

EDUCATION RIGHTS FOR STUDENTS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

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Relevant Federal Laws

- **Individuals with Disabilities Education Act(IDEA)**

The federal education law which governs special education – States that receive federal funding must comply – New Jersey’s law provide more favorable rights than the IDEA. (Information at www.ed.gov.)

- **Section 504 of the Rehabilitation Act**

Entities that accept federal funds can’t discriminate against students with disabilities. Applies to disabilities that affect learning. Reasonable supports and accommodations.

- **Americans with Disabilities Act**

Like 504 but no federal funding limit. Applies to access issues: buildings, aides, assistive technology, modify tests, etc.

Relevant New Jersey Administrative Codes

Special Education: N.J.A.C. 6A:14 (discipline at 14-2.8)

Records: N.J.A.C. 6A:32-7.1

Home Instruction: N.J.A.C. 6A:16-10.1

Psychiatric Clearance: N.J.A.C. 6A:16-5.1

Discipline and Attendance: N.J.A.C. 6A:16-7

HIB: N.J.A.C. 6A:16-7.7 ; defined at N.J.A.C. 6A:16-1.3

Intervention and Referral Services: N.J.A.C. 6A:16-8.1

Graduation Requirements: N.J.A.C. 6A:8-5.1

Controversies and Disputes: N.J.A.C. 6A:3-1.1

Who is Responsible in the School District?

- Special education: Case Manager, Dir. of Special Ed., County Supervisor of Child Study.
- Intervention and Referral Services: could be principal, guidance counselor or child study team.
- 504 Plan: coordinator could be principal, guidance counselor or child study team.
- Discipline: vice principal, principal, superintendent, bd. of ed.
- HIB: coordinator could be principal/guidance counselor or child study team/ supervisor at Bd of Ed., county for appeals
- Homeless liaison: Could be supervisor special services/pupil services – appeal to county superintendent's office

The IEP process – the Timeline

- Parent or other person who knows child makes a written request for child study team evaluations to the child study team (CST).
- An identification (I.D.) meeting is held within 20 days of the written request.
- The child is evaluated and the CST meets with the parent within 90 days from I.D. meeting to hold IEP eligibility and development meeting and implement an IEP.

Evaluation Requirements

- At I.D. meeting, if it is agreed that evaluations are needed, the parent must sign consents to evaluations in order for them to be conducted.
- At least 2 evaluations in suspected disability, but usually an educational, psychological and social work.
- Appropriate standardized tests must be used.
- A functional assessment of academic and/or behavior (based upon observations in school).
- Parents can request other evaluations, if needed, that child study team does not recommend.

Evaluation Rights

- A child's IEP must be based upon scientific objective evaluation instruments, teacher observations and parent input.
- Evaluations must be conducted by qualified professionals in a language and method likely to get accurate results.
- Evaluation reports should clearly explain evaluator's opinions.
 - An evaluation report must establish the existence of a disabling condition and explain how the disability affects the student's ability to learn in school and make recommendations.

Evaluation Rights

- Parent can request independent evaluations if there is a disagreement with the school's evaluation – once every 3 years – must include in request all independent evaluations requested and should state the reason why.
 - School district must comply or file for DP within 20 days.
- Student must be re-evaluated every 3 years.
- Student must be re-evaluated when exiting pre-school.

The Eligibility Meeting

- At least 10 days before an eligibility meeting, parents must receive copies of written evaluation reports.
- Parents can disagree with evaluations if they believe that they are invalid or not accurate.
- Parents can offer their evaluations which then must be considered in developing an education plan.
- The eligibility meeting will determine whether an IEP is warranted.
- Parents should invite participants with direct knowledge of child's needs (must give prior written notice).
- Right to translated notices, interpreters and to record meeting (must give prior written notice).

The IEP Components

- Signed participant page
- Cover page that lists eligibility category, placement, date of last IEP meeting, current beginning and end date of IEP.
- Present levels of academic achievement and functional performance: evaluation and dates, summary of parent and teacher input.
 - evaluation summaries
- Annual Goals with detailed and measurable goals
- Program, Related Services, Supplementary services: ex aide
- Modifications
- Extended School Year, progress reporting, transition

Related Services Available Through an IEP

- Counseling
- Occupational
- Physical Therapy
- Speech-Language Services
- School Nurse Services
- Transportation
- Assistive Technology
- Recreation
- Social Work Services

Other Related Services

- Medical Services
- Behavioral Services
- Transportation
- Extended School Year
- Aide - individual or shared
- Other therapies that support child's education

Behaviors Impacted by Disability

- Education plan should provide services to address behaviors which affect learning or life skills.
- School should pay for psychiatric and/or neurological evals and conduct functional behavioral assessment to create plan.
- Plans must clearly explain the triggers, targeted behavior and the positive supports -(negative consequences are permitted but plan should not be punitive).

IEP Implementation Issues

- Is the student getting all the services and making progress?
- Do all the teachers, aide, principal know what modifications/ supports the student is entitled to?
- Are the staff qualified who are assigned to implement the IEP?
- Are missed related services being made up?
- Is IEP being implemented through home instruction when school prevents student from attending school or for chronic health issues (following approved physician's note only)?
- Has IEP team met to consider modifications and conduct other needed evaluations prior to the annual review due to an IEP that is not working?

