



# PARENTS CAN BE THE KEY

"This book gave me the answers I needed to help my child."

**PACER CENTER**   
CHAMPIONS FOR CHILDREN WITH DISABILITIES®  
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# PARENTS CAN BE THE KEY

A Handbook on  
Rights and Responsibilities in Special Education  
for Parents of Children with Disabilities

**Eleventh Edition**



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# INTRODUCTION

As a parent, you know your child in a way no one else does. You are an expert on your child and a vital member of the team that plans your child's education. As a parent, you can be the key to an appropriate education for your child.

You have important information to share about your child's educational planning, and you can take action to make changes when they are needed. To be an effective

advocate, you must know your rights and those of your child. Exercising these rights and fulfilling your responsibilities are important steps in supporting your child on their educational journey.

This book offers an overview of special education in Minnesota. For further information or individual assistance, contact PACER at (952) 838-9000.

\*The term *parent* refers to parents, surrogate parents, legal guardians, and sometimes foster parents. When the parents are separated or divorced, it means the parent who has the legal right, by court decree or agreement, to determine the student's education, even though the student may be living with the other parent. In some situations, both parents maintain legal rights.

# SPECIAL EDUCATION SERVICES

## **What is the purpose of special education?**

The U.S. Congress passed the first law guaranteeing the rights of children with disabilities to a free, appropriate education program in 1975. This law, now called the Individuals with Disabilities Education Act (IDEA), provides children with disabilities opportunities to achieve at higher levels and to prepare for postsecondary education, quality employment, and independent living. The most recent amendments to the law in 2004 were written to improve services to

children and strengthen the involvement of their parents in education planning.

Children who receive special education and related services are entitled to a free appropriate public education (FAPE). This includes opportunities to participate in the school's general education curriculum and to make progress toward meeting annual goals. Children who receive special education must also have opportunities to take part in other typical school activities that are appropriate to their individual needs.

# If a disability interferes with learning, a child may be eligible for special education services.

## What disabilities are covered under IDEA?

The disabilities or special needs that are described in Minnesota special education law include:

- Autism spectrum disorders (ASD)
- Deaf-blind
- Deaf and hard of hearing
- Developmental cognitive disability
- Emotional or behavioral disorders
- Physically impaired
- Severely multiply impaired
- Specific learning disability
- Speech or language impairments
- Traumatic brain injury (TBI)
- Visually impaired
- Other health disabilities

Children may have disabilities that are not visible or obvious, such as attention deficit hyperactivity disorder (ADHD) or depression. If a disability interferes with learning, a child may be eligible for special education services.

The term *developmental delay* is used for children ages birth to three. In Minnesota, local school districts may also use this disability category for children ages three to seven. If a local district or co-operative chooses to do so, it must use both the definition and the age range defined by the state. In districts that choose not to use the expanded definition of developmental delay, children over three have to meet the criteria for one of the disability areas in order to receive services.

## At what age may a child receive special education services?

In Minnesota, schools are required to serve eligible children from birth until July 1 after the child becomes 21 years old or the completion of high school, whichever comes first.

## What are special education and related services?

Under IDEA, *special education* means “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability.” It can be provided in the classroom, home, hospital or institution, or other setting, and includes instruction in physical education. These services are provided by licensed personnel and include special teaching materials and techniques. Special education services may also require special equipment or facilities.

*Related services* means “transportation and such developmental, corrective, or other support services... as may



be required to assist a child with a disability to benefit from special education.” Related services include: “speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services... counseling services, including rehabilitation counseling, orientation and mobility services, and medical services... for diagnostic and evaluation purposes only.”

In Minnesota, special education and related services may include direct or indirect services.

*Direct services* are those delivered directly to the student by a special education teacher or a related-services professional.

*Indirect services* are provided by special education staff to regular education teachers, parents, or others who have direct contact with the student. Indirect services include consultations; ongoing progress reviews; cooperative planning, consultation, demonstration teaching, modification and adaptation of the environment, curriculum, materials, or equipment; and monitoring, observing, and reviewing the student’s progress.

## **How do I start the process?**

Under a process known as child find, school districts have a legal obligation to identify, locate, and evaluate all children with disabilities who live within the district’s boundaries and need special education and related services. The

school district is also responsible for child find and providing services to children with disabilities who attend a private school within the district’s boundaries.

When a child is suspected of having a disability and needing special education and related services because of the disability, a referral for evaluation should be made.

A *referral* is a request to have a child evaluated. A referral can come from school personnel, a community agency professional, or the child’s parents. Parents should make their request for evaluation in writing to their building principal. They should also send a copy to the district special education director and keep a copy for their own records.

