

WHAT EVERY PARENT SHOULD KNOW ABOUT THEIR CHILD'S BASIC RIGHTS IN SPECIAL EDUCATION

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I. INTRODUCTION

This outline is designed to provide parents and guardians with a basic overview of their rights in special education matters. This information should not be construed as specific legal advice regarding your child's circumstances. You should consult with an attorney for specific legal advice concerning your child.

a. IDEA

This federal law was first enacted by Congress in 1975, with an effective date commencing with the 1977 school year. The law ensures that the rights of children with disabilities between the ages of three (3) and twenty-one (21), who require special education and related services, are protected and that each child receives a *free appropriate public education* (FAPE). This law is generally administered by local school districts through PPT meetings, and can be enforced through informal CRP Complaints filed with the State Department of Education and formal requests for Mediation or Due Process hearings and litigation in state or federal court.

b. Section 504

This federal law was first enacted during 1973 and it provides civil rights protections, prohibits discrimination based on mental or physical disability and requires reasonable accommodations and/or modifications for children with disabilities who attend public or private schools that receive federal financial assistance. Children who have Section 504 Plans often do not require special education and related services. The provisions of this federal law are administered through 504 Plan meetings with the school and parents, enforcement through informal complaints filed with the school district's Section 504 Coordinator, formal complaints filed with the U.S. Department of Education's Regional OCR office in Boston, or through litigation in federal court. The ADA was amended in 2008 and the definition of disability and scope of accommodations or modifications under Section 504 were revised by statute on 1/1/10 with implementing regulations promulgated by the U.S. DOJ effective 3/15/11.

c. IDEA Improvement Act of 2004

(P.L. 108-146)—This is the latest reauthorization of the IDEA enacted by Congress that was signed by the President during December, 2004 and its provisions took effect on July 1, 2005. Regulations to implement this federal statute were promulgated by the U.S. Department of Education and finalized with an effective date of October 13, 2006. This latest revision to the IDEA has changed several provisions including the purpose of special education, revising some of the evaluation procedures, changing the IEP format, changing the CRP Complaint procedures, revising some of the procedural safeguards, and aligning parts of the IDEA with some of the NCLB provisions.

d. State Law

Connecticut has its own statutes and regulations that provide for special education and procedures for Due Process hearings. Many provisions of state law have been harmonized with the IDEA, however, there are some differences and both laws should be reviewed.

NOTE: The State Department of Education is in the process of revising state special education regulations.

e. Birth to Three

The IDEA—Part C contains a provision for services for children from birth to age three, if there is a need for services. Services are provided pursuant to an IFSP. Approximately six months before reaching age three, the process to transition the child from the Birth to Three Program to a local school district commences with a determination of eligibility for special education and related services and the development of an IEP. The State Department of Developmental Services (formerly the Department of Mental Retardation) administers the Birth to Three Program.

NOTE: The U.S. Department of Education has issued revised federal regulations effective October 28, 2011.

f. Special Education

The purpose of special education is to protect the rights of *children with disabilities and their parents* to ensure that such children have FAPE available to them, which will meet their unique needs, and prepare them for further education, employment, and if necessary, independent living.

g. IEP

The *individual education plan* or IEP is basically an educational blueprint developed by the PPT members, including parents, in order to address the child's unique needs. The IEP is supposed to be designed to remediate the parents' concerns for enhancing their child's education and needs listed in the IEP, and includes special education instruction, related services, assistive technology devices or services (if required), accommodations and modifications, as well as annual goals and short-term objectives to be achieved. If the program and services are not fully described in the IEP, including the PPT recommendations page and/or PPT summary page, then ask the school district to place that information in the IEP before the PPT meeting has been adjourned.

If there is a disagreement at the PPT meeting, then ask that any such disagreement be recorded on the PPT recommendation page, PPT summary page, and/or the Prior Written Notice page, before the PPT meeting is adjourned. If you receive a copy of an IEP that contains inaccurate or incomplete information, then you should write a letter (or e-mail) to the school and request that the IEP be revised to include the information in your letter or that a copy of your letter is placed in your child's educational record as an addendum to the IEP.

h. FAPE

A PPT meeting that includes the parents, is supposed to develop the student's IEP that will provide appropriate special education services in a program that will meet the child's unique needs and provide the student with a *free appropriate public education (FAPE)*. In order to provide FAPE, the IEP must be based upon the student's unique needs and be reasonably calculated to confer meaningful educational benefit upon the child. The Courts have construed the FAPE requirement to provide special education and related services that are appropriate and not necessarily the best possible program for the child. If the child has not been making *at least* trivial and meaningful progress on the IEP goals and objectives, then the IEP is not providing FAPE.

