

# Special Education Rights

A Handbook for  
Maryland Families  
and Professionals



## MARYLAND DISABILITY LAW CENTER

The Maryland Disability Law Center (MDLC) is a private, non-profit law firm. MDLC is designated by Congress as the Protection and Advocacy System for individuals with disabilities in Maryland. Our mission is to advance the rights of Marylanders with disabilities. MDLC uses an array of advocacy strategies including information and referral, direct representation, abuse and neglect investigations, technical assistance, community outreach and advocacy training.



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## WHAT IS THIS HANDBOOK ABOUT?

This handbook is intended to provide parents, guardians and caregivers of school-age children with basic information regarding the special education process so they can advocate effectively for their children.

The Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973 are the main federal laws that protect the educational rights of children with disabilities. These laws promise every child with a disability a “free appropriate public education,” which means individualized special education and related services designed to meet the child’s unique needs. This education must be provided in the “least restrictive environment” in which the child’s needs can be met.

To accomplish this mandate, school systems must follow a number of requirements. In addition, there are certain rights that you and your child have, such as your right to be part of the team that decides what services your child will receive. You also have the right to review test results with teachers and other professionals, to review your child’s educational program, and to request changes you think are necessary. You can also challenge school system actions by asking for mediation or a due process hearing.

Because school systems do not always keep the promises of the special education laws, it is very important for parents, guardians, and caregivers to understand how to navigate the special education process.

This handbook is an introduction to special education law for school-age children and primarily discusses the IDEA and the state law and regulations that implement this federal law. It is designed to give you many of the tools you will need to advocate for appropriate special education and related services for your child.

*This handbook is not a substitute for the advice of a competent attorney or advocate.*

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## IDENTIFICATION

### *1. Who is eligible for special education?*

Under federal and state law, children with disabilities from birth through the end of the school year in which they turn age 21 may be eligible for special education and related services.<sup>1</sup> Eligible children with disabilities up to age 3 receive services through the Infants and Toddlers program. These early intervention services and supports may be provided at home, at a daycare site, or at a school. Preschool-age children may receive services in a school program or in typical early childhood settings. School-age children usually receive special education services in public or non-public schools. This manual primarily addresses the special education process for school-age children.

Some of the disabilities that can make a child eligible for special education are:

- 1) Autism
- 2) Deaf-blindness
- 3) Developmental delay (this category can be used at the discretion of local school systems for children within the age range of 3 through 9)
- 4) Emotional disability
- 5) Hearing impairment, including deafness
- 6) Intellectual disability (formerly called mental retardation)
- 7) Multiple disabilities
- 8) Orthopedic impairments
- 9) Other health impairments (including, but not limited to, attention deficit hyperactivity disorder, Tourette Syndrome, HIV, epilepsy or sickle cell anemia)
- 10) Specific learning disability
- 11) Speech or language impairment
- 12) Traumatic brain injury
- 13) Visual impairment (including blindness)

A child does not automatically qualify for special education services just because he has a disability. The legal standard is whether the child, because of the disability, needs special education and related services in order to make meaningful educational progress. The child's disability must adversely impact his educational performance such that he is in need of special education and related services designed to meet his unique needs. Education includes academic, nonacademic, and extracurricular aspects of school. When looking at educational performance, the child's social skills as well as his academic skills must be considered.

<sup>1</sup>The federal special education law is called the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*, 34 C.F.R. Part 300. The regulations for Maryland's special education laws can be found in the Code of Maryland Regulations (COMAR), Title 13A.05 and 13A.08.

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Note that attention deficit hyperactivity disorder (ADHD) is not a listed disability. Children with ADHD might be eligible under the category of “other health impaired” or in some cases, the categories of “learning disability” or “emotional disability” if they also have either of those disabilities. If not, children with ADHD still may qualify for services and accommodations under another federal law called Section 504 of the Rehabilitation Act of 1973. Children who have a disability and need accommodations or services but who do not need special education and related services may be eligible for a Section 504 Plan.

**NOTE:** Section 504 of the Rehabilitation Act of 1973 is a federal law that prohibits any agency that gets federal money from discriminating against a person on the basis of a disability. Section 504 requires “reasonable accommodation” of a disability and is appropriately used to address issues that special education law may not cover, such as services to parents with disabilities so they can participate in school conferences and activities. A Section 504 Plan can also be used to get reasonable accommodations for a child who has a disability, but who does not need special education and related services. For example, a child who has diabetes may need medication or a snack during the day. A 504 Plan for a child who uses a wheelchair could include special transportation or mobility assistance within the school, on field trips, or in after-school programs run by the school system. A Section 504 Plan for a child with ADHD might include the opportunity to get up and walk around the classroom or take a brief break during class, to play quietly with a squishy ball to keep his hands occupied and enable better concentration, and to have extra time to complete assignments and tests.

If your child has a disability and is eligible to receive special education and related services, the special education and related services are outlined in a document called the IEP. IEP stands for “Individualized Education Program.” The IEP must be reviewed each year, and revised as necessary to make sure that your child will continue to make educational progress.

## 2. *Who decides if your child is eligible for special education?*

A group of people called an “IEP team” makes the decisions about special education. As a parent or guardian, you are a full member of the IEP team.<sup>2</sup> As a member, you have the right to attend and participate in all IEP team meetings about your child.

Depending on the purpose of the meeting, the IEP team includes:

- 1) You, as the parent or guardian of the child;
- 2) Your child, if you think it is appropriate (Your child’s presence is particularly important if the team will be considering postsecondary goals and transition services);

<sup>2</sup>Under special education law, a “parent” means a biological or adoptive parent; a guardian; a person acting as a parent, including a relative; a foster parent with whom the students lives and who has limited guardianship for educational decision making purposes; or a surrogate parent. A surrogate parent must be appointed when the child’s parents cannot be identified, the parents’ whereabouts are unknown, or when the child is a ward of the state and there is no foster parent who meets the definition of “parent” as described above. A parent surrogate may not be an employee of any State or local public agency which is responsible for the education or care of the child.

- 3) At least one of your child’s regular education teachers, if your child is or may be participating in the regular education environment;
- 4) At least one of your child’s special education teachers;
- 5) The professionals who have tested your child for specific disabilities (such as a psychologist, speech pathologist or vision teacher) or an individual who can interpret the evaluation results;
- 6) A representative of the school system who is:
  - a. Qualified to provide, or supervise the provision of, specially designed instruction;
  - b. Knowledgeable about the general curriculum; and
  - c. Knowledgeable about the availability of school system’s resources;

**NOTE:** Such representative of the school system may have a title such as “area specialist” or “resource specialist.”

- 7) Other individuals at the school system’s discretion or at your discretion (such as an advocate, friend or family member), who have knowledge or special expertise regarding your child; and
- 8) If transition is being discussed and the parents consent, the school system must invite a representative of any participating public agency that may be responsible for providing or paying for transition services.

If your child is transitioning from the local Infants and Toddlers Program, his service coordinator should also be part of the IEP team.

Sometimes it is helpful to ask that a representative from the central special education department of the school system attend the school-based IEP team meeting if you are concerned that the IEP team may require additional resources to address your child’s needs. Many, if not most, school systems have area specialists that can also be invited to your child’s IEP team meetings. Which specialists attend your child’s IEP team meetings will depend on the needs of your child but might include a behavior specialist, inclusion specialist, or assistive technology specialist. You should make your request for their presence as soon as possible to ensure that they can participate.

In addition, many school systems use more than one level of IEP team to make certain special education decisions. Usually, there is a local IEP team meeting at your child’s school. Depending on your child’s needs, a county or central IEP team meeting may occur after a local team meeting. If the school system chooses to use more than one level of IEP team, you should ask that the meeting be held quickly to prevent a delay in getting needed services for your child and to ensure that all timelines are followed. There is no provision in the law permitting or prohibiting multiple levels of IEP meetings.

If you and the school system agree, IEP team members can be excused from attending an IEP meeting if their area of knowledge will not be discussed or the IEP will not be modified in that

area. This agreement must be in writing. If the IEP team meeting does involve a change in or a discussion of a team member's area, then that member may only be excused if you and school system both consent and the team member provides a summary of his or her input in writing ahead of time. This consent should be documented in a separate consent form. You should not agree to excuse any team members unless you have had an opportunity to review their written input before the meeting, you feel absolutely sure that you do not have any questions for them, and you do not think having the team member(s) at the meeting will change the outcome of the meeting

### 3. How do you find out if your child is eligible for special education?

A child becomes eligible for special education when the IEP team **identifies** him as having a disability and determines that he is in need of special education and related services. Identification is the result of an evaluation process which essentially consists of three parts: referral, assessment (testing), and review of assessment(s).

### 4. What is the referral process?

Parents and school personnel, such as a teacher, can refer children to be evaluated for special education and related services. To refer your child for special education, you should make a request for an evaluation *in writing*. The letter should be dated. It should go to the principal of your child's school or to your school district's Special Education office. (See **Appendix**: Sample Letter Requesting an Evaluation, page 44.) You can ask the principal or the IEP team chairperson at your child's school for an evaluation of your child for special education, but then you should follow up that verbal request in writing.

**NOTE:** You should always keep a copy of any letters you send about your child's education. You should also keep notes from any telephone calls or conversations. In these notes, you should write down the date, the name of the person(s) with whom you spoke, and a summary of what you spoke about. It is helpful to keep track of these notes in a separate notebook.

After the school system receives the evaluation request, an IEP team will usually meet to discuss your child. The team will review existing data, information you provide, the teacher's attempted strategies and efforts to meet your child's needs, current tests that have been given in the classroom, and the teacher's (or other service providers') observations of your child. For a child leaving the Infants and Toddlers Program, this may include information from your child's early intervention record if you have given written consent to have it shared with the IEP team. If the team suspects that your child has a disability, the team may recommend additional assessments. The assessments must be in the areas of suspected disability. For example, if your child has trouble holding or using a pencil, the team may recommend an occupational therapy assessment. If the team decides that there is no evidence that your child may have a disability, the team likely will not recommend assessments for your child. In either case, if you disagree with the IEP team's decision, you have the right to appeal. (See: Ways to Resolve Disagreements with the School System, page 22.)

### 5. How is a child evaluated for special education services?

During the evaluation stage, if you have given consent, the IEP team tests your child. The school system is responsible for getting and paying for all the assessments the IEP team has recommended. Professionals conducting and interpreting these assessments must be qualified. The evaluation stage is finished when the IEP team meets again to review the assessments and decides if your child has a disability. If the IEP team determines that your child has a disability that adversely impacts his educational performance, the team then discusses what special education and other services your child needs.

**NOTE:** The purpose of an educational assessment is to determine your child's current academic levels in areas such as reading, math, spelling, and language. These tests are designed to find out *what* problems your child is having in school. Other assessments include, but are not limited to, psychological, speech and language, vision and hearing tests. These tests are designed to find out *why* your child is having problems in school. The type of special assessments that should be performed depends upon your child's suspected disability or disabilities.

### 6. What rights do you have at the evaluation stage?

You have several important rights at this stage of the special education process.

A. **Timelines** – The IEP team must complete the evaluation process (initial meeting, assessments, and review) within 60 calendar days of your consent for assessment(s) and 90 calendar days of receiving a *written* referral. For children transitioning from a local Infants and Toddlers program, the deadline for the transition is the child's third birthday. Therefore, all steps in the process – eligibility determination, and if found eligible, development of the IEP, and parental consent to begin services – must be completed prior to the actual date the child turns 3 years old.<sup>3</sup>

B. **Consent** – Before the school system can conduct the initial evaluation of your child, you must agree to the assessments. If you do not consent to the assessments, the school system may pursue the evaluation by requesting mediation or a due process hearing. If there is a hearing, the administrative law judge will decide if your child should be tested.

C. **Free Evaluation** – Any assessments recommended by the IEP team must be provided at no cost to you.

D. **Participation** – You also have the right to participate in all IEP team meetings about your child. You have a right to be notified in writing at least 10 days in advance of any IEP team meetings. If you do not receive notice 10 days prior to an IEP team meeting, you can decide to go ahead with the meeting anyway. (This is called "waiving" your right to the 10 days notice.) If you ask that the meeting be rescheduled because you did not get the 10 days notice, the IEP team cannot go ahead

<sup>3</sup>Maryland offers families the option of an extended individualized family services plan (IFSP) through the Infants and Toddlers program instead of moving to an IEP at age 3. Families may choose to continue the IFSP until the beginning of the school year in which the child turns 4.

and meet anyway. If it does, you can make a complaint or request a hearing, and the IEP team will have to meet again with you present. Even if you do get 10 days notice of the meeting, you can ask that the meeting be rescheduled if you are unable to attend the meeting. You can also ask to participate by telephone if you are unable to attend in person. In addition, the school system must arrange for an interpreter for parents who are deaf or whose native language is not English so they can participate fully in IEP meetings.