Positive Interventions

- Behavior interventions should be individualized and based on staff input, parent input and if applicable: up to date school evaluations, and/or a student's treating physician's report.
- Examples: counseling, modified schedule, frequent praise, rewards that motivate the student, breaks.
- Frequent short term suspensions require a review of and possible changes to the IEP.

What is School Refusal?

- A child who refuses to go to school on a regular basis or has problems staying in school due to an emotional or psychological difficulty
- Can occur for a variety of reasons:
 - Avoidance or Escape (i.e.. fear of failure in school, fear another student)
 - Perceived need to stay home (i.e. concern something will happen to a parent)
 - Other stressful life events (i.e. changing schools or homes)
- Not a formal psychiatric diagnosis, but school refusal is often associated with or the result of a recognized psychiatric disorder
 - Ex. Generalized Anxiety, Depression, Social Phobia

Features of School Refusal

- Students will often exhibit extreme emotional distress and have accompanying physical symptoms like headaches and stomachaches.
- Child is likely to express a willingness to do schoolwork or academic work at home.
- Child typically does not attempt to conceal his or her problems with school.

Best Practice with School Refusal

- Request a comprehensive evaluation from a mental health professional to reveal the reasons behind school refusal.
- School must create a BIP or an IEP to address school refusal or modify an existing BIP/IEP to include a school refusal plan.
 - This plan should include a list of evaluations that have been or will be conducted, goals related to increasing school attendance, and counseling services.
- Talk with the school about excepting student from attendance policy for discipline and promotion.
- School plan should include alternative ways for student to complete and pass required classes.

Psychiatric Clearance

- Conflict between compelling interest in school safety and order v. student's education rights.
- Advocate should ask is clearance request rationally related to incident/ is it arbitrary, capricious or unreasonable?
- School must have written policy.
- School may require clearance from physician.
- Psychiatric clearance may be required for verbal threat or statement of self harm or harm to others.
- Bergen County Children's Inter-Agency Coordinating Council (CIACC) has established best practices in joint effort by Bergen County Mental Health and School Districts.

Psychiatric Clearance Issues

- Should classified student be returned to school pending evaluation?
- Emergency room clearance – is it valid?
- Psychiatric Clearance letter at district's expense should be provided within short time.
- Parent may pay for psychiatrist of its choosing.
- If classified student is out for more than 10 days is manifestation determination required?
- If Student is also suspended – was that appropriate?

Education Advocacy Requires Parental Written Consent

- Only a birth parent, or person acting like a parent (guardian, foster parent, or person appointed by the court) can sign a consent in school.
- A state agency representative is not a “parent”.
- If parental rights are not terminated and parent is available, and if access isn’t prevented by court order, birth parent must get notices, be invited to meetings and should give consent.
- If no parent is available - a surrogate must be appointed.
 - DCPD must notify school that surrogate is required
 - Family Ct. Judge can appoint (could be a CASA)
 - Best practice – someone connected to the child

Aside from Parent, who else Should help plan an IEP/504?

- Youth's caretaker/ another guardian
- Youth/ family social worker
- Family support worker
- Youth's therapist/ physician
- School teachers, principal, school staff
- For children involved with DCPP: law guardian, DCPP caseworker, CMO worker, CASA
- As much as appropriate: the Youth

Tips for Asserting Rights in School

- Date and sign letters written to school.
- Keep copies of all letters/ notices to and from the school.
- Challenging School actions or inactions:
 - ❖ Make sure parent has all relevant school records and necessary doctor reports.
 - ❖ Get legal information from an advocate.
 - ❖ If CST doesn't help, write to director of special education
 - ❖ Request intervention from County Supervisor of Child Study.
 - ❖ File for mediation/ due process as a last resort:
must file when seeking stay-put – to stay in last agreed upon IEP placement when school seeks to change placement

School Records Required for Advocacy

- Required school records other than discipline:
health, academic, attendance, special ed., 504, IR&S plans, identifying info: child's name, address, date of birth, parents' names and address.
- Attendance records
check tardies, cuts, early pick-ups and full day absences.
- Academic records:
grades, for high school: credit status, required course completion status, progress reports, sample classwork, quizzes and tests
- Discipline records:
suspensions, HIB, violent/dangerous conduct, video,
- Behavior records:
incident reports, detentions, write ups, behavior contracts, behavior plans, data collection for behavior goals

How to get School Records

- **Contact the principal in writing** to request academic, behavior and discipline records.
- The principal must **grant this request within 10 days or prior to any hearing.**
- **Fees:** The school may charge reasonable fee for copying. If parent **cannot afford fee, the copies must be free.**
- Special education records are available from the case manager and must be provided within a reasonable time and prior to a meeting.

Due Process, Mediation, Complaint Investigations

- Parent may file for due process, mediation or a complaint investigation for the following reasons:
 - denial of evaluations
 - denial of eligibility
 - denial of FAPE
 - failure to implement
 - inappropriate placement
 - stay put- remain in current placement during appeal/ must file to challenge high school graduation prior to graduation