The district should respond to the parent’s request either by agreeing to evaluate the child or, if they refuse to evaluate the child, by advising the parents of the processes to resolve disagreements (see pages 20-25).

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# EVALUATION

Evaluation involves gathering information to determine whether a child has a disability and using the results to decide on any special education and related services the child needs. The evaluation is done at no cost to parents. Because your child's education program is based on the evaluation results, it is important to be sure the evaluation is accurate and complete. Evaluation should identify the things your child does well in addition to those that are challenging.

People often think of tests when they hear the word *evaluation*. Special education evaluation involves more than tests, however. Professionals may

observe your child, administer tests, and use other procedures such as interviews to assess your child's:

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

An evaluation must assess your child in all areas of suspected disability. It will identify all needs, even those not commonly linked to your child's disability category. Tests are an important part of an evaluation, but your information is also important. The evaluation process will also include:

- Observations by staff who have worked with your child
- Medical history when it affects school performance
- Parental input on the child's school experiences, abilities, behaviors in other settings, and feelings about school

All tests must be given to your child individually in your child's primary language. They must not be discriminatory based on disability, race, or culture. Evaluations must be completed by qualified professionals, and a child may not be found to qualify or not qualify for special education and related services based on just one test. You will be given a copy of the completed evaluation summary report, including how eligibility was determined.

## **What is transition evaluation?**

For children who receive special education services in Minnesota, the process of transition to adulthood begins during the ninth grade. Children must be evaluated in the areas of postsecondary education and training, employment, and independent living skills to determine what skills the child needs to work on to prepare for life beyond high school.

Transition evaluation results must be included as part of the evaluation summary report.

Transition evaluation tools may include surveys or interviews to help your son or daughter determine strengths, interests, and needs. Your child will be asked what they want to do after high school. Career or vocational interest surveys, ability assessments, and information from work or volunteer experiences are part of the transition planning process.

For these students, complete evaluation results will be considered along with the information in the three transition planning areas. This information will be used to build an individualized education program (IEP) that also addresses transition needs to help prepare the child for life after high school.

## **Will there be any ongoing evaluation?**

Yes. Children who are eligible for special education must be reevaluated at least once every three years, more often if necessary.

In addition, if you have new information about your child or are concerned that needs are not being met, you may ask for a reevaluation. Ongoing measures can help show whether your child is making appropriate progress.

## **What is functional behavioral assessment?**

When a child has behavior problems that do not respond to standard interventions,

# Transition evaluation tools may include surveys or interviews to help your son or daughter determine strengths, interests, and needs.

a functional behavioral assessment can help the team understand *why* a child behaves in certain ways and plan more effective interventions.

A typical functional behavioral assessment includes the following:

- Clear description of the problem behavior
- Observations of the child at different times and in different settings. These observations should record:
  - (1) What was happening in the environment before the behavior occurred,
  - (2) What the actual behavior was, and
  - (3) What the student achieved as a result of the behavior.
- Positive intervention strategies to teach behavior skills

Once the functional behavior assessment has been completed, the results may be used to write a behavior intervention plan or to develop behavior goals for the individualized education program.

Parents or school staff may request a functional behavioral assessment as part of a child's evaluation or reevaluation. This kind of assessment is required in Minnesota when a child who receives special education is removed from their educational program for five consecutive or 10 total days.

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

If you disagree with the school's evaluation results in writing, you may request an independent educational evaluation (IEE) of your child. An IEE is conducted by qualified people not employed by the school. When you request an IEE, the school has two choices:

1. Provide an independent educational evaluation at no cost to you, or
2. Initiate a due process hearing to show that its evaluation is appropriate.

# If you have new information about your child or are concerned that needs are not being met, you may ask for a reevaluation.

## **How can parents play a role in the evaluation process?**

- You may request an evaluation if you think your child needs special education.
- You must be invited to help plan the evaluation.
- You are part of the evaluation team and should share what you know about your child.
- An initial evaluation may not begin without your written permission.
- You have the right to refuse permission to have your child evaluated. You must agree or disagree in writing with the school's request to evaluate your child.
- You must be invited to discuss the evaluation results and your child's eligibility and needs.
- You should ask to receive a draft of the evaluation summary report before the meeting to discuss the results. If you have not received a draft, you may want to take the evaluation results home and read them after the meeting.

# INDIVIDUALIZED EDUCATION PROGRAMS (IEP)

The individualized education program (IEP) is a written plan that describes the educational program and services designed to meet your child's specific needs. It is developed by a team, including parent(s), at an IEP meeting. The components of the IEP are based on the present levels of academic and functional performance, which are summary statements of your child's functioning in assessed areas.