**E. Right to Documents** – You have the right to receive all of the documents that the IEP team plans to discuss at an IEP team meeting at least 5 business days prior to the meeting, including all of the assessment reports. This will give you an opportunity to review the reports before the meeting and to make a list of questions that you may have.

**F. Independent Evaluation** – If you disagree with the school system’s evaluation, you have the right to ask the school system to pay for an independent evaluation. You can ask for this independent evaluation from your child’s principal or from the special education director in your school district. (See **Appendix: Sample Letter Requesting an Independent Evaluation**, page 46.)

If you ask for an independent evaluation, the school system has two options. It can either (a) agree to pay for the independent evaluation and provide you with a list of possible evaluators or (b) if the school system thinks that its testing is appropriate (accurate and performed correctly), it may refuse to pay for the independent evaluation. In this situation, the school system must ask for a due process hearing and tell the administrative law judge why its testing is appropriate. If the hearing officer agrees with the school system, you will have to pay for the independent evaluation yourself. If you ask for an independent evaluation, the school system may not unreasonably delay in either providing the independent evaluation or requesting a due process hearing. If the school system gives you a list of evaluators, you do not have to use one of the people on the list, but the person you choose must have the same qualifications as a person the school system would use.

You always have the right to get an independent evaluation of your child at your own expense. The IEP team must *consider* the findings of any independent evaluation. However, the IEP team does not have to *accept* these findings. If the team does not accept the findings or recommendations of your independent evaluation, it must provide a reason in writing why it is rejecting these findings.

If the IEP team does accept the findings of an independent evaluation you obtained for your child, you can ask the school system to pay you back for the cost of the evaluation (reimbursement). You do not have a right to reimbursement, but you should point out that the team relied on your private evaluation in making its decision about your child’s education services or placement.

**G. Due Process Hearing** – If you disagree with any actions of the school system, you may ask for a due process hearing. (See: *Ways to Resolve Disagreements with the School System*, page 22.) You might want to ask for a hearing because:

- 1) The school system has refused to evaluate your child;
- 2) You think the school system is not giving your child the right assessments;

- 3) The school system is not evaluating your child or providing his special education program within the required timelines;
- 4) You think the school system has made the wrong decision about the services or placement your child needs; or
- 5) You have some other concern about your child’s program or services.

**H. Mediation** – Mediation is the process of having a trained person (a mediator) help you and the school system reach an agreement. The mediator must be independent of the school system. In Maryland, mediators are either administrative law judges or paralegals from the Office of Administrative Hearings. If you disagree with the actions of the school system but you do not want to go to a due process hearing, you can request mediation. Either you or the school system can request mediation, but it is voluntary. In other words, if you ask for mediation, the school system can say no; if the school system asks for mediation, you can say no. Mediation must be provided at no cost to either party, and if an agreement is reached, it is binding. A sample request for mediation/due process hearing form is included at the end of this manual.

## 7. *What are common problems at the evaluation stage?*

Although problems can come up for children with all types of disabilities, some of the most common problems that come up at this stage in the process involve children with emotional disabilities or learning disabilities. Therefore, this section will focus on these two types of disabilities.

### A. Emotional Disability

The legal definition of an **emotional disability**<sup>4</sup> as stated in the federal regulations to the Individuals with Disabilities Education Act (IDEA) refers to children with emotional or behavioral disabilities. This term is defined as follows:

(I) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

- (a) An inability to learn that cannot be explained by intellectual, sensory or health factors;
- (b) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (c) Inappropriate types of behavior or feelings under normal circumstances;
- (d) A general pervasive mood of unhappiness or depression; or
- (e) A tendency to develop physical symptoms or fears associated with personal or school problems.

(II) The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

*Cite: 34 C.F.R. § 300.8(c)(4)*

<sup>4</sup>Under Maryland law, an “emotional disturbance” is referred to as an “emotional disability.”

It is important to remember that the term “emotional disability” is an educational definition and not a medical definition. This term includes both children who have psychiatric diagnoses and children who have other emotional problems that affect their education. These problems may include anxiety, school phobia, inability to get along with others, and depression.

Four common problems can come up in applying the definition of “emotional disability”.

First, some school systems do not include many children with recently diagnosed emotional disabilities in special education. The school systems may argue that the emotional condition has not been exhibited “**over a long period of time.**”

Second, it is illegal for the school system to look *only* at grades to determine if the condition “**adversely affects educational performance.**” This often happens with a child with an emotional disability who is performing at or near grade level. It is important to remember that social skills and relationships and other nonacademic skills are an important part of a child’s education and must be considered by the team when looking at whether a child has an emotional disability that adversely affects his education.

Third, schools may inappropriately label a child as “**socially maladjusted**” in order to deny eligibility. There is no definition of “socially maladjusted” in the law. Some school personnel incorrectly take the position that children with certain psychiatric diagnoses, such as conduct disorder, are socially maladjusted and do not have an “emotionally disability.” However, a child has an emotional disability if he meets the definition, regardless of his technical diagnosis.

Fourth, some school systems mistakenly think that they do not have to pay for psychiatric evaluations. This is incorrect. School systems may not have to pay for *treatment* by a psychiatrist, but they do have to provide or pay for a psychiatric *assessment* if it is necessary to determine a child’s disability and or educational needs.

Remember, if you disagree with any part of the school system’s decision regarding the identification of your child, including the types of assessments, you can request mediation or a due process hearing.

## B. Specific Learning Disability

The legal definition of a **specific learning disability** as stated in the IDEA regulations is as follows:

A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

*Cite: 34 C.F.R. § 300.8(c)(10)*

In assessing students to see if they have learning disabilities, school systems do not have to use the traditional model of looking at whether the student has a discrepancy (difference) between his achievement and intellectual ability. Rather, the school system can look at the student’s response to “scientific, research-based interventions.” This is often called “Response to Intervention” (RTI) or “Tiered Instructional Approach.” Through RTI, schools identify students who are struggling academically, monitor student progress, provide evidence-based interventions, and adjust the interventions depending on how a student responds. It is important to remember that even if a school uses RTI, you or anybody working with your child may refer your child for special education at any time. School staff cannot delay a referral on the basis that they need to continue the RTI process to see how your child responds.

## 8. *If your child sees professionals outside of the school system, how can they help in the evaluation process?*

If you feel comfortable sharing assessments or reports from outside professionals such as treating psychiatrists, psychologists, and other medical or educational professionals, you can provide copies of those reports to the IEP team. You are not, however, required to share this information. If you do provide outside assessment reports, the IEP team must *consider* this information but is not required to *accept* the findings and recommendations from private providers.

In addition, outside professionals may not be familiar with the way the school system defines certain disabilities, such as “emotional disability” and “specific learning disability.” It can be helpful to show these definitions to the private professionals who evaluate your child before they write their reports. They can then describe your child and make recommendations in the language used by the school system. It is also helpful if the outside professionals can make suggestions regarding strategies, supplemental services, supports, aids, and program modifications that they believe your child needs.

School staff can often serve your child better if you have shared information with the school system. However, if there are records you do not feel comfortable sharing or if you do not feel comfortable having school staff talk to your child’s doctors or therapists without you, there are several options you can consider. You can sign a limited consent for specific records or you can suggest a conference call for school staff, the doctor or therapist, and you, so that you can all talk about your child together.

## 9. *What if your child has been receiving early intervention services through the local Infants and Toddlers Program and will be turning three?*

Children receiving services through the Infants and Toddlers Program have a plan that describes the services the child and family will receive. That plan is called an Individualized Family Service Plan (IFSP). Before the child turns 3, the local school system must convene an IEP team meeting to determine if a child in transition from a local Infants and Toddlers Program has a disability or a developmental delay that requires the provision of special education and related services. This meeting for eligibility determination must occur prior to your child’s third birthday. If your child

is determined to be eligible for special education and related services, the IEP team must develop the IEP and be ready to implement it before your child turns 3 years old. The parents must provide informed written consent before special education services may begin. If the child is not receiving Extended School Year Services (ESY), the beginning service dates may be later than his third birthday.

Families also have the option of continuing the IFSP beyond a child's third birthday. The Maryland Extended IFSP Option will allow children and families receiving services through an IFSP to continue to receive services until the beginning of the school year in which the child turns 4, if the child has a current IFSP and is determined eligible for preschool special education and related services as a child with a disability. The Extended IFSP Option gives children to access to services under an IFSP while allowing families to continue to receive family training and supports through the infants and toddlers family centered service model. For more information, see MSDE's website at [www.marylandpublicschools.org/MSDE/divisions/earlyinterv/infant\\_toddlers](http://www.marylandpublicschools.org/MSDE/divisions/earlyinterv/infant_toddlers).

## SPECIAL EDUCATION

Every eligible child with a disability is entitled to receive a **free appropriate public education** in the **least restrictive environment** that can meet the child's needs.

*Free* means that the education services must be provided at no cost to you. If you have health insurance or Medical Assistance, you may be asked to consent to having the school system bill your insurance company or Medical Assistance for the cost of some services such as counseling or physical therapy. The school system cannot make you agree to this if it would cost you anything (such as payment of a deductible, increase in premiums, or a loss of insurance) or if your lifetime coverage would be reduced. You should check your policy very carefully before allowing the school system to bill your insurance company for services provided to your child.

**NOTE:** The school system cannot refuse services for your child if you decide not to allow billing of your insurance company or Medical Assistance.

*Appropriate* means that the education services must be individually designed to meet the special needs of your child. Your child must have an individualized education program that outlines his special education needs and the services he will receive to meet those needs.

*Public* means that the public school system must either provide an appropriate education program directly or must arrange for it to be provided.

*Education* means that your child will receive special classroom instruction, special physical education, or special vocational education, depending upon his individual needs. If your child cannot attend school for some exceptional reason, special education can include home teaching or teaching in a hospital. Special education also includes additional services your child needs in order

to benefit from his education program. These additional services are called Related Services. (See: Related Services, page 16.)

*Least Restrictive Environment* means that, as much as possible and based on your child's needs, your child must be educated with children who do not have disabilities. Least restrictive environment also means that your child should attend his zoned (neighborhood) school unless his individualized education program requires some other arrangement. The more a child's education occurs only with other students with disabilities, the more restrictive the placement is. For children younger than school age, the continuum of settings includes typical early childhood settings that a child without disabilities would attend, such as childcare centers and preschools.

Through the IEP process, the school system may only move your child to a more restrictive placement *if* his needs cannot be met in a less restrictive setting. The school system must try to meet your child's needs in a satisfactory way in the less restrictive setting. It must provide supplementary (extra) aids and services in order to try to make the less restrictive placement appropriate for your child. Also, the school system must provide programmatic supports and modifications to staff to help them better meet your child's needs in a less restrictive setting. Such supports might include training, classroom modifications, or additional staff. The school system cannot move your child to a more restrictive setting because it is convenient to do so, or because of the way services are arranged by the school system, or just because your child may have significant disabilities. However, your child is not required to fail in a less restrictive education setting before moving on to a more restrictive setting if that is what she needs. The IEP team must determine if it is possible to meet your child's needs satisfactorily in the less restrictive setting.

## THE INDIVIDUALIZED EDUCATION PROGRAM (IEP)

### 1. What is an IEP?

The IEP is a document that describes the special education and related services your child is to receive. Your child's IEP may be developed at the same meeting at which she is identified as eligible for special education services or at a later IEP meeting. The team may also decide your child's placement at this meeting. The team must develop your child's IEP before making a decision about where she should be placed. This is because your child's placement must be based on what special education and related services are in her IEP.

For a child who is already in special education, an IEP team meeting must be held at least once a year to review the child's progress and to revise the IEP, if necessary. However, you have the right to ask for an IEP team meeting at any time you have concerns about your child's education or IEP.

### 2. What should the IEP contain?

The IEP describes the way that the school system will provide your child with an education. If there is a particular service your child needs, you should make sure it is listed on his IEP. In developing the IEP, the IEP team must consider your child's strengths and your concerns.