i. LRE

This acronym is the least restrictive environment. Parents may hear about other terms, including mainstreaming, inclusion, or inclusive education. These terms, however, are not in the law. Instead, the law creates a presumption that every child in special education will be placed in the LRE, that is, the student will be educated alongside children without disabilities in regular education classes to the maximum extent appropriate. Children with disabilities are not to be removed from their regular education classrooms unless it can be shown that even with the provisions of supplemental aides and services, the child cannot receive FAPE. The school district is required to maintain a continuum of alternative placements such as resource rooms, self-contained classrooms, other public school settings, and private special education placements.

II. ELIGIBILITY

- a. Special education and related services are provided to *children with disabilities* who are determined to be in need of such services and can benefit from specialized instruction in order to receive FAPE.
- b. A referral to a PPT by the parents or school district commences the process of determining a child's eligibility for special education.
- c. Parents can be proactive and request a referral to a PPT in order to determine eligibility, if they have concerns with their child's academic performance, organizational skills, social skills, or any other concern that is adversely affecting the child's educational performance.
- d. Parents are an important source of referral information regarding their child including any issues affecting health, medical history, social, developmental, and/or academic performance.
- e. State regulations require a prompt referral to a PPT if the child has been suspended repeatedly or if the child's behavior, attendance, or progress is considered unsatisfactory or at a marginal level of acceptance.
- f. Once a PPT meeting has been convened, the PPT, including parents, will review any relevant referral information; discuss parental concerns, and discuss the need for any formal evaluations in order to determine if the student is eligible for special education as a *child with a disability*.

- g. The school district must obtain permission from the parent or guardian in order to commence the initial evaluation of the child's suspected disability and to determine if there is any *adverse impact* upon the child's educational performance.
- h. If the parents do not consent to the school district's request for permission to evaluate the child's suspected needs in order to determine eligibility, then the school district is no longer obligated to initiate a Due Process hearing against the parents in an effort to override the parents' refusal to provide consent for an evaluation and there is no obligation to provide special education services.
- i. The parents can request a Due Process hearing to contest the PPT's denial of eligibility. It is advisable to confer with an attorney to assess the merits of the case before submitting a request for a Due Process hearing.

III. EVALUATIONS

- a. Generally, the school district will request an opportunity to first evaluate the child's suspected disability. However, there may be circumstances that the PPT will utilize an evaluation obtained by the parents in advance of the PPT referral. The school district has sixty (60) days from the date of the referral or the parents' consent to complete its evaluation.
- b. The school district's evaluation is supposed to be free of racial and cultural bias, administered in the child's native language, designed to measure the extent that the child has a disability and may require special education. The school is supposed to use a variety of assessment tools to assess relevant functional and developmental information concerning the child.
- c. Effective July 1, 2005, the IDEA no longer requires the use of the severe discrepancy formula between achievement and cognitive ability previously utilized by local school districts as the sole criteria in order to determine the existence of a learning disability. Instead, local school districts can utilize other methods such as *scientific, research-based intervention as part of the evaluation procedures*. The State Department of Education has convened a task force that issued recommendations for RTI during 2008. That publication is now available on the Department's website. The use of RTI or SRBI cannot be used to delay or deny a parent's request for an evaluation. RTI is not special education but is part of regular education and it does not constitute an evaluation.
- d. Tests selected for the evaluation are supposed to be standardized; validated for the purpose that the test is being used; administered by trained personnel; and the test should accurately reflect the child's aptitude and achievement, rather than measure the manifestation of the child's impairment or disability.
- e. No single test or evaluation can be relied upon in order to determine whether or not a student is a *child with a disability*.
- f. A PPT meeting will be convened within sixty (60) days to review the results of the school district's evaluation and any other information in order to determine if the student is a *child with a disability*, whether there is a need for additional evaluative data, and whether or not the student requires special education and related services. Students are to be re-evaluated at three year intervals unless the PPT decides to schedule an evaluation sooner. Parents are supposed to receive a complete copy of the school district's evaluation.
- g. If the parents disagree with the results of the school's evaluation, they have the right to request an independent evaluation (IEE) at public expense.
- h. The school district can suggest the names of independent evaluators. However, the parents are not obligated to use the evaluators suggested by the school. However, parents should obtain from the school the standards or qualifications for outside evaluations, in order to ensure that their evaluator meets or exceeds the standards set by the school district.
- i. The school district is required to pay for the costs of the independent evaluation, unless the school district initiates a Due Process hearing in order to defend the appropriateness of its evaluation. Often this process can proceed smoothly if both the parents and school district can mutually agree on the selection of an independent evaluator.
- j. A PPT is supposed to reconvene and review the results of any independent evaluation and if necessary, revise the IEP.