Every child who receives special education and related services must have an IEP. The child's parent(s) must be invited to help develop the IEP and must be given a copy when it is completed. In addition, the IEP must:

- Be implemented as soon as possible after the IEP development meeting.
- Be accessible to the teachers and others who are responsible for putting the program into action.
- Remain in effect at the beginning of each school year.
- Be reviewed periodically to determine whether the annual goals are being achieved.
- Be revised if progress is not being made on goals or in the general curriculum or if there is new information about the child.

Because every child is unique, each IEP should be, too. Your child's IEP must be based on their assessed needs and tailored to fit your child.

For a child ages birth to three, an individualized family service plan (IFSP) is used instead of an IEP. An IFSP requires that the team look at the concerns, priorities, and resources of the family as they relate to the child's development. Because the IFSP is an interagency document, representatives from education, health, human services, and other agencies may be involved in developing the plan. The agency responsible for providing each service is determined, and that agency signs the document for the particular service and assumes financial responsibility.

For more information on the IFSP, you may request PACER's booklet, "Families Are Important."

## **Who is included in the IEP meeting?**

Schools must ensure that the IEP team for each child with a disability includes:

- The child's parent(s)
- The child's regular education teacher (if the child participates in regular education)
- The child's special education teacher
- A representative of the school district who is qualified to provide or supervise special education services and is knowledgeable about the general curriculum and the resources available

**Because every child is unique, each IEP should be too.**

- Someone who can explain, based on the evaluation, what kind of instruction the child will need and how they should be taught (this may be one of the above people)
- Others, at the discretion of parents or school staff, who have knowledge or expertise regarding the child, including related services staff
- Someone who understands the cultural needs of the student
- The child, when appropriate (parents may include their child of any age)

The school district must invite the child to the IEP meeting if transition to adulthood needs or services will be discussed. If the child does not attend, the school must ensure that their preferences and interests are considered.

Schools must invite representatives of any other agencies that are likely to pay for or provide transition to adulthood services. If an agency does not send a representative, the district must take other steps to obtain its participation.



Anyone else important to your child's education may attend. By law, parents or school personnel may invite "other individuals who have expertise about the child." The inviting party determines if the invited person has expertise.

## **What factors must be considered in developing an IEP?**

When developing an IEP, the team must consider:

- The child's strengths and the parents' concerns for their child's education
- The results of the initial or most recent evaluation
- The academic, developmental, and functional needs of the child

The IEP team must also consider special factors:

- The team must consider the child's communication needs
- For a child whose behavior interferes with learning, the team must consider strategies to address the behavior, including positive behavior interventions and supports
- For a child with limited English proficiency, the team must consider the child's language needs

- For a child who is deaf or hard of hearing, the team must consider the child's language and communication needs, opportunities to communicate with others in the child's language or communication mode, the child's academic level and need for direct instruction in the child's language and communication mode
- For a child who is blind or visually impaired, the IEP team must provide for instruction in Braille and the use of Braille, unless the IEP team determines it is not appropriate for the child
- The team must consider the child's needs for assistive technology (AT) devices

## What must be included in an IEP?

The IEP for each child must include the following:

1. Descriptions of the child's present levels of academic and functional performance and how the child's disability affects involvement and progress in the general education curriculum.
2. Measurable annual goals including benchmarks or short-term objectives (see box on pg.15) for:
  - Meeting the child's needs that result from the disability, so the child can participate and make progress in the general education curriculum, and
  - Meeting each of the child's other educational needs that result from the disability.
3. A statement of the special education and related services and the supplementary aids and services to be provided to the child, and a statement of the program modifications and supports for school personnel.
4. A description of special education and related services and other supports so that the child can advance toward annual goals, progress in the general curriculum, participate in extracurricular and nonacademic activities, and be educated and participate with children who do and do not have disabilities.
5. A statement describing the extent that the child will not participate with children in regular education classes or extracurricular activities.
6. Any modifications or accommodations needed for the child to participate in statewide and districtwide assessments, or a statement of why the child cannot participate in regular assessment and what alternate assessment will be used if the team determines that a child cannot participate in the standard assessments. Children with disabilities must participate in general statewide and districtwide assessment programs, with appropriate accommodations and modifications. For those who cannot, alternate assessments must be used.
7. The date that services and modifications begin, including their frequency, location, and duration.
8. A description of how progress toward annual goals will be measured, how parents will be regularly informed of the child's progress, and whether it is sufficient to meet the goals. Parents must be informed of their child's progress at least as often as parents of children who do not have disabilities are informed about their children's progress.