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Ultimately, your child's disability, services, modifications and supports must be clearly stated on the IEP so that any school in any jurisdiction would understand what is required to be implemented.

The IEP must describe:

- 1) Your child's disability and how it affects her ability to learn.
- 2) Your child's present level of educational performance.
- 3) The annual goals and short-term instructional objectives for your child. These goals and short-term objectives must be related to enabling your child to be involved in and make progress in the general curriculum and should be designed to be achieved over the course of the school year.
- 4) The specific special education and related services your child will receive and the anticipated duration, location and frequency of each service.
- 5) The objective ways that progress toward meeting the annual IEP goals will be measured and reported.
- 6) Whether your child needs extended school year (ESY) services. ESY is the individualized extension of special education and related services provided to a child with a disability beyond the normal school year, in accordance with the IEP, and at no cost to the parent. (See: Extended School Year Services, page 21.)
- 7) If your child is 14 or older, the transition services she will receive to help her prepare for life after leaving the school system. Transition services help a student move from school to post-school activities, including postsecondary education, vocational training, employment, independent living, community participation or other adult services. Transition services must be based upon the student's needs and must take into account the student's interests and preferences. The IEP should include transition goals, what course of study the student will follow to reach those goals, and a statement describing needed transition services. Receiving information and assistance about voter registration and understanding what civic participation means are also an important part of preparing for adult life and community living. For students who are 17 or older, consider asking the IEP team to include goals related to voting.
- 8) The supplementary aids and services to be provided, and the program modifications or supports for school personnel that will be provided, so that your child can be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities.
- 9) The extent to which your child will not participate in regular education classes or regular typical early childhood settings.
- 10) Strategies, including positive behavioral interventions and supports, to address behavior, if your child's behavior interferes with his learning or the learning of other students.
- 11) Your child's need for Braille if she is blind, or may be blind in the future.
- 12) Your child's language needs if she has limited English proficiency.

- 13) Your child's communication needs, and if she is deaf, her mode of communication.
- 14) Whether your child may need assistive technology devices and services. An assistive technology device is any item or piece of equipment that is used to help a child with disabilities benefit from her education. **Assistive technology (AT) must be considered for ALL students.**

The IEPs of students age 14 and older who use AT during school must include the AT in their transition plans. Many schools will take back the AT device or equipment as the student transitions. Students may be able to get some AT, such as communication devices, through Medical Assistance (Medicaid). Students may obtain other AT through organizations such as the Department of Rehabilitation Services (DORS) or the Centers for Independent Living. Because requests for AT can take time, you should make sure that if your child uses AT, it is included in her transition plan so when she leaves school, she will have access to the AT she needs.

### *3. What should happen at the IEP team meeting?*

An IEP team meeting is your opportunity to ask questions so that you fully understand what program and services the school system is proposing. Remember that you should receive a copy of all of the documents that the IEP team plans to discuss at least 5 business days before the IEP meeting. These documents may include assessment reports, teacher updates and a draft IEP. It is important that you review this information and make a list of questions that you may have. By the end of the IEP team meeting, you should be satisfied that your questions have been answered and that the IEP describes the educational program and related services that your child needs. In order to decide if the school system's plan is appropriate, you should ask whether your child has achieved all of the goals in the past year's IEP and, if not, why not. You should decide if proposed new goals are realistic or if they are too hard or too easy. You should make sure that the school system has identified a way to measure your child's progress towards his goals. The measurements must be clear and objective. For example, a measurable goal might require your child to learn to read and comprehend 100 new sight vocabulary words by reading passages aloud and using the identified words appropriately in sentences when asked.

You should ask why the specific services have been recommended. You should also be sure that the IEP team decides how much time per week your child needs each service and that these amounts are listed on the IEP. If your child has behavioral problems that affect his learning (for example, your child is often sent to the office or suspended), you should make sure that his IEP contains positive strategies, services, and supports to address the problems. Students with behavior issues often need a functional behavior assessment (FBA) to help figure out why the behavior is happening. With the information from a functional behavior assessment the IEP team can develop a behavior intervention plan (BIP) that includes the strategies and supports the team will use to address the behavior.

You should also ask why the school system wants to make any proposed changes to the IEP and whether any other changes should be made. The IEP team must provide you with “**prior written notice**” that explains the reasons for any proposed changes and all the evaluations or other information the school system is using to make its decision. If the IEP team proposes changes with which you do not agree during the IEP team meeting, you should ask that the IEP team meet all the requirements of “prior written notice.” This notice will help you understand the basis of the IEP team decision and decide whether you want to challenge it.

**NOTE:** Specifically, “**prior written notice**” must include:

- a) A description of the action proposed or refused by the school system;
- b) An explanation of why the school system proposes or refuses to take the action;
- c) A description of any other options the school system considered and the reasons why those options were rejected;
- d) A description of each evaluation, test, procedure, record, or report the school system used as a basis for its proposed or refused action;
- e) A description of any other relevant factors;
- f) A statement that parents have procedural rights; and
- g) Places parents can contact for help in understanding the law.

*Cite: 34 C.F.R. § 300.503*

Try not to feel overwhelmed by test names and other technical language. Ask the school staff to explain anything that you do not understand. It is the school system’s job to make sure you understand your child’s school program.

Do not feel rushed or pressured by the school system. With something as important as your child’s education, you should take as much time as you need to protect his rights. Often, school systems schedule many IEP team meetings with very little time set aside for each meeting. If you think that a meeting about your child might require some extra time, you can call or write to the school ahead of time and try to have extra time scheduled. Remember that IEP team meetings must be scheduled at a time and place that is convenient for both you and the school system.

Some school systems now offer the service of a “facilitated” IEP meeting where the meeting is facilitated by an external, independent, trained “facilitator.” The facilitator can help parents and school systems reach agreements through the IEP process. (See page 22 for more information regarding facilitated IEP meetings.)

#### ***4. Can your child participate in her IEP meeting?***

Yes. Students 14 and older have a right to be invited to and participate in their IEP meetings. Additionally, some students may choose to direct their own IEP team meetings, allowing them to take a more active role in their education. Research shows that students who direct their own IEP meetings learn self-advocacy skills that positively impact learning, attendance, and outcomes

after high school. When a student turns 14, or earlier if it is appropriate, you and your child can request that your child direct his own IEP meetings. The request can be made in writing to the principal or IEP team chair at your child’s school. For more information, see *I’m Determined* at [www.imdetermined.org](http://www.imdetermined.org).

#### ***5. What problems may come up at the IEP team meeting?***

One problem that may come up is that the school may not want to hold a meeting. You should make sure that the school system holds an IEP team meeting to which you are invited so that you can fully review and participate in the development of your child’s program. The school system must send you all of the documents that the team will review 5 business days before the IEP meeting so you should have a copy of the draft of the IEP. This allows you the opportunity to review the draft IEP at home, share it with any advocates or professionals who are working with your child to get their input, and be better prepared to discuss what you want added or changed in the IEP.

Another issue that could arise is a request by the school to excuse certain members of the IEP team because their areas will not be discussed at the meeting or for some other reason. You do not have to agree. If you do agree, you and the school-based team must agree in writing. If the team member’s input is relevant to the meeting and the school system wants to excuse the team member, you and the school must get written input from the team member before the meeting. You must consent in writing before the team member can be excused.

Do not feel pressured to agree with everything quickly. Ask the team members to go over the IEP item by item. Since it is a draft, ask for any changes that you feel should be made. Request explanations for any refusals to make those changes and ask that your comments and the school system’s responses be documented. If the IEP chairperson is not keeping minutes, parents may submit their comments and ask that they be made part of the record. If you run out of time, ask the team to schedule another meeting.

The IEP should contain goals and objectives that are designed to help your child be as independent as possible in the least restrictive environment. You should be sure that your child’s IEP contains age-appropriate goals and objectives that will increase his independence in the community. The IEP should also contain age-appropriate goals and objectives that will increase the opportunities your child has to participate in activities and establish friendships with children her age who do not have disabilities. Age-appropriate activities are ones in which children without disabilities, the same age as your child, participate.

You might not agree with the IEP proposed at the meeting. If this is your child’s first IEP, the school system cannot start providing special education and related services without your informed written consent. However, if this is *not* your child’s first IEP, the school system can go ahead and implement the IEP unless you request a due process hearing. If possible, it is always a good idea to try other less formal ways to resolve disagreements or concerns that you have with the proposed IEP before pursuing a due process hearing. (See: Ways to Resolve Disagreements with the School System, page 22.)

Once the IEP is developed, it is the responsibility of the IEP team to determine the least restrictive environment in which the IEP can be implemented. The IEP determines your child's placement.

**NOTE:** All school districts in Maryland are now using a computerized online IEP form as required by the Maryland State Department of Education. It is important that you be able to follow along as the IEP is developed and that you receive a printed copy at the end of the meeting. If you do not leave the meeting with the IEP, the team must send you a copy of the IEP within 5 business days of the meeting.

#### ***6. What is the timeline for IEP development and implementation?***

The IEP team must meet to develop an IEP for a child with a disability within 30 calendar days from the evaluation meeting. The IEP must be implemented as soon as possible unless the meeting occurs during the summer or a vacation period, or unless there are circumstances that require a short delay, such as working out transportation arrangements. A student with a disability must have an IEP in effect at the beginning of a school year.

For children transitioning from a local Infants and Toddlers Program, the IEP must be developed and ready to be implemented prior to the child's third birthday unless the family has chosen the extended IFSP option discussed on pages 9 and 10 of this manual.

#### ***7. What happens to the IEP if a student transfers to a new school district?***

When a student with a disability transfers to a new school district, the new school system must continue to provide special education and related services that are comparable to those set forth in the student's most current IEP. The new school system can either adopt the IEP from the student's former school system or can develop a new IEP. The new school system may decide to re-evaluate the student but must continue to provide services while the evaluation process is happening.

When a student transfers to a new school district, the new school must take reasonable steps to promptly obtain the student's records from the previous school including the IEP, supporting documents, and any other records relating to the provision of special education or related services to the student.<sup>5</sup> However, to speed up the process, parents should also take whatever school records they have to the new school when they go to enroll the student. It is also a good idea to request an IEP meeting as soon as possible so that the IEP team can appropriately plan for your child's new placement.

## **RELATED SERVICES**

Related services are those services that must be provided to your child so that he can benefit from special education instruction. Some of the related services that your child may require, depending on his special needs, include but are not limited to:

- 1) Transportation
- 2) Speech pathology
- 3) Audiology
- 4) Psychological services (including psychotherapy)
- 5) Physical therapy
- 6) Occupational therapy
- 7) Recreation
- 8) Social work services
- 9) Medical services for the purpose of diagnosing and evaluating the child
- 10) Rehabilitation counseling
- 11) Parent counseling and training
- 12) School health services
- 13) School nursing services
- 14) Counseling
- 15) Assistive technology devices or services
- 16) Orientation and mobility services
- 17) Interpreting services

If your child needs any of these services in order to benefit from his special education program, they must be provided to him at no cost to you. These services may be provided directly to your child. They may also be provided indirectly by a service provider working with your child's teacher to implement his IEP.

When the IEP team recommends related services for your child, the recommended services must be included in his IEP. The IEP should specify exactly how much of each service your child is to receive and how often. If at any time the school system fails to provide services to your child as stated in his IEP, you may request mediation, a due process hearing, or file a complaint with the Maryland State Department of Education. You should ask that the school system provide compensatory (make-up) education services to your child for the time missed.

## **PLACEMENT**

### ***1. Placement in the least restrictive environment***

At the IEP meeting, your child's ability to participate in general education classes and nonacademic and extracurricular activities is one of the most important matters to be discussed by the IEP team. In fact, if a child is not fully included with non-disabled peers, the IEP must explain why. The goal of special education is to provide an appropriate education in the least restrictive environment in which your child's needs can be met. This goal is often called **inclusion**.

**Inclusion** means that your child is included with peers without disabilities in academic settings and non-academic and extracurricular activities, and that she gets any special services she needs

<sup>5</sup>There are special timelines that apply for students who are in the care and custody of the state in order to ensure that their records are transferred promptly to a new school district. See Md. Code, Education § 8-502.

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within a general education classroom. Inclusion is the creation of programs and services where all children feel welcomed and valued. The main features of inclusion are access (offering a wide range of activities and environments and removing physical barriers), participation (using a variety of teaching approaches), and supports (providing professional development and collaboration with families).