IV. RECORDS

- a. Parents are entitled to a complete set of their child's educational records.
- b. Parents can request that educational records be amended if there are errors or omissions in the records. If the school district refuses to amend the records, the parents can either:
 - 1) Request a hearing to amend the records
 - OR
 - 2) Send a letter to the school district with the amended information and request that the letter be placed in their child's educational records.
- c. It is advisable to maintain a written record of any requests submitted to the school district and their response. If necessary, keep a diary or calendar to record the dates of conversations or significant events or meetings. If you send a note, e-mail, or letter, you should be certain to retain a copy for your personal records.

V. PLACEMENTS

As stated in Section I (i), children who receive special education services are supposed to be placed in the LRE. In addition to providing placements in regular education classrooms, school districts are also required to maintain a continuum of alternative educational placements that could include resource rooms, alternative settings, or out of district day or residential special education programs that will meet the student's needs. The PPT, including the parents, is supposed to decide which placement will be appropriate for the student's needs based upon the IEP's goals, objectives, and services.

VI. SECTION 504

- a. A student may have a disability but may not be eligible or require special education and related services. In that situation you could request a *Section 504 Plan* meeting in order to determine if the student requires a reasonable accommodations or modification to a school program, policy or procedure in order to receive a free appropriate public education (FAPE) as defined under Section 504.
- b. The *Section 504 Plan* meeting is supposed to identify the student's disability, establish that the disability has an adverse impact upon the major life activity of learning, and develop a plan of reasonable accommodations and/or modifications. The FAPE requirement that is available under Section 504 is different than the FAPE that is available under the IDEA especially since there are not any benchmarks in the Section 504 Plan to measure progress and the procedures to enforce Section 504 rights are different than the present IDEA procedures.
- c. The school district is required to provide a parent with information about rights and services available under Section 504, including notice of procedural safeguards.
NOTE: The regulations have been revised to expand the definition of disability and the scope of accommodations and modifications based upon 2008 amendments to the ADA and regulations that were effective on March 15, 2011.

VII. COMMON MYTHS OR STEREOTYPES

- a. **Having an attorney present at the PPT automatically elevates the meeting to an adversarial relationship.**
Often parents do not want an attorney at a PPT meeting because they do not want to create an adversarial relationship with the school district. Some parents believe that they need to first use the services of an advocate because it is less adversarial and less expensive before they retain an attorney. PPT meetings are legal proceedings where a record is being developed and formal decisions about a child are being made by the team. The outcome of a PPT meeting can often be a turning point in determining if there is a need for further legal proceedings such as submitting a request for Mediation or a Due Process hearing. Advocates can serve an important role for parents. However, if your child is not receiving FAPE and you and/or an advocate have presented that concern without achieving a successful resolution, then it may be time to consult an attorney. Having a knowledgeable attorney available to you during a PPT does not automatically elevate the meeting into an adversarial proceeding. Instead, an attorney can serve an extremely useful purpose by articulating your concerns, advocating your legal position, developing the record of the PPT meeting both during and if necessary after the meeting, and advising you about your rights and available legal options. School districts are consulting their attorneys about you and your child's circumstances and often will bring an attorney to a PPT meeting even if you do not.
NOTE: It is advisable to consult with an attorney before requesting Mediation or a Due Process hearing.