**Goals** are statements that describe what a child is expected to accomplish within an IEP year.

**Objectives** are the specific measurable steps to achieve the goal.

**Benchmarks** establish a performance level for the child to achieve during a specified time period.

**9.** For students who are in ninth grade or older, the IEP must address the student's transition to adulthood service needs. (Transition to adulthood services may be provided earlier if the team decides the child needs them.)

**10.** At least one year before the student turns 18, the IEP must include a statement that both the parents and the student have been informed that parental rights will transfer from the parents to the student at age 18, unless a legal guardian has been appointed. Both the parents and the student will continue to receive special education notices after the transfer of rights occurs.

### **What placement options does my child have?**

All students with disabilities must receive special education services in the *least restrictive environment* (LRE). This means that your child must be educated with children who do not have disabilities, to the maximum extent appropriate. Schools must apply this concept when planning services or programs for children with disabilities.

To be sure children with disabilities receive services with the fewest restrictions possible, a variety of settings or placements must be available. The school must provide an appropriate program, even if that means developing or creating new services.

Special education and related services for children ages birth to three may be provided in the child's home, childcare setting, or other places where infants and toddlers without disabilities are typically found, such as in Early Childhood Family Education (ECFE) programs. The setting must be appropriate to meet the needs of the child and family. Once the child turns three, services may be provided in the school district's center-based or community-based programs such as Head Start or ECFE. Services must be available in integrated settings, and children must have opportunities to interact with peers who do not have disabilities, if appropriate.

Special education for school-aged children may be provided in many settings: in the regular education classroom, the resource room, a separate special education classroom, a community setting, a separate school, or in the home or hospital.

# The school must provide an appropriate program even if it means developing or creating new services.

## How can parents contribute to IEP planning meetings?

You must be invited to the IEP planning meeting, which will be held at a time agreeable to both you and the school staff. This meeting is very important. You, the school staff, and anyone else attending the meeting will review and discuss information about your child to plan the IEP.

## IEP planning meeting checklist

### Before the meeting:

- ☐ Review your child's evaluation data and records. Make a list of questions you want to ask.
- ☐ Make a note about information you want to contribute at the meeting, such as your child's strengths or the goals you would like your child to work on.
- ☐ Involve your child in their IEP. Talk with them about their feelings about school. Determine what your child's involvement will be in the IEP process, depending on your child's age and specific circumstances.
- ☐ Take a relative, a friend, another parent, or an advocate to the IEP planning meeting with you. If you feel your child needs an ethnic, cultural, or disability representative on the team, you may bring someone you choose to talk about the child's needs.
- ☐ If transition to adulthood will be discussed at the IEP meeting, be sure to talk to your child about their interests, needs, and skills before attending.
- ☐ Consider visiting the classroom before the meeting to observe how your child is doing.

**At the meeting:**

- ☐ Your role is to contribute ideas and information to the planning process. Share your short- and long-term visions for your child. Discuss your child's strengths and needs and your concerns about your child's education. Expect that what you know about your child will be used in making decisions.
- ☐ You have the right to ask a qualified staff person to explain evaluation data and records and to have your questions answered.
- ☐ Be a good listener. Ask questions.
- ☐ Make sure you understand. If you do not understand something, ask to have it explained in a way that you can understand.
- ☐ Use school data, your child's progress reports, and other information you know about your child to make decisions.
- ☐ Take the proposed IEP document home to review or ask that a copy be sent to you. You probably will not want to agree to a proposed IEP at the end of the meeting. You have 14 calendar days from the time the school sends you the written IEP to agree or disagree with the program in writing and return it to the school.

**After the meeting:**

- ☐ Carefully read the IEP and be sure that everything the team discussed and agreed to is listed.
- ☐ Use PACER Center's parent homework sheet as a tool to understand the evaluation summary results and the IEP.
- ☐ Along with the IEP, the school will give you a prior written notice form which will explain what the school is proposing or refusing to do in this IEP. (See page 20 for more detailed description of prior written notice.)
- ☐ You must have the opportunity to agree or disagree in writing with the IEP. If this is your child's first IEP, you must give your written consent before the program can begin. If this is not the first IEP, the school may start the program if you do not disagree in writing within 14 calendar days from the time you were sent the IEP.

- ❑ If you notify the school in writing that you disagree with the IEP, you are asking for a conciliation conference, mediation, or facilitated team meeting to try to resolve the differences. If you do not believe mediation or conciliation will be helpful, you may go directly to a hearing. If you are unable to resolve the difference in a conciliation conference or mediation, you can request a hearing. PACER Center recommends you try to work out your disagreement, if appropriate, with a facilitated team meeting.