Your child should not be placed in a special education program even for part of the day unless she cannot receive an appropriate education in regular education classes with supplementary (extra) aids or services and programmatic modifications and supports. In addition, your child should not be placed in a separate special education school unless she cannot receive an appropriate education in a neighborhood school with special education classes and extra aids or services and programmatic modifications.

Supplementary aids and services can include, but are not limited to: classroom or one-to-one aide, curriculum modifications (changes in the classwork), testing accommodations, peer tutoring (having a student with certain skills work with your child to help her learn those skills), individualized behavioral intervention programs, untimed tests, or the provision of a tape recorder, computer or other assistive technology.

The programmatic modifications and supports to help children be served in the least restrictive environment might include, among other things, training for staff, classroom modification, smaller classes, and/or additional staff.

The key is to provide all the appropriate services necessary for your child to benefit from her education in the least restrictive environment. Often, this means bringing new services into neighborhood schools that have never provided those services. The fact that the school system “never did it that way before” is no excuse.

Many services can be provided in any setting. The type of disability your child has or the fact that it is not convenient for the school system to provide services in your child’s school are not excuses either.

Many school systems interpret the least restrictive environment requirement to mean that your child should get as few special services as possible in order to “get by.” This is *not* what the federal law requires. The Individuals with Disabilities Education Act (IDEA) requires that your child get *all* of the services that she needs in the least restrictive setting possible. The least restrictive setting is the one that is most like a regular classroom in your child’s neighborhood school, or for preschool children, like the community-based, typical, early childhood setting she would participate in if she did not have a disability, such as preschools and childcare centers.

## ***2. What happens if a public placement cannot be found?***

The school system must place your child in an appropriate program that can implement the IEP. If the school system cannot provide an appropriate public program, the school system must place your child in a nonpublic (private) school and pay for it. The Maryland State Department of

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Education keeps a list of approved nonpublic schools. You can see a list of approved nonpublic schools by going to [www.mansef.org](http://www.mansef.org) or by contacting the Maryland State Department of Education and asking for a copy of the list.

The school system must pay all the costs of the placement. In many cases, the school system gets a good deal of reimbursement from the Maryland State Department of Education for these costs. If the nonpublic school requires a pre-placement interview, the school system must provide this at no cost to you. The school system is also responsible for transporting your child to and from the school. When your child is in a residential program, her IEP should state how often it is appropriate for her to come home. The school system is responsible for providing and paying for the transportation.

It is important to remember that a child sometimes needs a residential placement for reasons that are unrelated to her educational needs. In this situation, it may be possible to make arrangements for the school system to pay for the educational part of the residential placement while other public agencies might pay for the residential part of the program.

## ***3. Students placed in private or nonpublic<sup>6</sup> schools by their parents***

Sometimes parents may choose to place their child in a nonpublic school if they believe the school system’s proposed public program is inappropriate. Parents who do this may then ask the school system to pay for the cost of the student’s education in the nonpublic school. Usually, this will result in a due process hearing. Parents who choose to place their child in a nonpublic school and seek public payment must meet certain requirements regarding notice to the school system. If these notice requirements are not met, tuition reimbursement (payment by the school system of the costs of the student’s education) can be reduced or altogether denied. If you wish to place your child in a nonpublic school and ask the school system to pay, you should carefully read the parents’ rights form provided by your school system and consider consulting with a lawyer or advocate.

Sometimes parents may choose to place their child in a private school for personal reasons such as a desire to give their child a religious education. Children whose parents have chosen to place them in private schools do not have the same entitlement to special education services they would have if they were in public school. However, children in private schools may be entitled to some special education and related services. If you have placed your child in a private school or are considering doing so, you can get more information about your child’s rights by calling your local school system or the Maryland State Department of Education.

## ***4. What is home and hospital instruction?***

Home and hospital instructional services (sometimes referred to as “home teaching”) are educational services provided if your child cannot attend school for temporary physical reasons or if she is in emotional crisis. If your child is in emotional crisis and is receiving home teaching, the home teaching cannot be provided for more than 60 consecutive school days. Also, a child’s home

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<sup>6</sup>Nonpublic schools are private special education schools approved by the state of Maryland to serve students with disabilities. Primarily these schools are funded through public funds and students are placed there through their local school systems.

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may not be used as an instructional setting while she is waiting for a nonpublic placement or a change in placement, or while she is on suspension from school.

If your child receives home teaching, the IEP team must determine the appropriate number of hours of service and develop a plan of service delivery. All students, with and without disabilities, must receive *at least* 6 hours of educational services a week. Often school systems only offer 6 hours of instruction, but you should ask for as much instruction as your child can handle. For a student with an IEP, the IEP team must determine what additional services the student should receive based on her individualized needs. The school system should also provide the related services, such as speech therapy or counseling, that are on your child's IEP.

The school system should not force you to accept home teaching for your child instead of a school-based program. If you disagree with the school system's recommendation of home teaching for your child, you can ask for mediation or a due process hearing. Until the mediation agreement or hearing decision, your child must remain in the last approved school placement, except in certain circumstances. For example, you could agree to a different placement, or the school system could go to a hearing or to court to get an order saying that your child cannot return to school because she poses a danger.

### 5. *What rights do you have at the IEP development and placement stages?*

Parents have a number of important rights at these stages of the special education process.

A. **Participation** – Your most important right is to be a member of the IEP team, to attend the IEP team meetings, and to participate in the development of the IEP and the selection of your child's placement. If you cannot participate in person, you should ask to participate by telephone. Also, you can bring someone with you to help at the meeting, like a friend, family member or a professional working with your child outside of school.

B. **Consent** – The first IEP will not be implemented until you agree to it by signing it. Your consent is not needed before later IEPs can be implemented.

C. **Timelines** – Within 30 calendar days after the school system decides that your child needs special education services, the school system must develop the IEP. The IEP must be implemented as soon as possible and *must* be in effect at the beginning of a school year. If your child is waiting for a nonpublic school placement, she has the right to remain in the public school placement unless you agree to another interim placement or the school system gets a hearing decision or court order to keep your child out of school.

D. **Mediation or due process hearing** – You can request mediation or a due process hearing if you do not agree with the IEP or placement, or if the school system takes too long to develop or implement the IEP. (See: Ways to Resolve Disagreements with the School System, page 22.)

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## EXTENDED SCHOOL YEAR SERVICES (ESY)

If the benefits your child gained during the school year would be substantially jeopardized if he did not receive services during the summer, then the school system must provide extended school year (ESY) services. The IEP team must consider six different factors in making the decision about whether your child qualifies for ESY. If your child has critical life skills that meet any one or more of these criteria, he should be found eligible for ESY.

- 1) **Regression/recoupment:** This factor looks at whether your child will, or is likely to, regress (lose skills) if he does not get ESY, and if it will take your child a long time to recoup (get back) skills he has lost during the break from school. It is not necessary that your child actually regress or take a long time to get back skills (recoup), only that it is *likely* that regression/recoupment would be an issue, based on the information available to the IEP team.
- 2) **Degree of progress:** How much progress has your child made during the school year? If not much, he may be eligible for ESY.
- 3) **Emerging skills/breakthrough opportunities:** Is your child in the process of gaining a new critical life skill such as reading, toilet training, or walking? If so, he may qualify for ESY.
- 4) **Interfering behavior:** Does your child have behavior that interferes with his ability to make educational progress? If so, he may qualify for ESY services.
- 5) **Nature and/or severity of the disability:** If your child has a very severe disability, particularly if progress is very slow, he may be eligible for ESY.
- 6) **Special circumstances:** Your child may qualify for ESY services if an unusual situation exists. For example, your child may have missed a good deal of school because of a serious illness, or he may face the risk of a more restrictive placement unless ESY services are provided.

The law does not define "critical life skill," but just as it sounds, it is a skill that is crucial to the child's life. Depending on circumstances, including age and stage of development, it may be a functional skill such as toileting, dressing, walking, or communicating. It may also be an academic skill such as reading or writing or a social, emotional or behavioral skill.

The IEP team must make a decision about ESY services annually. The IEP meeting to determine eligibility for ESY must be held early enough in the school year so that you have time, if necessary, to challenge the school system's decision before the summer session begins. ESY must be individualized to meet your child's needs and must be provided in the least restrictive environment.

**NOTE:** ESY services are not an extension of time in school. They are not automatic. They are not an enrichment program, nor are they meant to teach your child new skills. ESY services are individualized services designed to give your child the ability to meet certain objectives in his IEP that cannot be achieved without education beyond the regular school year. Sometimes, parents are reluctant to accept ESY because they have vacation or other plans. If this is the case, you are not required to accept the services, but you may want to work with the school system to try to find a schedule that will accommodate your summer plans and allow your child to participate in the services.

## WAYS TO RESOLVE DISAGREEMENTS WITH THE SCHOOL SYSTEM

### 1. *What is a “facilitated” IEP meeting?*

When you have a concern regarding your child’s special education and related services, the first thing you should do is request an IEP meeting. At the meeting you can explain what your concerns are and ask the team members to address them. Another option is to request a “facilitated” IEP meeting in order to have the meeting facilitated by an external, independent, trained “facilitator.” A facilitator can assist the IEP team process particularly when there have been conflicts, disagreements, or communication problems between the parents and school staff. The facilitator is not a member of the IEP team and does not have a relationship with the school or the parents. It is the facilitator’s job to assist in running the meeting. The facilitator should ensure that each person who attends the meeting, especially the parent, is able to participate fully and meaningfully, and that all concerns are addressed. Throughout the meeting, the facilitator remains neutral and focuses on the process while the team makes the decisions.

Either the parent or the school may request a facilitator. However, both parties must agree to use this voluntary process. Not all school systems offer this service, so you should ask your school system about the availability of facilitated IEP meetings.

School systems that do offer facilitation services have their own process for requesting a facilitator. To find out how to request the service, you should contact the office of the Director of Special Education for your child’s school system or you can call Community Mediation Maryland at (301) 270-9700.

### 2. *How do you file a formal complaint if you feel that your child’s special education rights have been violated?*

If you believe that your child’s rights have been violated, you may file a written complaint with the Maryland State Department of Education (MSDE). (See **Appendix**, MSDE State Complaint Form, page 48.) Although you can file a complaint about any issue, this approach is most likely to work when there is a procedural violation (such as failure to assess, develop or implement an IEP), a problem with a lack of resources (such as no teacher in a classroom or no staff to provide related

services such as speech or physical therapy), or a system-wide problem (such as violation of discipline procedures). Filing a complaint is generally not a good option when you disagree with the school system about what program is appropriate for your child, although you can file such a complaint if you wish to do so. MSDE will not second-guess an IEP team’s decision but it will look at whether the decision making process followed the law.

**The complaint has to allege a violation that occurred not more than 1 year prior to the date of the complaint.** The complaint can be in the form of a letter or you can use the MSDE complaint form. In the complaint, you should give your child’s name, date of birth, school system and school name, and explain the problem. You should also send with the complaint copies of papers which you think would be useful, such as your child’s IEP. Always keep a copy of any complaint that you send. The complaint should be sent to:

Assistant State Superintendent  
Division of Special Education/Early Intervention Services  
Maryland State Department of Education  
200 West Baltimore Street; Baltimore, MD 21201  
(410) 767-0238 / (410) 333-8165 (fax)

MSDE must investigate your complaint and issue a written decision within 60 days of receiving your complaint. However, the 60-day timeline may be extended if there are unusual circumstances. If a violation is found, MSDE can order the school system to fix the problem. MSDE can also order that the student receive compensatory education services to make up for the violation and any missed services due to the violation.

**NOTE:** When a complaint is filed with MSDE, the state must provide the local school system with the opportunity to respond to the complaint. This might include a proposal by the local school system to resolve the complaint. MSDE must also give you and the school system the opportunity to agree to engage in mediation or another form of dispute resolution. If you and the school system agree to this opportunity, then the 60-day timeline can be extended.

Sometimes making a written complaint to the Director of Special Education for the school district can also be an effective way to resolve a problem or a violation. You can request that the school system investigate the alleged violations and provide compensatory education services. While no timeline applies to this type of complaint, the school system may take the opportunity to remedy the problem promptly.

### 3. *What is mediation?*

Mediation is another way to resolve disagreements between parents and the school system. Mediation is the process of having an impartial trained person, called a mediator, try to help you and the school system reach an agreement about your child’s special education program and services. Mediation is more informal than a due process hearing. Both you and the school system have to agree in order for mediation to occur. If you come to an agreement, it will be put in writing. If you

do not come to an agreement, the mediation discussion will remain confidential and cannot be used in any subsequent due process hearing. If a school system fails to implement a mediation agreement, you can go to court to enforce the agreement.

