards
 Mt. Pleasant, TX 75455
 903-572-8551

Region 13 ESC
 5701 Springdale Road
 Austin, TX 78723-3675
 512-919-5313

Region 4 ESC
 7145 West Tidwell
 Houston, Texas 77092-2096
 713-462-7708

Region 9 ESC
 301 Loop 11
 Wichita Falls, TX 76306-3799
 940-322-6928

Region 14 ESC
 1850 Highway 351
 Abilene, TX 79601-4750
 325-675-8600

Region 5 ESC
 2295 Delaware Street
 Beaumont, Texas 77703-4299
 409-838-5555

Region 10 ESC
 400 East Spring Valley Road
 Richardson, TX 75083-1300
 972-348-1700

Region 15 ESC
 612 South Irene
 San Angelo, TX 76903
 325-658-6571

Regional Education Service Centers, continued

Region 16 ESC

5800 Bell Street
Amarillo, TX 79109-6230
806-677-5000

Region 18 ESC

2811 LaForce Blvd.
Midland, TX 79711-0580
432-563-2380

Region 20 ESC

1314 Hines Avenue
San Antonio, TX 78208-1899
210-370-5200

Region 17 ESC

1111 West Loop 289
Lubbock, TX 79416-5029
806-792-4000

Region 19 ESC

6611 Boeing Drive
El Paso, TX 79925
915-780-1919

Legal Assistance

County Bar Associations

These are organizations of lawyers in major counties. Several county bar associations have a lawyer referral service which can refer parents to lawyers who specialize in education or child-related cases. See the yellow pages of your phone book. If your county does not have an association, contact the Lawyer Referral Service of the State Bar of Texas.

Lawyer Referral Service
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
1-800-252-9690 or
<http://www.texas.bar.com>
(Select Lawyer Referral under Quick Links)

They will refer you to a lawyer near you who handles special education cases. A small fee (@\$20) is charged for a half-hour consultation. Lawyers who speak languages in addition to English are available.

Legal Aid or Legal Services

Look for a Legal Aid or Legal Services office in your area in your local telephone directory, or contact the Texas Legal Services Center to see if your county is served.

Texas Legal Services Center
<http://www.tlsc.org>
815 Brazos, Suite 1100
Austin, Texas 78701
1-800-622-2520

There are currently three Legal Aid regional offices that have lawyers who take some special education cases for families who meet their income requirements. They are:

Legal Aid of Northwest Texas
<http://www.lanwt.org>
1-888-529-5277

Lone Star Legal Aid
<http://www.lonestarlegal.org>
Serves East Texas.

Texas Rio Grande Legal Aid
<http://www.trla.org>
1-888-988-9996

Additional Legal Resources

The Council of Parent Attorneys and Advocates, www.copaa.org, and the Texas Organization of Parents, Attorneys and Advocates, www.topaa.org, both have listings for Texas attorneys and advocates.

ADVOCACY, INC.

The mission of Advocacy, Inc. is to advocate for, protect and advance the legal, human and service rights of people with disabilities.

Main Office:

7800 Shoal Creek Boulevard, Suite 171-E
Austin, Texas 78757-1024
(512) 454-4816 (Voice/TTY)
Fax: (512) 323-0902
Intake: (800) 252-9108 (Voice/TTY)

Advocacy, Inc. also maintains regional and satellite offices around the state. To find information about the regional office closest to you, go to: www.advocacyinc.org or call the nearest office.

Central Texas Region

1-512-454-4816
1-800-315-3876

East Texas Region

1-713-974-7691
1-800-880-0821

North Texas Region

1-214-630-0916
1-800-880-2884

West Texas Region

1-806-765-7794
1-800-880-4456

South Texas Region

1-210-737-0499
1-800-880-8401

El Paso Region

1-915-542-0585
1-800-948-1825

The Arc of Texas

The Arc of Texas is committed to creating opportunities for people with intellectual and developmental disabilities to be included in their communities and to make the choices which affect their lives.

Main Office

8001 Centre Park Dr
Austin Texas 78731
1-800-252-9729
512-454-6694
512-454-4956 (fax)
www.thearcoftexas.org

The Arc of Texas has local affiliates located around the state. To find information about the local affiliate closest to you, go to: www.thearcoftexas.org Some of the local affiliate offices are listed below:

The Arc of the Capital Area

512-476-7044
www.arcofthecapitalarea.org

The Arc of Dallas

214-634-9810
www.arcdallas.org

The Arc of Denton County

972-436-8471
www.arcofdentoncounty.org

The Arc of Fort Bend

281-494-5959
www.arcoffortbend.org

The Arc of Greater Houston

713-957-1600
www.thearcofgreaterhouston.com

The Arc of Greater Tarrant County

817-877-1474
www.arcgtx.org

The Arc of Gregg County

903-753-0723
www.arcofgreggco.org

The Arc of the Gulf Coast

281-388-1161
www.arcgc.org

The Arc of McLennon County

254-756-7491
www.wacoarc.org

The Arc of Midland (MARC)

432-498-8590
www.arcmidlandtx.org

The Arc of San Antonio

210-490-4300
www.arc-sa.org

The Arc of Smith County

903-597-0995
www.arcofsmithcounty.org

The Arc of Wichita County

940-692-2303
thearc@arcwctx.org