**Remember: developing a good IEP is a team effort!**

### **To evaluate the IEP, ask yourself the following questions:**

- Are my child's goals measurable?
- Does my child participate in the general curriculum all or part of the day?  
*If not*, ask how your child will be taught the general curriculum.
- Does the IEP list the modifications, accommodations, and other supports my child needs to make progress in the general curriculum and toward IEP goals?
- Do the school staff and I agree on the amount of progress my child should make in one year?
- How often will I be notified of my child's progress on the IEP goals and how will I be notified?
- Is the IEP understandable and can it be used by staff as a basis for teaching?
- Will the transition to adulthood goals and objectives in the IEP help my child reach their desired adult outcomes?

# PROCEDURAL SAFEGUARDS AND MINNESOTA DISPUTE RESOLUTION OPTIONS

## Procedural safeguards

*"At my last IEP meeting, my child's IEP Case Manager handed me a long document and said, 'These are your procedural safeguards.' What does that mean?"*

Procedural safeguards are the ground rules for the special education process. They are an explanation in writing of your legal rights and protections in the Individuals with Disabilities Education Act (IDEA) and in Minnesota state special education laws. The school district must give you a copy of the procedural safeguards at least once every school year; this often happens at your child's Annual IEP Review meeting. Under IDEA, the school district is required to give you the document:

- When your child is initially referred for a special education evaluation, or when you request an evaluation
- The first time you file a special education complaint in a school year
- The first time you file a due process complaint in a school year
- On the day a decision is made to change the placement of your child due to a violation of a code of student conduct
- Any time you request a copy

Minnesota parents will find an explanation of these important legal rights and protections in the procedural safeguards:

- Independent educational evaluations
- Prior written notice
- Parental consent
- Access to education records
- Conciliation, mediation, and facilitated team meetings
- The opportunity to present and resolve complaints through special education complaints, and due process complaint procedures
- Student placement while awaiting the resolution of a due process complaint
- Procedures for students subject to placement in an interim alternative educational setting
- Requirements for unilateral placement by parents in private schools at public expense
- Hearings on due process complaints
- Appeals to the state court
- Civil actions
- Attorney fees

The school district must provide you the procedural safeguards in understandable language. Even so, this document can be overwhelming. If you need help in understanding your procedural rights, it is important to contact your school district special education director, the Minnesota Department of Education, or a PACER parent advocate.

## **Prior written notice**

One of the most important procedural safeguards for parents in the special education process is the prior written notice, a written explanation of an action which the school district is either proposing or refusing to carry out that will have an impact on your child's education.

The Individuals with Disabilities Education Act (IDEA) requires the school district to give you a prior written notice when proposing or refusing to initiate or change your child's identification, evaluation, or educational placement or the provision of a free appropriate public education to your child. Under IDEA, the prior written notice must include the following important information:

1. A description of the action proposed or refused by the school district
2. An explanation of why the school district is proposing or refusing to take the action
3. A description of each evaluation procedure, assessment, record, or report the school district used as a basis for the proposed or refused action
4. A description of other options that were considered and the reasons why those options were rejected
5. A description of other factors relevant to the school district proposal or refusal

Finally, the prior written notice must state that you have protection under the procedural safeguards in IDEA, tell you where you can get a copy of your procedural safeguards, and provide you



with contact information for agencies where you can get help to understand what the prior written notice means.

The prior written notice unlocks your dispute resolution rights because it gives you the opportunity to object. When you receive a prior written notice from the school district proposing or refusing an action related your child's evaluation, identification, placement, or services, you have the right to object in writing, the opportunity to request a conciliation conference or another dispute resolution procedure, and the right to information about all your dispute resolution options. Except in the case of the school district proposing an initial evaluation or initial placement and provision of services, you must object in writing within 14 calendar days of the date the prior written notice was sent to you.

## Minnesota dispute resolution options

*In Minnesota, parents have dispute resolution options that give you and the school district the opportunity to **work together to make decisions** about how your dispute is resolved. They include conciliation conferences, facilitated team meetings, and mediation.*

### Conciliation conference

The conciliation conference process is unique to Minnesota. It is the lowest level dispute resolution option, so it leaves a lot of other options open if you are not able to fully resolve your disagreement with the school district at your conciliation conference.

If you receive a prior written notice from the school district and you disagree with the action being proposed or refused, you can use the enclosed response form to document in writing that you object and are requesting a conciliation conference. You are not required to use the school district form to object, but you are required to object in writing. Requesting a conciliation conference in writing is the clearest way to document this request. Unless the school district is proposing an initial evaluation or initial placement and provision of services, you must object in writing within 14 calendar days of the date the prior written notice was sent to you.

It is important to note that an alternative to requesting a conciliation conference to resolve your objections to a prior written notice is requesting a meeting with appropriate members of the IEP team. You would follow the same process described above to request it.