A parent requesting mediation must put the request in writing. (See **Appendix: Request for Mediation and Due Process Complaint Form**, page 50.) A copy of the request should be sent to the school system and to the Office of Administrative Hearings (OAH). OAH will schedule the mediation session within 20 calendar days from when it receives the request.

More information about mediation, due process hearings, and the complaint process can also be found on the MSDE website: [www.marylandpublicschools.org/MSDE/divisions/earlyinterv/complaint\\_investigation/](http://www.marylandpublicschools.org/MSDE/divisions/earlyinterv/complaint_investigation/).

#### 4. *What is a due process hearing?*

A due process hearing is a formal way to resolve a dispute between you and the school system about your child's educational program. An administrative law judge, appointed through the state Office of Administrative Hearings, runs the hearing.

During the IEP process, the school system ultimately retains control over every decision. By requesting a hearing, you can take this decision-making control away from the school system. The hearing officer will then make the decision. The hearing can address any issue related to the provision of special education and related services to your child. However, a due process hearing must be filed within 2 years of the date that you knew, or should have known, about the alleged violation.

**NOTE:** Parents are at risk of having to pay the school system's lawyer's fees if the parents file a due process hearing request for an improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. Because of the complexity of the process and the risk of having to pay the school system's fees, parents should consider seeking legal assistance prior to filing a due process hearing request.

#### 5. *How can you request a due process hearing?*

You can ask for a hearing by submitting a written request to *both* your child's school system and to the Office of Administrative Hearings. Your request for a due process hearing must include the following information:

- The name and address of the child,
- The name of the child's school,
- A description of the problem and the facts relating to the problem, and
- A proposed resolution of the problem.

You can ask your school system for a copy of the form you will need in order to request a hearing. A copy is also included in the back of this handbook. (See **Appendix: Request for Mediation and Due Process Complaint Form**, page 50.) You may also want to ask your school system or the

Maryland State Department of Education for a copy of "Guidelines for Special Education Mediations and Due Process Hearings" and for a list of low-cost resources.

#### 6. *What can you expect after you or the school system requests a due process hearing?*

When you make a hearing request, the school system will have to send a response if it has not already given you prior written notice. (See page 14 for a definition of "prior written notice".)

If the *school system* asks for a due process hearing, you will need to file a response within 10 days of receiving the school system's hearing request. Your response must address the issues raised in the school system's complaint.

When you ask for a hearing, the hearing is not scheduled right away. The Office of Administrative Hearings (OAH) will schedule a telephone prehearing conference when a due process hearing is requested. During the prehearing conference, the administrative law judge will work with the parties to determine the length of the hearing and schedule it accordingly. If a party has requested a hearing and mediation, OAH will schedule the telephone prehearing conference on the day of the mediation, when the parties will already be together. If only a hearing is requested, OAH will convene the conference approximately 15-20 days after it receives notice of the outcome of the resolution meeting. If only mediation is requested, a prehearing conference is not necessary.

#### 7. *What is a resolution session?*

Within 15 days of receiving your due process hearing request, the school system should schedule a resolution session. This is a meeting to try to resolve the matter. Someone from the school system who has decision-making authority must be present at this meeting. The school system cannot bring a lawyer unless you bring a lawyer. Both you and the school system can agree to waive (skip) this session if you think it will not be helpful. If you do not think a resolution session would help, you can agree to go to mediation or directly to due process.

If you resolve the issue at the resolution session, you and the school system will develop a written agreement. You or the school system can void (back out of) this agreement within 3 days; otherwise it becomes a final agreement that can be enforced in court.

If you do not resolve the issue at the resolution session, the hearing must be scheduled and the decision issued within 45 days of the resolution session. You may request that the hearing be held at a location convenient for you, such as at the school system headquarters, rather than at the Office of Administrative Hearings. For more information, you can contact OAH at (410) 229-4100.

#### 8. *Do you need an attorney at the hearing?*

Some parents can do an effective job of protecting their children's rights at hearings. But often, the school system brings an attorney to the hearing and many parents feel uncomfortable about going through the hearing by themselves. You do have the right to bring a lawyer, an advocate, or a friend to assist you at the hearing. The school system must also give you information about free and low cost legal services. If you win the hearing, you may go to court to try to get fees from the school

system for your lawyer. However, if you lose the hearing, it is possible that you could be asked to pay for the fees of the school system's lawyer. If possible, you should consult with a lawyer before asking for a due process hearing.

### ***9. What happens during a due process hearing?***

At least 5 business days before the hearing, you must give the school system copies of all documents, including evaluations, which will be used at the hearing and the names of all witnesses. If you do not do this, you will not be able to use the documents or witnesses at the hearing unless the school system gives permission.

The administrative law judge generally begins a due process hearing by reviewing the issues. Both you and the school system have a chance to make an opening statement. During this statement, you can explain what you want for your child and what evidence you will be presenting.

Generally, the person or side (called a "party" in the hearing process) proposing a change in the identification, program or placement of the child presents first. Each party questions its witnesses. Each party's witnesses can be cross-examined by the other party. The administrative law judge can also ask the witnesses questions. Parties can also present documents such as school records, test results, and medical reports.

After all the witnesses testify, each party has a chance to make a closing statement. The closing statement is a chance to summarize what has happened at the hearing and to argue your side of the case.

After the hearing is completed, the administrative law judge will make a decision. Sometimes the decision is announced at the hearing, but usually it is given a few days later in writing. Even if the administrative law judge announces the decision at the hearing, she must also give a written decision.

### ***10. What is "burden of proof" and who has the burden of proof at due process hearings?***

Burden of proof, or more accurately, burden of persuasion, is the requirement to present enough evidence to the judge to prove the case. The party that asks for a due process hearing has the burden of proof. Usually, parents ask for due process hearings. Therefore, they have the burden of convincing the administrative law judge that they are right and that the administrative law judge should rule in the child's favor. However, if a parent asks for an independent evaluation and the school system refuses and asks for a due process hearing, the school system bears the burden of proving that its evaluation is appropriate and that it should not have to pay for an independent evaluation.

### ***11. What happens if you lose at the hearing?***

The party who loses the hearing can appeal to state or federal court. An appeal to court must be made within 120 days of the hearing decision.

### ***12. What happens to your child during the hearing or appeal process?***

Your child has the right to remain in her last approved placement until the appeal process is completed. This placement generally cannot be changed unless you and the school system agree. This requirement is known as "maintenance of placement" or the "stay put" provision. However, **there are exceptions to the "stay put" provision.** If the school system feels that your child is too dangerous to stay in school, the school system can remove her from school for up to 10 days, but *must* go to a hearing or to court to try to get an order to keep your child out of school for more than 10 days, unless you and the school system agree to a different placement. In addition, if the school system transfers your child to an interim alternative education setting during a suspension or expulsion, the interim alternative education setting would be the "stay put" placement during a due process hearing to challenge the disciplinary removal. (See: Suspension, Expulsion and Other Disciplinary Actions, page 28.)

### ***13. What happens if you win the hearing?***

After the administrative law judge gives the decision, the school system must implement the decision unless the school system appeals to state or federal court and asks for, and is given, a stay (hold) of the order. However, if the school system appeals a decision in which the hearing office agrees with the parents that a change in placement is appropriate, the school system must implement the new placement. The new placement becomes the "stay-put" placement during the appeal.

### ***14. What are attorney's fees?***

If you have an attorney and you win all or part of your appeal, you may be able to get fees from the school district for the work your attorney did on your child's case. You should discuss this possibility with any attorney that you retain. You will not be able to recover the costs of any experts who testified on your child's behalf.

As stated earlier, parents and/or their attorneys may be at risk of having to pay the school system's lawyer's fees if the parents or their attorney file a due process hearing request for an improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

**NOTE:** Attorney's fees may be reduced or denied if the hearing request does not include the student's name and address; the name of the school the child attends; a description of the problem and related facts; and a proposed resolution of the problem to the extent known and available to the parents at the time the hearing request is made.

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## SUSPENSION, EXPULSION & OTHER DISCIPLINARY ACTIONS

### *1. Can your child be suspended or expelled from school?*

A child with a disability may be suspended for up to 10 consecutive school days in the same manner as a regular education student. The school system does not have to consider whether the conduct was related to the disability before suspending the student for fewer than 10 days.

However, federal and state laws offer protections to students with disabilities who are facing suspensions that are *greater* than 10 school days or are facing expulsion. (Expulsion is the dismissal of a student from the school system, although it may also be for a specific period of time, such as a semester.) For exclusions greater than 10 school days, the school system must follow certain procedures and determine whether the conduct was related to the student's disability. A child whose behavior problems are not related to his disability may be subject to the normal suspension or expulsion procedures and penalties.

### *2. What rights does your child have if he is removed from school for up to 10 consecutive school days?*

A school system may remove a student with disabilities for up to 10 consecutive school days if the school system uses the same procedure with students who do not have disabilities. A suspension is considered an excused absence. You should ask your school for any work that your child may have missed due to the suspension.

### *3. Can your child be subjected to a series of short-term suspensions?*

School personnel are not permitted to subject a student with a disability to multiple short-term suspensions if the suspensions become a "pattern of exclusion". The school system can suspend a student with a disability for separate incidents of misconduct. For example, a student could be suspended for 3 days one month, then 1 day the next month, and 2 days another month. However, this is not permissible if the series of suspensions become a "pattern of exclusion" that effectively amounts to a "change in placement."

If the suspensions add up to more than 10 school days in one school year, the IEP team must determine if there is a pattern of exclusion. The team must consider several factors, such as whether the behavior is very similar from one suspension to another, the length of each removal, the total amount of time the child is removed, and how close the removals are to each other.

If your child has been suspended for more than 10 total days in a school year, you should consider requesting an IEP meeting to determine whether there has been a pattern of exclusion. You should go to this meeting and explain the effect the suspensions are having on your child. The team should also review your child's IEP and behavioral intervention plan, if there is one. If there is no behavioral intervention plan, you should consider asking the team to conduct a functional behavioral assessment and develop a behavioral intervention plan. Sometimes a child with one identified

disability may also have another disability that has caused the behavior. You can also ask the IEP team to look at whether or not your child may have a disability that has not yet been identified.

If the IEP team determines that there has been a pattern of exclusion, the IEP team must then determine if the conduct was a "manifestation" of your child's disability. (See page 30 for more on manifestation determinations.) If manifestation is found, your child should return to school if he is currently suspended. If the IEP team decides that your child's short-term suspensions do not form a "pattern of exclusion" and you disagree, you can immediately request a due process hearing or mediation.

**NOTE:** After a student with disabilities has been removed from school for more than 10 school days in the same school year, the school system must provide special education services to the student during any additional days of suspension. The services must allow the student to make progress in the general curriculum and appropriately advance toward achieving the goals set out in his IEP. In this circumstance, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and advance toward achieving IEP goals.

### *4. Can school staff send a child home early due to behavior without suspending the child?*

No. Unfortunately, however, school administrators sometimes send a student home early by calling the parent to pick up the student. Regardless of what the school administrator may call it, this is a suspension, and due process rights apply. You should ask the school administrator to provide in writing why your child is being sent home. If there is a behavioral intervention plan, you should ask what steps have been taken to address your child's behavior. If the school staff did not follow the behavioral intervention plan, you should request that your child remain in school. It is not unusual for students to have a significant amount of time out of school because of numerous "send homes" or disciplinary removals. If your child is being sent home regularly, you should consider requesting an emergency IEP team meeting and/or filing a formal complaint. (See page 22 for more about complaints.)

### *5. When can your child be removed from school for more than 10 consecutive school days?*

There are three ways that your child may be removed from school for more than 10 consecutive school days.