- b. **“What could you possibly know; do you have a degree in education or psychology?”**
Parents are experts on their child and the child’s needs. You see your child’s schoolwork, as well as their homework. For example, if homework is supposed to provide the student with an opportunity to reinforce what was taught in school, then he or she should be capable of doing their homework with little or no supervision on the part of the parents. If that is not occurring, then you do have relevant expertise and experience to share with the PPT. Further, a PPT is required to consider the concerns of the parents for enhancing the education of their child when developing the child’s IEP. Therefore, parents should not be afraid to share their expertise, experiences, and concerns at the PPT meeting.
- c. **“Mommy don’t worry, everything will be okay.”**
If your knowledge or instincts about your child indicate to you that everything is not okay, then you should act on those concerns. If it does not feel right, then trust those feelings as a parent. Many times an informal meeting with a teacher will be sufficient to address your concerns. Often a formal PPT meeting is required to make substantive revisions to the child’s IEP or to arrange for evaluations. Parents spend more time with their child each week than a teacher does and parents also see their child in a variety of settings, home, school, and community and can determine if skills learned in school are generalized to other settings.
- d. **“We cannot do anything to address your concerns until your child is at least two grade levels behind.”**
There is no requirement that your child actually is two grade levels behind his or her peers before a school can intercede. If you are seeing a measurable impact upon your child’s educational performance in the areas of reading, math, spelling, organization, or social skills or development, there is no requirement that you wait until things get worse before attempts are made to make things better or address the parents’ concerns. In addition, there is no requirement that your child has to complete RTI before there is a referral to special education.
- e. **“It’s developmental; your child will grow out of it.”**
In some cases, a child’s academic and other skills will take a little longer to develop when contrasted to his or her peers. In other cases, waiting for the child to “grow out of it” will not be an appropriate response. The IDEA has a separate category of eligibility for ‘developmental delays’ for children age between ages three (3) through nine (9) or age five (5) in Connecticut. This category allows a PPT to establish eligibility if the PPT establishes physical, adaptive, cognitive, communication, social or emotional delays based upon appropriate diagnostic instruments and procedures established by the State. Talk to the school and other qualified professionals including the child’s pediatrician, about your child’s development and your concerns. In addition, there is no requirement that your child has to complete RTI before there is a referral to special education.

VIII. PARENT ADVOCACY

- a. Parents have to be an advocate for their child on a daily basis. If the parent is not ensuring that the IEP is being implemented each day, then who will take on that responsibility? Do not delay if you have concerns. Request an informal meeting with the teacher or members of the team. If your concerns are not adequately addressed, then request a formal PPT meeting.
- b. In preparing for any PPT meeting, knowledge is important. If you have concerns based upon your child’s schoolwork or homework, then bring examples of that work to the PPT meeting in order to illustrate your concerns. You should be certain that you understand the technical terms that are used during any meeting, including information contained in progress and evaluation reports.
- c. **PPT meetings are the official meetings to discuss your concerns** as parents and to request evaluations, revisions to the IEP, or other changes to the educational program, including placement. The 2004 revisions to the IDEA now allow the parents and the school to revise an IEP without a formal PPT meeting provided there is a written agreement. Informal meetings, e-mails, or telephone calls alone, do not constitute a PPT meeting.
- d. **Parents are equal participants and members of the PPT.** If you feel intimidated by going to a PPT meeting alone, bring a spouse, trusted friend or family member. In addition to adding to your comfort level, that person could be asked by you to take personal notes while you are talking. Sometimes a parent may prefer to tape record a PPT meeting if they have to attend the meeting alone. The PPT is required to take into account parental concerns in the development of a child’s IEP and submitting a written outline of your concerns during the PPT meeting is one method to ensure that the record of that meeting includes your concerns and requests for enhancing your child’s education.

- e. **The PPT is supposed to provide a copy of your procedural safeguards in advance of the PPT meeting or at the beginning of that meeting.** Read the procedural safeguards and be certain that you understand your rights and those rights of your child. If you received the last copy of your procedural safeguards prior to July 1, 2011, be certain to have the latest version in hand, since some of those procedural safeguards have been changed effective July 1, 2011 and the new booklet is much easier to read than the old pamphlet.
- f. **The student's rights vest at age eighteen.** At least one year before your child reaches age eighteen (18), he or she will receive notice that upon reaching age eighteen (18), the student will have the right to make educational decision. Since the age of majority is eighteen (18), the student will have the legal right to make his or her own decision about the special education program. The student can authorize his or her parents to continue in their decision making role with a written authorization, power of attorney, or by other means.
NOTE: It may be advisable to consult an attorney about a power of attorney or Probate Court decrees that may enable a parent to make decisions after the student turns 18.

IX. TRANSITION SERVICES

The student's IEP is required to have a transition plan upon reaching age sixteen (16) in order to commence the process to transition to student life after high school. The student's IEP is required to have a transition plan that will facilitate the student's movement to post secondary activities including post secondary education, vocational education, employment, independent living, community participation and referrals to adult service agencies. The transition plan is supposed to be based upon the student's interests and preferences. If the student will require the assistance of adult service provider agencies such as DDS, BRS, or DMHAS, then appropriate linkages with those agencies should be established by the school district. If the student has issues with employment and independent living, then the student's IEP is supposed to contain an array of services that will promote the student's progress towards employment and independent living. If the student will pursue further education after high school, then the IEP is supposed to assist the student in achieving that objective.