A conciliation conference does not require the entire IEP team to meet. Usually, the school district staff who attend will include a higher level of administrative staff such as the director of special education or one of their coordinators or supervisors, because the school district needs someone in the meeting with knowledge of school district resources and the authority to make decisions that will help resolve the disagreement.

You can invite someone to your conciliation conference to support your advocacy for your child, such as a PACER parent advocate you have consulted with prior to the meeting, a friend or family member, or an outside professional who

works with your child and has a strong understanding of their needs.

Statements made at a conciliation conference cannot be used at a due process hearing. Of all the dispute resolution options, the timelines for a conciliation conference move the fastest. The school district must hold your conciliation conference within 10 calendar days from the date they receive your request in writing. The school district must provide you with a conciliation conference memorandum that describes the school district's final proposed offer of service and any proposed IEP resulting from the conciliation conference within five school days after the final conciliation conference.

## **Facilitated team meeting**

The facilitated team meeting process is the only dispute resolution option that requires the entire IEP team to meet. If you and the school district cannot reach agreement about how to write an appropriate IEP for your child and you need the assistance of a neutral, third party to move forward, you may request a facilitated team meeting. The school district can also request a facilitated team meeting.

A facilitated team meeting is a voluntary process for parents and the school district and only happens if both parties agree to participate. Either you or the school district can complete a Request for Facilitated Team Meeting form and send it to the Minnesota Department of Education (MDE) by email, fax, or regular mail.

If both parties agree to a facilitated team meeting, participants will include the entire IEP team and an impartial facilitator assigned by MDE. You may also invite a PACER parent advocate you have consulted with prior to the meeting. The role of the facilitator is to help maintain open and respectful communication among team members, offer ways to address and resolve conflicts that may arise, and keep the focus on your child's needs.

A facilitated team meeting is held as soon as possible after MDE receives a completed request form from both the school district and the parents, usually within three weeks. The meeting itself is much longer than a typical IEP meeting. MDE requires that the entire IEP team reserve four hours to meet. The goal at a facilitated team meeting is to reach agreements so that an appropriate IEP can be developed for your child. Following this meeting, the school district will send you a prior written notice and a new IEP proposal.

## **Mediation**

If you and the school district are struggling to resolve a disagreement and you are stuck without any way to move forward, you may need the assistance of a neutral third party to clearly communicate concerns, find common ground, and explore possible solutions. In these situations, mediation can be a productive dispute resolution process that either you or the school district can request.

Mediation is a voluntary process for parents and the school district, and

only happens if both parties agree to participate. Either you or the school district can complete a Request for Mediation form and send it to the Minnesota Department of Education (MDE) by email, fax, or regular mail.

If both parties agree to mediation, participants will include you, a school district representative with decision-making authority, educators who have direct experience with your child and knowledge of their current programs and services, and an impartial mediator assigned by MDE. You may also invite a PACER parent advocate you have consulted with prior to the meeting.

The role of the mediator is to support a constructive, forward-looking conversation about the issues related to the disagreement and lead a problem-solving session to find an acceptable resolution for both parties. Mediators are neutral – they are not judges. Mediation is about compromise, with the expectation that you and the school district will meet somewhere in the middle.

Mediation is held in a timely manner, usually within 3 weeks of MDE receiving a completed request form from both the school district and the parents. This meeting is also long, taking an average of five to six hours. MDE requires that all participants to reserve the entire day to meet.

If agreement is reached, a legally binding Mediated Agreement will be signed by the school district's authorized representative and the parent. The terms of a Mediated Agreement will include

**A mediator works to help find a solution agreeable to both sides.**

how the issues will be resolved, who is responsible for implementing the terms, and a timeline for implementation.

*Parents in Minnesota also have dispute resolution options where you and the school district **do not make the final decision** about how your dispute is resolved. They include special education complaint, due process complaint and request for hearing, and discrimination complaint.*

## **Special education complaint**

If you are concerned that the school district did not follow or is not following federal or state special education laws, regulations, or rules, you may consider filing a special education complaint against the school district. Any person can file a special education complaint. Also, any person can file a special education complaint against the school district based on a system-wide concern that is affecting more than one child receiving special education services.

## If either the school or the parents disagree with the decision of the review officer, they may appeal through the court system.

To file, you can complete a Special Education Complaint Form and send it to the Minnesota Department of Education (MDE) by email, fax, or regular mail.

The alleged violations that are the basis of your special education complaint must have occurred within one year of the date that MDE receives your complaint. The decision maker in this complaint process is the MDE Division of Assistance and Compliance. With limited exceptions, within 60 calendar days after MDE receives your complaint, the MDE complaint investigator assigned to your complaint will send a final decision to you and the school district.