- 1) **The behavior is not related to a disability.** Your child can be suspended for more than 10 consecutive school days if the school system recommends a long-term suspension and the IEP team determines that the conduct was not related to your child's disability.
- 2) **The behavior involves drugs, weapons or serious bodily injury.** School personnel may order a change in your child's placement to an "appropriate interim alternative educational setting" for up to 45 school days if:

- a) Your child carries a weapon to school or to a school function, or has a weapon at school (in a locker, for example) or at a school function, *or*
  - b) Your child knowingly has or uses illegal drugs or sells or solicits the sale of illegal drugs while at school or a school function, *or*
  - c) Your child has inflicted serious bodily injury upon another person while at school or at a school function.
- 3) **A hearing officer may order a change in your child’s placement to an “appropriate interim alternative educational setting” for up to 45 days if he:**
- a) Determines that the school system has demonstrated, beyond a preponderance of the evidence, that keeping your child in his current placement is substantially likely to result in injury to your child or others; *and*
  - b) Considers the appropriateness of your child’s placement; *and*
  - c) Considers whether the school system has made reasonable efforts to minimize the risk of harm in your child’s current placement, including the use of supplementary aids and services; *and*
  - d) Determines that the interim alternative educational setting allows your child to continue to participate in the general curriculum, receive the services and modifications included in the IEP, meet the IEP goals, and receive services and modifications that are designed to address your child’s behavior so that it does not happen again.

**6. *What happens if your child is recommended for a suspension for more than 10 consecutive school days?***

If the school system wants to suspend your child with a disability for more than 10 consecutive school days during one school year, it must notify you of the proposed long-term suspension. In addition, the IEP team *must* meet within 10 school days from the date your child was excluded from school. As with all IEP team meetings, you have the right to participate in this meeting. At the IEP team meeting, the team must decide if your child’s behavior (what your child did that resulted in the disciplinary action) is related to his disability. **This meeting is generally called a “manifestation” IEP team meeting.**

In determining manifestation, the team *must* consider all of the relevant information, including information the parents provide, teacher observations of the child, and the IEP. The IEP team must find that your child’s behavior was related to his disability if it:

- 1) Determines that your child’s conduct was caused by or had a direct and substantial relationship to his disability; *or*
- 2) Determines that your child’s conduct was the direct result of the school system’s failure to implement his IEP.

**7. *What happens if the IEP team determines the behavior is not related to the disability?***

If the team finds that your child’s behavior was *not* a manifestation of his disability, the regular education disciplinary procedures can be used. However, the school system cannot stop providing special education services to your child. While on suspension, a child must receive services that permit him to participate in the general curriculum, although in a different setting, and make progress toward meeting the goals set forth in the IEP.

If the IEP team decides that your child’s behavior is not related to his disability and you disagree, you have the right to request a due process hearing. At the same time, you can also appeal your child’s exclusion from school through the regular education process by writing to the superintendent of the school system. If you request a due process hearing to challenge the manifestation determination, your child will remain in the interim alternative education setting until the appeal is resolved or until the end of the removal period, whichever comes first.

**8. *What happens if the IEP team determines the behavior is related to the student’s disability?***

If the IEP team decides that your child’s behavior is related to his disability, he should be reinstated to his original placement as soon as possible. However, if the incident involved drugs, weapons, or serious bodily injury, the school system can still place your child in an interim alternative education setting for up to 45 school days, even if the team found “manifestation.”

Additionally, whenever there is a suspension, the IEP team should look at whether your child’s program is still appropriate or if it should be changed. Sometimes, changes in the program such as additional related services or behavioral goals and strategies can make the program appropriate. Such changes should be included in the IEP.

**9. *What is a functional behavior assessment?***

A functional behavior assessment examines the student’s behavior, tries to figure out the reasons why it may occur, and determines how to address the behavior. If your child is facing disciplinary removal or is being transferred to an interim alternative education setting, the IEP team should determine whether a functional behavior assessment was ever completed and whether your child already has a behavioral intervention plan to address the behavior.

If your child does not have a functional behavior assessment or does not have a behavioral intervention plan, the IEP team must meet within 10 business days of the removal to develop a “functional behavior assessment plan” to address the behavior that resulted in the disciplinary action. After completing the assessment, the IEP team must meet again to develop a behavioral intervention plan. If the student already has a behavioral intervention plan, the IEP team must review the plan and make any necessary modifications to address the student’s behavior.

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### ***10. What decisions relating to discipline can you appeal?***

You can appeal any decision regarding a disciplinary action by requesting a due process hearing or mediation. For example, if you disagree with the finding of the IEP team about the relationship between your child's behavior and his disability (the manifestation decision), you have the right to appeal that determination and request a due process hearing. You can also appeal the decision by the school system to place your child in a 45 day alternative placement by requesting a due process hearing.

If you request a due process hearing to appeal a suspension or expulsion, the hearing process will be expedited. The hearing must be held within 20 school days from the date of the hearing request. During the appeal, your child will remain in the interim alternative educational placement until you get a decision from the administrative law judge or until the end of the suspension period or until the end of a 45 day placement, whichever comes first. If the school system believes that your child is dangerous, it can ask for an expedited hearing to try to show that your child should not return to his original placement after the 45 day period.

If an administrative law judge finds that your child poses a substantial likelihood of injury to self or others (a high legal standard to meet), and you disagree, you can appeal the decision to state or federal court. You should obtain the advice of a lawyer or advocate if your child is in this situation.

### ***11. What happens if your child is removed from school and he is not in special education?***

Sometimes there is reason to believe that a child may have a disability that has not yet been identified. In fact, many children are identified as having a disability and in need of special education only after a disciplinary incident at school.

The discipline procedures described above will apply to your child if the school system had "knowledge," before your child's disciplinary action, that your child was eligible for special education. A school system is considered to have this knowledge if you wrote to the school staff about your concerns that your child might need special education or you requested an evaluation. The school system is also considered to have this knowledge if your child's teacher or another school system employee expressed specific concerns about a pattern of behavior by your child to the special education director or other supervisory staff.

If there is reason to believe that your child may have a disability and need special education, your child must immediately be referred to the IEP team to be assessed for special education. If your child is found to be eligible for special education, and if his behavior is found to be related to his disability, he should be returned to school. In some cases, you may be able to get compensatory education services for your child for the days when he was excluded from school.

If you think that your child may have a disability that is related to the behavior that led to the disciplinary action against him, you should immediately ask for an IEP team meeting and provide the team with any medical reports or other information you have in support of your position. If the school system keeps your child out of school while he is being assessed, it must expedite (speed up) the assessment process.

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### ***12. Can the school system restrain a child or put a child in seclusion?***

Physical restraint is the use of force that restricts the movement of a student. Seclusion is the placement of a student alone in a room when he is prevented from leaving. Restraint or seclusion can only be used in the following situations:

- 1) There is an emergency situation and restraint or seclusion is necessary to protect the student and others from imminent, serious, physical harm after less intrusive interventions have been attempted or deemed inappropriate;
- 2) The child's IEP or behavior plan describes the specific behaviors and circumstances in which restraint or seclusion can be used; or
- 3) A parent of a student without disabilities has provided written consent while a behavior plan is being developed.

If the IEP team determines that restraint is going to be used as a behavioral intervention, it must be included on the IEP or behavioral intervention plan. (See below if restraint has been used and it is not on the IEP.) It must be done by trained staff and only reasonable force can be used. Mechanical restraint, which is a device or material used to restrict a student's movement, is prohibited in all Maryland public schools and most nonpublic schools.

If the IEP team determines that seclusion is going to be used as a behavioral intervention, it must also be on the IEP or behavioral intervention plan. It must take place in a room where the child will be safe and can be viewed at all times. Seclusion can only be applied by trained staff and the child must be reassessed, at a minimum, every 30 minutes.

### ***13. What other rules apply to the use of restraint and seclusion?***

School staff must document each incident of restraint or seclusion and include the following:

- Other less intrusive interventions that failed or were deemed inappropriate;
- The precipitating event that took place before the use of restraint or seclusion;
- The behavior that prompted the intervention;
- The names and signatures of the school personnel who observed the behavior that prompted the use of the restraint;
- The names of the staff members who implemented and monitored the use of the restraint or seclusion;
- If restraint was used, the type of restraint;
- If seclusion was used, the justification for initiating the use of seclusion;
- The length of the restraint or seclusion;
- The student's behavior and reaction during the intervention; and
- The administrator who was informed of the use of restraint or seclusion.

In addition, the parents or guardians must be notified in writing or orally within 24 hours of the use of the restraint or seclusion.

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#### 14. *What if your child does not have restraint or seclusion on his IEP?*

If school staff use restraint or seclusion for your child and the IEP or behavioral intervention plan does not include these interventions, the IEP team must meet within 10 business days to consider the need for a functional behavior assessment and a behavioral intervention plan.

When reviewing or revising the IEP or a behavior intervention plan, the team must consider 1) existing information about the child (health, physical, psychological, psychosocial), 2) information from the parent, teachers and service providers, and 3) the child's current placement. If restraint or seclusion is included on a child's IEP, the IEP must describe how often the IEP team will meet to review and revise the IEP and/or behavioral intervention plan.

If restraint or seclusion is used for a child who is not identified as having a disability, the student shall immediately be referred to the school's pupil services team or an IEP team.

#### 15. *What is "exclusion" and when can it be used?*

Exclusion occurs when a student is placed in a supervised area for a limited period of time in order to regain self-control. When school staff place a student in exclusion, he is not receiving instruction, including special education, related services or support. Exclusion can only be used 1) if the student's behavior unreasonably interferes with his learning or the learning of others, or 2) in an emergency to protect the student and others from imminent harm. Exclusion must be done in a safe, *unlocked* setting where the child can be monitored. A period of exclusion may not exceed 30 minutes.

### REVIEWING SCHOOL RECORDS

Federal law guarantees you access to the school records that the school system keeps about your child. In general, school records are governed by a law called the Family Educational Rights and Privacy Act (FERPA), which has its own regulations and policies governing access to, release of, and correction of records. The IDEA also guarantees your right to inspect and review your child's records. You have a right to review *all* of the official records kept about your child. You also have a right to review records prepared by or received by school staff. Even if someone outside the school system has created the document (for instance, a doctor's report), if it is part of your child's school record, you can review it.

The school must respond promptly to your request to review your child's records and in no case later than 45 days from the date of your request. If your child's principal or school administrator does not respond to your request, you should write to your school system superintendent, indicating that the IDEA requires the school to provide the records without "unnecessary delay."

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Many school systems keep three or more separate files on each child. These separate files are usually called the cumulative, health, and confidential files. Disciplinary records may be kept separately. You should remember to ask to see all of the files kept about your child. You can also ask for copies of any records that may be stored electronically.

If you believe that any of the information in your child's files is wrong or not accurate, you can ask the school system to correct the records. If the school system refuses to do this, you have the right to request a hearing to challenge this refusal. Even if you lose at this hearing, you have the right to put your own explanation of the information into your child's records. If your child's records are released to anyone, your explanation will also have to be released.

You have the right to request copies of all of your child's school records. The school system is allowed to charge a "reasonable" fee for copies of records if the fee does not effectively prevent a parent from inspecting and reviewing the records. The fee is usually the actual cost of copying each page. The school system cannot charge you a fee for searching and retrieving the records. At an IEP team meeting, you will not be charged for any documents shared.

### INCLUDING YOUR CHILD IN OUT OF SCHOOL TIME PROGRAMS

An out of school time (OST) program is a program or activity where children participate in academic, athletic, recreational or cultural activities with other young people beyond the school day, before or after the school day, or during the summer. For many parents and guardians of children with disabilities, finding safe and accessible out of school time activities can be a difficult and frustrating process.

All children, including those with disabilities, should be able to participate in OST programs and activities. Taking part in fun, engaging activities outside the school day is good for all children. Giving young people with and without disabilities the opportunity to participate together is beneficial to all.

If you ask an OST program whether your child can participate in a program or activity, the answer should be "Yes!" Your child should be able to participate fully in an OST program – even if it means the program will need to make changes to accommodate your child. The law requires that almost all OST programs, regardless of size, take steps necessary so that all children can safely and meaningfully participate. For more information see MDLC's handbook, "Together Beyond the School Day, Including Youth with Disabilities in Out of School Time Programs" available in print and on MDLC's website [www.mdclaw.org](http://www.mdclaw.org).

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## BULLYING, HARRASSMENT OR INTIMIDATION

### *1. What is bullying, harassment or intimidation?*

Bullying, harassment or intimidation is prohibited in all Maryland public and nonpublic schools. It is defined as intentional conduct, including verbal, physical, or written conduct or an intentional electronic communication (electronic device, including a telephone, cellular phone, computer, or pager) that creates a hostile educational environment by substantially interfering with a child's educational benefits, opportunities, or performance, or with a child's physical or psychological well-being. In order to be considered bullying, harassment or intimidation, the behavior must:

- be motivated by an actual or a perceived personal characteristic including race, national origin, marital status, sex, sexual orientation, gender identity, religion, ancestry, physical attributes, socioeconomic status, familial status, or physical or mental ability or disability; or,
- be threatening or seriously intimidating; and,
- occur on school property, at a school activity or event, or on a school bus; or,
- substantially disrupt the orderly operation of a school.