Upon graduation or completion of public school, the school district will prepare a *summary of performance* which will record the student's accomplishments, issues, and goals after high school.

X. ROLE OF AN ATTORNEY

- a. Attorneys who are experienced in special education and related matters can assist, advise and represent parents in PPT meeting, Mediation, Due Process hearing, negotiations, and in judicial proceedings. There is no hard and fast rule when to call an attorney. If you have attempted to resolve a concern through the PPT process and you are not making any progress with the PPT, then you may decide that is the point in time to arrange for a consultation to see if you have a case that requires an attorney to assist you at a PPT meeting and/or to evaluate the merits of the case in order to determine if it is ready for either Mediation or a Due Process hearing.
- b. Generally, it is advisable to consult with an attorney before you file a request for Mediation or a Due Process hearing. The filing of a request for Mediation or hearing will trigger short timelines to commence and complete either of these proceedings. These legal proceedings can be complex and an attorney who is knowledgeable about special education matters can best advise you if your case has sufficient merit to proceed to Mediation or a Due Process hearing.
- c. An attorney can review your child's records and determine if the school district has complied with the IDEA's procedural safeguards; whether the substantive provisions of the IEP have conferred FAPE upon your child; whether there is a need for additional evaluative data; and/or whether the parents should proceed to another PPT meeting, request Mediation, or file for a Due Process hearing or pursue another option.
- d. A Due Process hearing is basically an administrative trial where the parent has the burden of proving that the IEP in dispute would not confer FAPE. The school district also has burdens of proof such as proving that the IEP was appropriate. In addition, there may be other issues for the hearing such as procedural violations; reimbursement for outside evaluations, professional services, related services costs, private tuition costs, transportation costs, and other educational expenditures. The Hearing Officer will issue a final written decision after the close of the evidence and the submission of any oral or written legal arguments. Given the reluctance of the federal courts to reverse the decision of a Hearing Officer and defer to the administrative proceedings, it is vitally important to present your case to the Hearing Officer in a manner that will increase the likelihood of receiving a favorable outcome.

- e. Mediation is another option that is available to resolve disputes following a PPT meeting. If both the parents and school district agree, the State Department of Education will appoint an impartial mediator who will attempt to work with both parties and negotiate a resolution of the issue(s) in dispute. For example, if the parents have requested reimbursement of certain expenditures, and both parties are willing to consider a compromise, then the Mediator will assist the parties to negotiate a binding settlement agreement.
- f. The 2004 revisions to the IDEA now require both parties to meet either at Mediation or a Prehearing Resolution Meeting prior to the commencement of the Due Process hearing in one final effort to resolve the dispute in advance of the formal hearing.
- g. If the parents are the prevailing party in the Due Process hearing, their legal fees for the hearing may be reimbursed retroactive to the date of their Due Process hearing request. Fees for expert witnesses are no longer reimbursable. There are new IDEA provisions authorizing a school district to seek reimbursement of its legal fees if it prevails in the Due Process hearing, provided that it has proved that the parents had initiated their Due Process hearing request in bad faith or for the purpose of harassing the school district or for some other improper purpose. The federal court, not Hearing Officers, has the authority to award legal fees depending upon the circumstances of each case.

XI. RESOURCES

- a. U. S. Department of Education Office of Special Education Programs (OSEP) for IDEA matters. www.ed.gov
- b. U.S. Department of Education Regional Office for Civil Rights (OCR) for Section 504 matters.
Regional OCR Office: www.OCR_Boston@ed.gov
- c. State Department of Education Bureau of Special Education, P.O. Box 2219, Hartford, CT 06145-2219, 1-860-713-6910. www.ct.gov
- d. Connecticut Parent Advocacy Center: www.cpacinc.org
- e. Connecticut Birth to Three Program: www.birth23.org.
- f. State Agencies: BESB, BRS, CDHI, DCF, DDS (formerly DMR), DMHAS.
- g. Private attorneys, advocates, educational consultants.
- h. Pediatricians, Physicians, Hospitals in your community, clinical psychologists, child guidance centers, other health care providers.
- i. Parent or Disability Rights Organizations such as:
Connecticut Association for Children and Adults with Learning Disabilities, www.caclld.org
Learning Disability Association of CT, www.ldact.org
CT Autism Spectrum Resource Center www.ct-asrc.org
CT Down Syndrome Congress, www.ctdownsyndrome.org
Special Education Resource Center, (SERC), www.ctserc.org, etc.
Some communities have established a Special education PTA or SEPTA
For information on SEPTA contact: www.ctpta.org/membership/septa/

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