If no violation is found, the file is closed. If the school district is found in violation of special education law, MDE may develop a corrective action plan to resolve the problem, and this will be included in the decision. If either you or the school district disagrees with the MDE decision, you both have the right to appeal it to the Minnesota Court of Appeals within 60 calendar days.

### **Due process complaint and request for hearing**

The highest level dispute resolution option you have in the special education process is filing a due process complaint and request for hearing.

If you have a dispute with the school district over the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE) to your child and you want to seek a court process for resolving your dispute, you can file a due process complaint and request for hearing.

If you have a dispute with the school district over a manifestation determination or a discipline-related decision affecting your child's placement, you can file an expedited due process complaint and request for hearing. The school district can also file a due process complaint and request for hearing.

To file, either you or the school district can complete a Due Process Complaint and Request for Hearing form and send it to the Minnesota Department of Education (MDE) by email, fax, or regular mail.

Of all the dispute resolution options, the timelines involved in a due process complaint and request for hearing are the longest and the process itself is the most complex. While you are not required to retain an attorney to file a due process complaint, the school district usually has legal representation, and if your due process complaint does go to a hearing, an Administrative Law Judge from the Office of Administrative Hearings trained in federal and state

special education law will preside over the hearing. It is recommended that parents consider consulting with an attorney if you are thinking about filing a due process complaint. MDE publishes a list of free or low-cost legal resources for parents, available on the same page as the request form.

A due process complaint and request for hearing must be filed within two years of the date the parent or school district knew or should have known about the alleged action that forms the basis of the complaint. A decision may be issued within 75 calendar days from the date a due process complaint is filed, but this time frame is often extended for good cause.

A request for hearing related to an expedited due process complaint moves faster. An expedited due process hearing must be held within 20 school days from the date an expedited due process complaint is filed, and a decision must be issued within 10 school days after the hearing. The time frames for expedited due process complaints cannot be extended.

If you file a due process complaint, the school district must arrange for a resolution meeting with you and other members of your child's IEP team who have knowledge of the facts alleged in your complaint within 15 days of receiving notice of your complaint. You and the school district can also agree in writing to participate in mediation instead of a resolution meeting. If your due process complaint is not resolved within 30 days, then the timelines for a due process hearing will begin.

If your due process complaint does go to a hearing, the decision maker is the Administrative Law Judge who presides over the hearing, and their decision is legally binding. Both you and the school district have the right to appeal the judge's decision to the Minnesota Court of Appeals within 60 calendar days or to federal district court within 90 calendar days.

The burden of proof in any due process hearing is on the party who requested the proceeding. In other words, if a due process complaint that you filed results in a hearing, then you are obligated to prove your case to the judge. If a due process complaint filed by the school district results in a hearing, then the school district is obligated to prove its case to the judge.

## **Discrimination complaint**

A discrimination complaint is very different from any of the other dispute resolution options described above because it is a claim that your child's civil rights have been violated. Your child's civil rights are protected not by the federal Individuals with Disabilities Education Act (IDEA) or by Minnesota state special education laws, but by federal and state civil rights laws, including:

- The Minnesota Human Rights Act
- The Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990

If you are concerned that your child has experienced discrimination based on belonging to any protected class, you can file a discrimination complaint. Examples of protected classes are disability, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, age, sexual orientation, or familial status.

Disability is defined very differently in civil rights law compared to IDEA and in Minnesota state special education laws. For example, the Minnesota Human Rights Act defines disability in this way:

*'Disability' means any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.*

2021 Minnesota Statutes, Chapter 363A.03, Subd. 12

The Minnesota Department of Education has no authority to investigate discrimination complaints. You can file a discrimination complaint with your school district, the Minnesota Department of Human Rights, or the U.S. Department of Education, Office for Civil Rights.

Your child's school is required to publish the district policies that protect students from discrimination. If you cannot find your school district's nondiscrimination policy and discrimination complaint procedures on the website, contact the superintendent's office directly to request them in writing, including

information about which school district staff person should receive your complaint and how you can reach out to that person with questions you may have about the process.

The Minnesota Department of Human Rights (MDHR) is the civil rights enforcement agency for the state, charged with enforcing the Minnesota Human Rights Act. Filing a complaint with MDHR is not the same as filing a lawsuit. You do not need to have legal representation to file a complaint. You can speak with an intake specialist by calling the MDHR Discrimination Helpline at 1-833-454-0148. A flowchart of the MDHR civil rights investigation process is available at the Minnesota Department of Human Rights website.