This definition does not distinguish between students and school staff. Any time this behavior occurs, it is considered bullying, harassment or intimidation and it is prohibited.

### *2. What must the school system do about bullying, harassment or intimidation?*

Every Maryland school system, including nonpublic schools, must have a policy that prohibits this kind of conduct. The policy must describe the process for reporting incidents of bullying, harassment or intimidation as well as the consequences for committing such behavior. School systems must investigate and report incidents to the Maryland State Board of Education as well as provide families with a report form and information about support services that are available to students involved in incidents of bullying, harassment or intimidation.

### *3. How is bullying reported?*

Reports of bullying, harassment or intimidation may be made by a student, parent/guardian/close adult relative, or a staff member. The information contained in the report is confidential and may not be made a part of a student's permanent educational record.

### *4. How does bullying impact the rights of a student with disabilities?*

The failure of a school system to address disability harassment may constitute a violation of the IDEA when harassment impacts a student's ability to benefit from her education, and/or when it forces a student with a disability into a more restrictive educational setting. Such failure by a school system may also violate a student's right to an equal educational opportunity as guaranteed by Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.

### *5. What can you do if your child is bullied?*

In addition to completing the reporting form, you can provide written notice to the school and to school district officials of the harassment or bullying behavior to which your child has been subjected. If you believe the behavior has occurred on the basis of disability, you should explain this in your letter. The notice gives the school and local school system officials the opportunity to fix the situation and establishes a record that you gave them notice of the problem. If they do not address the issue, you will be able to show later that you gave them written notice of the problem. This is important if you are considering legal action.

You can also request an IEP meeting to address your concerns and to consider any additional supports and services that may benefit your child.

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## GLOSSARY OF COMMONLY USED TERMS AND ABBREVIATIONS

**BIP** – Behavior Intervention Plan. An individualized plan for a student, designed for the settings where behaviors occur, and implemented consistently across those settings.

**ESY** – Extended School Year services. ESY services are individualized services provided during the summer when the benefits your child gained during the school year would be substantially jeopardized if he did not receive services beyond the regular school year.

**FBA** – Functional Behavior Assessment. A process for gathering information to predict the conditions and/or circumstances that would explain why a student is exhibiting an inappropriate behavior. Information from the FBA is used to develop a behavioral intervention plan (BIP).

**FERPA** – Family Education Rights and Privacy Act. The federal law governing access to, release of, and amendment of school records.

**IDEA** – Individuals with Disabilities Education Act. The federal law that guarantees all children with disabilities the right to a free appropriate public education. The IDEA is also known as the Individuals with Disabilities Education Improvement Act and can be found at 20 U.S.C. §1400, et seq., 34 C.F.R. Part 300.

**IEP** – Individualized Education Program. The annual document that describes what special education and related services your child is to receive.

**IEP TEAM** – The team of people who make all special education decisions about a child, including eligibility for special education, testing to be done, development of IEP, determination of placement and reviews. The parent is a member of the team. Whenever appropriate, the student is also a member of the team.

**IFSP** – Individualized Family Services Plan. The document that describes the services a child and family will receive through the Infants and Toddlers Program.

**LSS** – The Local School System responsible for educating your child.

**LRE** – Least Restrictive Environment. All children with disabilities have a right to be educated in the least restrictive environment in which their IEPs can be implemented. This is typically considered to be the general education classroom or the setting as close as possible to the general education classroom.

**MSDE** – Maryland State Department of Education. The state agency that is responsible for monitoring local education agencies and for making sure that these agencies follow state and federal laws.

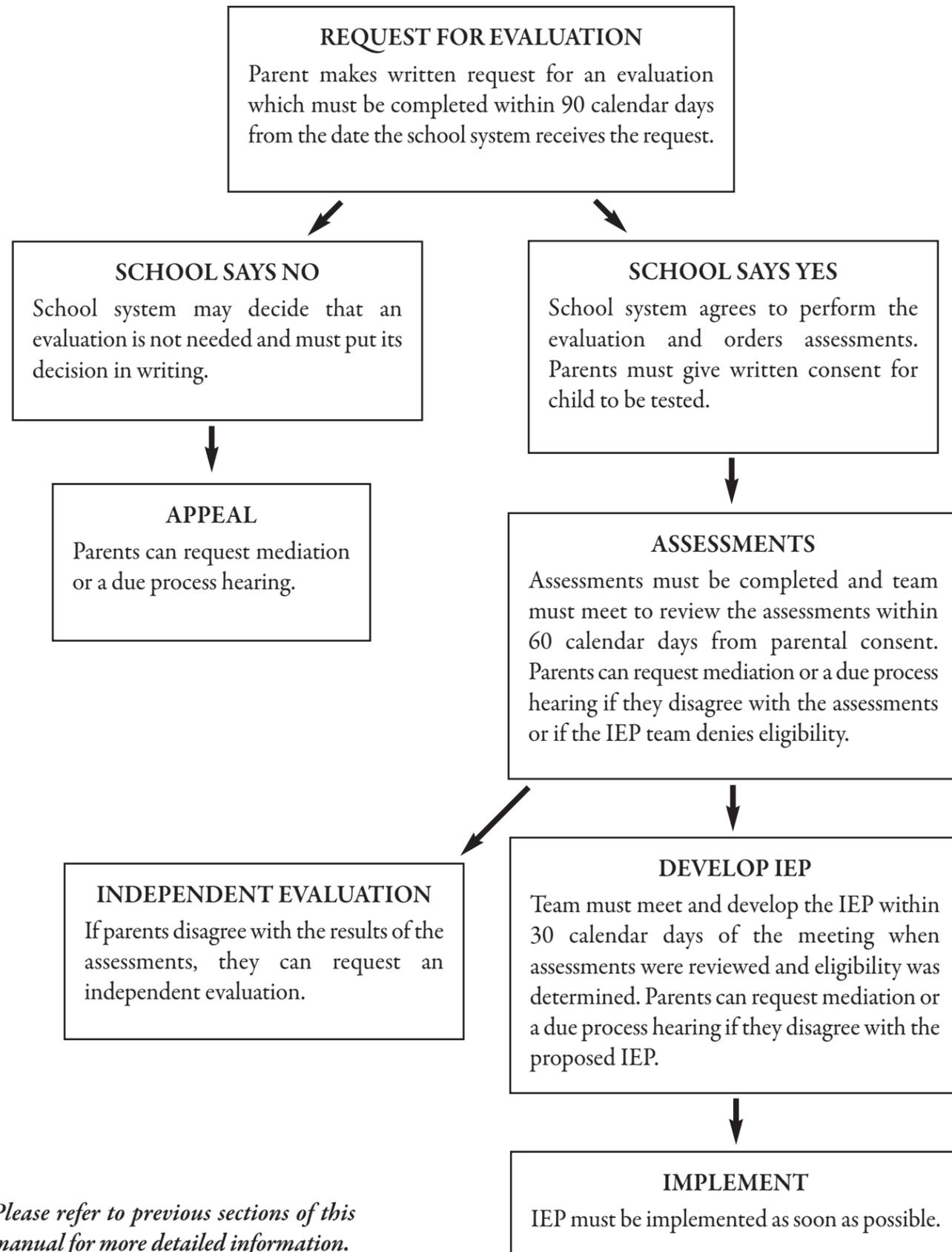
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**OST** – Out of School Time programs. A program or activity where children participate in academic, athletic, recreational or cultural activities with other young people beyond the school day, before or after the school day, or during the summer.

**SEA** – State Education Agency. The Maryland State Department of Education (MSDE).

**Section 504** – This is an abbreviated way to refer to the federal law called Section 504 of the Rehabilitation Act of 1973, 34 C.F.R. Part 104. This law prohibits any agency that gets federal money from discriminating against a person on the basis of disability. Section 504 requires “reasonable accommodation” of a disability.

## THE IEP PROCESS



*Please refer to previous sections of this manual for more detailed information.*

## INTERNET RESOURCES

**ADHDNews:** [www.adhdnews.com](http://www.adhdnews.com)

**Council for Exceptional Children (CEC):** [www.cec.sped.org](http://www.cec.sped.org)

**The Council of Parent Attorneys and Advocates (COPAA):** [www.copaa.org](http://www.copaa.org)

**The Family Village, Waisman Center, University of Wisconsin-Madison:**  
<http://www.familyvillage.wisc.edu/>

**LD OnLine: Learning Disabilities Information & Resources:** [www.ldonline.org](http://www.ldonline.org)

**National Dissemination Center for Children with Disabilities (NICHCY):**  
[www.nichcy.org](http://www.nichcy.org)

**Office of Special Education and Rehabilitative Services (OSERS):**  
[www.ed.gov/about/offices/list/osers](http://www.ed.gov/about/offices/list/osers)

**Pacer Center:** [www.pacer.org](http://www.pacer.org)

**The Resource Network at the Kennedy Krieger Institute:** [www.resourcenetworkatkki.org](http://www.resourcenetworkatkki.org)

**United States Department of Education:** [www.ed.gov](http://www.ed.gov)

**Wright's Special Education Law:** [www.wrightslaw.com](http://www.wrightslaw.com)

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## **SPECIAL EDUCATION ADVOCACY and INFORMATION RESOURCES**

### **Abilities Network**

(410) 828-7700 / (800) 492-2523 Website: [www.abilitiesnetwork.org](http://www.abilitiesnetwork.org)

### **AG Bell Association for the Deaf and Hard of Hearing**

(202) 337-5220 Website: [www.agbell.org](http://www.agbell.org)

### **The Arc of Maryland**

(410) 571-9320 (Annapolis) (410) 974-6139 (Baltimore)

Website: [www.thearcmd.org](http://www.thearcmd.org)

### **Autism Society of America**

(800) 328-8476 Website: [www.autism-society.org](http://www.autism-society.org)

### **Brain Injury Association of Maryland, Inc.**

(410) 448-2924 Website: [www.biamd.org](http://www.biamd.org)

### **Children with Attention Deficit Disorder (CHADD)**

(800) 233-4050 Website: [www.chadd.org](http://www.chadd.org)

### **CityWide Special Education Advocacy Project**

(410) 523-3225

### **Learning Disabilities Association of Maryland (LDA)**

(888) 265-6459 Website: [www.ldamd.org](http://www.ldamd.org); [www.ldanatl.org](http://www.ldanatl.org)

### **Providing Independence Through Technology (V-LINC)**

(410) 554-9134 Website: [www.v-linc.org](http://www.v-linc.org)

### **Maryland Association of Nonpublic Special Education Facilities**

(410) 938-4413 Website: [www.mansef.org](http://www.mansef.org)

### **Maryland Center for Developmental Disabilities**

(443) 923-9555 Website: [www.mcdd.kennedykrieger.org](http://www.mcdd.kennedykrieger.org)

### **Maryland Coalition for Inclusive Education**

(410) 859-5400 / (800) 899-8837 Website: [www.mcie.org](http://www.mcie.org)

### **Maryland Coalition of Families for Children's Mental Health**

(410) 730-8267 / (888) 607-3637 Website: [www.mdcoalition.org](http://www.mdcoalition.org)

### **Maryland Special Needs Advocacy Project**

(410) 735-5012

\*Trains volunteer educational advocates to assist Jewish families to navigate the special education system.

### **Maryland Volunteer Lawyers Service**

(410) 547-6537 / (800) 510-0050 Website: [www.mvlslaw.org](http://www.mvlslaw.org)

### **Project HEAL at Kennedy Krieger Institute:**

(443) 923-4416 Website: [www.projectheal.kennedykrieger.org](http://www.projectheal.kennedykrieger.org)

\*Provides free advocacy and legal services to low-income families receiving services from Kennedy Krieger Institute.

### **National Alliance on Mental Illness (NAMI) Maryland**

(410) 884-8691 Website: [www.namimd.org](http://www.namimd.org)

### **National Federation of the Blind of Maryland**

(410) 659-9314 Website: [www.nfb.org](http://www.nfb.org)

### **Parents Place of Maryland**

(410) 768-9100 / (800) 394-5694 Website: [www.ppmmd.org](http://www.ppmmd.org)

### **Unified Community Connections (UC2)**

(410) 484-4540 Website: [www.uc2.org](http://www.uc2.org)

## **STATE and LOCAL EDUCATION RESOURCES**

### **Maryland State Department of Education**

Division of Special Education/Early Intervention Services

200 West Baltimore St., Baltimore, MD 21201-2595

(410) 767-0238 Website: [www.msde.state.md.us](http://www.msde.state.md.us)

### **Partners for Success**

These offices are part of the local school systems and provide information to students and parents about the special education process. Call the Office of Special Education in your local school system and ask for the Partners for Success contact information.