The U.S. Department of Education, Office for Civil Rights (OCR) is a federal agency that enforces several federal civil rights laws, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990. The mission of OCR is ensuring equal access to education through vigorous enforcement of the civil rights of every student in the United States. Detailed information about how to file a discrimination complaint with the OCR, along with contact information, is available at the U.S. Department of Education website.

## **Questions?**

**You can always talk to a PACER parent advocate for support to help you understand the procedural safeguards and consider any of the dispute resolution options described in this publication:**

**(952) 838-9000**

**[pacer@pacer.org](mailto:pacer@pacer.org)**

**You can also contact someone from the Minnesota Department of Education Assistance and Compliance team.**

**(651) 582-8689**

**[mde.assistance-compliance@state.mn.us](mailto:mde.assistance-compliance@state.mn.us)**

# ADDITIONAL QUESTIONS

## **What are my child's rights and mine as a parent?**

- If your child is eligible for special education services, your child is entitled to a free appropriate public education (FAPE) that meets their unique educational needs.
- You may review all of your child's educational records, have them explained by a qualified professional, and obtain copies. Only parents and those directly involved in your child's education have access to these records.
- School staff must communicate with you in a language you can understand about any special education and related services and meetings to discuss special education for your child. Schools must provide you translation or interpretation from appropriate and competent individuals who have knowledge in English, and in your language, of any specialized terms or concepts to be used in these communications.
- Children with a known or suspected disability must be represented by a surrogate parent in the special education process if the child's parent is unknown or unavailable, the child is a ward of the State, the child is an unaccompanied homeless youth, or the child's parent requests in writing that the school district appoint a surrogate parent.
- Your child has the right to be educated with children who do not have disabilities to the maximum extent appropriate. This is called the least restrictive environment, and as an IEP team member you have input into determining what it looks like for your child.
- Any tests and evaluation materials used to assess your child must be selected and administered in a way that is not discriminatory on a racial or cultural basis. They must also be provided and administered in your child's native language or other mode of communication, and in the form most likely to yield accurate information about what your child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.
- You have the right to help make decisions about your child's education and to help develop your child's individualized education program (IEP), multi-agency team, or individualized family service plan (IFSP).
- You may use conciliation, facilitated team meeting, mediation, special education complaint, or a due process complaint and request for hearing to resolve disputes you have with the school district in the special education process that cannot be resolved through the IEP process.



- You have the right to seek reimbursement of your attorney's fees if you prevail in a special education dispute in a due process hearing.

## **How to be an effective advocate for your child**

- Know your rights.
- Date and save all notes, report cards, IEPs, and notices from the school regarding your child's education and progress.
- Make notes on telephone conversations and meetings. Summarize conversations and include the name of the person you spoke to and the date. Request that any decisions be put in writing, so you have a copy for your file.
- Write down questions you want to ask or information you want to share before you attend meetings.
- Put all requests in writing and keep copies of all correspondence.
- Mark important dates such as IEP meetings, dates when certain actions should be taken, and reminders to follow up on your calendar. If you cannot attend a meeting on a proposed date, be sure to inform your child's case manager so a new date may be determined.
- Ask your child for information and include the child in meetings whenever possible. Help your child to become a self-advocate.
- Learn more about your child's disability and services needed.
- Meet other parents of children with disabilities.
- If there isn't an active parent group in your area, organize one.
- Contact people who can be advocates for your child.
- Know how your child is doing on statewide and districtwide assessments.
- Educate yourself about the Pupil Fair Dismissal Act.
- Review materials from PACER's website.

## **Tips for good communication between parents and schools**

- Keep in touch with your child's teachers through periodic telephone calls, notes, or personal visits. Share your ideas with the teachers about what your child does well or learns best. Ask questions about anything you don't understand.
- Express your feelings about your child's education. Let staff know when you think they are doing a good job. When things are not going smoothly, try to ask questions and decide upon positive solutions.
- Attend all meetings on your child's education. Take notes and be an active, interested parent.
- Be a good listener. Encourage the staff to keep you informed about your child's progress, relationships with other children, and any problems or concerns they may have. Listen to their professional opinions about your child. Remember school personnel can also be good advocates for your child!
- When differences of opinion arise, talk about them. Look for ways to reach a solution, keeping your child's needs uppermost in your mind.
- Help your child develop a positive attitude toward school.



## ABOUT PACER CENTER

PACER's mission is to enhance the quality of life and expand opportunities for children, youth, and young adults with all disabilities and their families so each person can reach their highest potential. Through more than 30 programs, PACER provides information, training, and support to families of children with all disabilities and the professionals who work with them.



## PARENTS CAN BE THE KEY

is an informative book that helps parents navigate the special education system and help their children receive services.

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