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APPENDIX

SAMPLE LETTER REQUESTING AN EVALUATION

Parent's address  
Parent's phone number(s)

Date  
Principal  
Child's school  
School address

Dear \_\_\_\_\_:  
*(Principal)*

I am the parent of \_\_\_\_\_, whose date of birth is \_\_\_\_\_ and who is a student  
*(Child's name)*  
in the \_\_\_\_\_ grade. My child has not been doing well in school and I believe \_\_\_\_\_  
*(Child's name)*  
may need special education services. I am therefore requesting a complete evaluation of my child  
to determine if he/she has a disability, and if so, what programs and services are needed.

Since I am a member of the IEP team, I am asking that you please contact me at your  
earliest convenience in order to schedule the IEP meeting.

Should you have any questions or problems with this request, please contact me at  
\_\_\_\_\_.

Thank you.

Sincerely,

\_\_\_\_\_  
*(Parent's signature)*

Keep a copy for your records

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APPENDIX

SAMPLE LETTER REQUESTING A RE-EVALUATION

Parent's address  
Parent's phone number(s)

Date  
Principal  
Child's school  
School address

Dear \_\_\_\_\_:  
*(Principal)*

I am the parent of \_\_\_\_\_, whose date of birth is \_\_\_\_\_ and who is a student  
*(Child's name)*  
in the \_\_\_\_\_ grade. My child has not been doing well in school. In order to understand what  
changes may be needed in my child's special education program, I am requesting that  
\_\_\_\_\_ receive a complete re-evaluation.  
*(Child's name)*

Please contact me at your earliest convenience to arrange a re-evaluation meeting.

Should you have any questions or problems with this request, please contact me at  
\_\_\_\_\_.

Thank you.

Sincerely,

\_\_\_\_\_  
*(Parent's signature)*

Keep a copy for your records

APPENDIX

SAMPLE LETTER REQUESTING AN INDEPENDENT EVALUATION

Parent's address  
Parent's phone number(s)

Date  
Principal  
Child's school  
School address

Dear \_\_\_\_\_:  
*(Principal)*

I am the parent of \_\_\_\_\_, whose date of birth is \_\_\_\_\_ and who is a student in the \_\_\_\_\_ grade. I am requesting that the school district agree to pay for an independent educational evaluation of my child. I believe that the school system's evaluation was not appropriate because: \_\_\_\_\_.  
*(List reasons that school's evaluation was not appropriate.)*

I understand that if the school system turns down my request, it must arrange for a due process hearing. I would appreciate it if you would contact me at your earliest convenience to let me know whether the independent evaluation will be provided or whether a hearing will be scheduled.

Should you have any questions or problems with this request, please contact me at \_\_\_\_\_.

Thank you.

Sincerely,  
\_\_\_\_\_  
*(Parent's signature)*

Keep a copy for your records

APPENDIX

SAMPLE LETTER REQUESTING AN IEP MEETING

Parent's address  
Parent's phone number(s)

Date  
Principal  
Child's school  
School address

Dear \_\_\_\_\_:  
*(Principal)*

I am the parent of \_\_\_\_\_, whose date of birth is \_\_\_\_\_ and who is a student in the \_\_\_\_\_ grade. I am requesting that you schedule an IEP meeting as soon as possible in order to discuss the following: \_\_\_\_\_.  
*(List the issues you want to discuss.)*

I am available on the following dates: \_\_\_\_\_. Should you have any questions or problems with this request, please contact me at: \_\_\_\_\_.

Thank you.

Sincerely,  
\_\_\_\_\_

Keep a copy for your records



200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

Lillian M. Lowery, Ed.D.  
State Superintendent of Schools

### Special Education State Complaint Form

#### Part B of IDEA and COMAR 13A.05.01.15

This is the State Complaint form that the Maryland State Department of Education's Division of Special Education/Early Intervention Services (MSDE) has developed in accordance with State and federal requirements. While this form is *not* required for a complaint to be submitted, *all* information included on this form *must* be provided to MSDE and the public agency responsible for the education of the student *before* an investigation can begin. Failure to provide the required information or to provide a copy of the complaint to the public agency responsible for the student's education may prevent or delay the resolution of the complaint.

Student Information, if alleging a violation with respect to a specific student:

Student's Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
*City State Zip Code*

*In the case of a homeless student, please include any available contact information.*

School the student is currently attending: \_\_\_\_\_

School where alleged violation occurred, if different: \_\_\_\_\_

Check One:  High School  Middle School  Elementary School  Other: \_\_\_\_\_  
*(Please specify)*

If additional space is needed to answer any of the following questions, please use additional paper.

The following is a statement of the alleged violation(s) of IDEA and the facts upon which the statement is based. **Please note that the alleged violation(s) must not have occurred more than one year prior to the date that the complaint is received.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Please include any documentation that you have that supports the allegation(s) to assist MSDE and the public agency to better understand the violation(s) being alleged.*

Date(s) violation(s) occurred or duration of the violation: \_\_\_\_\_

The following is a description of the nature of the student's problem, including the facts relating to the problem:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the complaint is in regard to a specific student, please provide a proposed resolution or remedy to address the problem. **Please note that this information must be provided in order for MSDE to initiate a State complaint investigation regarding a specific student.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Information about the person filing the complaint ("complainant"):

Complainant's Name: \_\_\_\_\_  
*Please print*

Relationship to Student: \_\_\_\_\_

Address, if different than the student's: \_\_\_\_\_

\_\_\_\_\_  
*City State Zip Code*

Telephone number(s): \_\_\_\_\_

Signature of Complainant: \_\_\_\_\_  
*Date*

Please note: If the complainant is not the parent of the student, as defined in IDEA and State law, a release of information, signed by the parent or legal guardian, must be provided to MSDE in order to share personally identifiable information about the student.

Complaints must be provided to **both**:

Marcella E. Franczkowski, M.S.  
Assistant State Superintendent  
Maryland State Department of Education  
Division of Special Education/Early Intervention Services  
200 West Baltimore Street  
Baltimore, Maryland 21201  
and

The Director of Special Education of the local school system or the public agency against which the complaint is being filed.



Lillian M. Lowery, Ed.D.  
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD • MarylandPublicSchools.org

OFFICE OF ADMINISTRATIVE HEARINGS  
11101 GILROY ROAD, UNIT E/CLERK'S OFFICE  
HUNT VALLEY, MARYLAND 21031  
(410) 229-4294 FAX (410) 229-4277  
[www.oah.state.md.us](http://www.oah.state.md.us)

### REQUEST FOR MEDIATION and DUE PROCESS COMPLAINT

#### This dispute involves:

- INFANTS & TODDLERS EARLY INTERVENTION SERVICES**  
(PART C OF IDEA AND COMAR 13A.13.01.11 and .12)
- SPECIAL EDUCATION SERVICES**  
(PART B of IDEA and COMAR 13A.05.01.15)

#### Check all that apply:

- I am requesting mediation.** I understand that the Office of Administrative Hearings will schedule the mediation within approximately 20 days from receipt of this request if the other party agrees to mediate.
- I am filing a due process complaint.** I do not want to try to resolve the dispute through mediation. I understand that the public agency is required to schedule and convene a resolution meeting within 15 days<sup>1</sup> of receipt of this complaint, unless the parties agree to waive the meeting.
  - I am willing to waive the resolution meeting. I understand that if the public agency or local infants and toddlers program does not also agree to waive the resolution meeting, I will be required to attend a resolution meeting.
- I am filing a due process complaint and requesting we try mediation to resolve the dispute.** I understand that if the other party does not want to attend mediation, the public agency or local infants and toddlers program will schedule a resolution meeting to be held within 15 days<sup>1</sup> of receipt of this complaint, unless the parties agree, in writing, to waive the session. If both parties agree to mediate, it will be scheduled within approximately 20 days of receipt of this request so as not to delay the due process hearing.

**NOTE: THE PARTY FILING THIS COMPLAINT MUST BE AVAILABLE TO PARTICIPATE IN A RESOLUTION MEETING WITHIN 15 DAYS OF THE DATE THE COMPLAINT IS FILED UNLESS:**

- THE RESOLUTION MEETING IS WAIVED BY BOTH PARTIES;
- THE PARTIES AGREE TO MEDIATION; or
- THE RESOLUTION MEETING IS NOT REQUIRED BECAUSE THE COMPLAINT WAS FILED BY THE PUBLIC AGENCY OR LOCAL INFANTS AND TODDLERS PROGRAM.

<sup>1</sup> If a due process complaint is filed on behalf of a child with a disability who is not currently receiving educational services, or regarding placement in an interim alternative education setting or a manifestation determination, the Office of Administrative Hearings is responsible for scheduling an expedited due process hearing upon proper notice. This hearing must occur within 20 school days of the date the complaint requesting the hearing is filed. A resolution meeting must occur within 7 days of receiving notice of the due process complaint unless it is waived by both parties (34 CFR §300.532 and COMAR 13A.05.01.15(C)).

#### CHILD'S INFORMATION:

Name: \_\_\_\_\_

Birth Date: \_\_\_\_\_

Address: \_\_\_\_\_

Public Agency or Local Infants and Toddlers Program currently providing services (if applicable): \_\_\_\_\_

Public Agency or Local Infants and Toddlers Program against which the allegations are made (if different): \_\_\_\_\_

Check one, if applicable<sup>1</sup>:

- The child is not currently receiving services OR
- The dispute is over a manifestation determination, or a change in placement due to behaviors resulting in disciplinary actions.

#### PERSON FILING THE REQUEST:

Name: \_\_\_\_\_

Address (if different from child's): \_\_\_\_\_

Phone: (W) \_\_\_\_\_ (H) \_\_\_\_\_ (Cell) \_\_\_\_\_

Fax: \_\_\_\_\_ E-mail: \_\_\_\_\_

Relationship to student:  Parent  Legal Guardian  Public Agency  Self  Parent Surrogate

#### ATTORNEY/REPRESENTATIVE (if applicable):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Accommodations are required as follows (please be specific):

- Foreign Language Interpreter: \_\_\_\_\_ (specify)
- Sign Language Interpreter
- Other: \_\_\_\_\_ (specify)
- Special Communication: \_\_\_\_\_ (specify)
- Special Accommodations for Disability: \_\_\_\_\_ (specify)

**Please Provide ALL of the Additional Required Information:**

In accordance with the Individuals with Disabilities Education Act (IDEA), if you are filing a due process complaint you must provide a description of the problem(s) to be reviewed at the hearing, including relevant facts and a proposed resolution to the problem(s).

If the due process complaint does not meet the content requirements identified in the IDEA, the receiving party may challenge the sufficiency of the complaint.

If you are requesting mediation, providing this information will be helpful to the mediator.

If additional space is needed to respond to the following, please attach additional paper.

**Description of the problem(s) and relevant facts:**

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**Description of proposed resolution:**

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If you need additional information regarding mediation and due process hearings, please refer to the procedural safeguards document provided to you by either the public agency or the local infants and toddlers program. You may wish to review *A Parent's Guide to Frequently Asked Questions about Mediation*, *A Parent's Guide to Frequently Asked Questions about Due Process*, and relevant federal and State law and regulations, which can be obtained from the MSDE website at [www.marylandpublicschools.org](http://www.marylandpublicschools.org). You may also contact the Office of the Director of Special Education in your local school system, the Infants and Toddlers Program Director of the program responsible for the child's early intervention services, or the MSDE Division of Special Education/Early Intervention Services.

**You must forward a completed copy of this *Request for Mediation and Due Process Complaint* form to BOTH:**

- **The opposing party (the Director of Special Education in your local school system or the Infants and Toddlers Program Director responsible for the provision of the child's services); AND**
- **The Office of Administrative Hearings.**

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date



Maryland Disability Law Center  
1500 Union Avenue, Suite 2000  
Baltimore, Maryland 21211

Phone: 410.727.6352 • TTY: 410.235.5387  
Toll Free: 800.233.7201 • Fax: 410.727.6389

[www.mdclaw.org](http://www.mdclaw.org)