

# **Special Education in Plain Language**

**A User Friendly Handbook on Special Education  
Law, Policies and Practices in New York**

Created and provided by the  
Special Education Taskforce

[www.nyspecialtaskforce.com/](http://www.nyspecialtaskforce.com/)

This Guide contains general information and does not constitute individual legal advice about your situation. You should consult with an attorney for individual legal advice about your situation and to find out how this information applies to your situation.

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## **PREFACE**

The Special Education Taskforce is comprised of over 200 parent advocates, school district staff, attorneys and other individuals who specialize in Special Education Law, and work collaboratively to ensure that children with disabilities are educated in the least restrictive setting and receive a free and appropriate education. The Special Education Taskforce works to assure that families and school personnel have the knowledge and skills to enable them to effectively assist students with disabilities. To this end, this publication was developed to help families and educators to work collaboratively in supporting students with disabilities throughout their school years.

Parents and family members are important partners, along with school district personnel, in the education of children with disabilities. Parents provide necessary information to teachers and administrators, play an important role in decisions made about their children and parents participate as a full member of the Committee on Special Education. In order for families to have a meaningful role in their children's education they must understand their rights and responsibilities in special education.

This publication provides information for parents and families about laws, regulations, and policies affecting special education programs and services. Our hope is that through the use of this publication parents, families and school districts will collaborate together in order to help students reach their full potential. Developing this publication has taken the collaborative efforts of many dedicated individuals, organizations and school district personnel. This document is a reflection of the collaboration that is possible when schools and advocates, administrators and families work together to meet our obligation to students with disabilities.

**Jennifer J. Monthie**  
**Principal Author**

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## ACKNOWLEDGMENT

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## GENERAL INFORMATION

This publication includes imbedded citations to New York State and Federal education laws and administrative decisions from the New York Office of State Review and the New York State Commissioner of Education.

- **Citation to New York State Education Law:**

The NY Educ. Law Article 85 and 89 can be found at <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS>.

- **Citation to New York State Commissioner's Regulations:**

The Commissioner's Regulations can be found at Title 8 of the State of New York Codes, Rules and Regulations Part 200 and 201 (8 NYCRR 200-201). For a copy of these regulations please go to New York State Education Department (NYSED) web-site or <http://www.vesid.nysed.gov/specialed/publications/lawsandregs/coverpage.htm>

- **Citation to Family Educational Rights and Privacy Act:**

This publication includes citations to the Family Educational Rights and Privacy Act, 20 U.S.C.A. 1232 g (1974) and its implementing regulations at 34 C.F.R. 300.613(2006) and 34 C.F.R. 99 (2008). For a copy of these regulations please go to <http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

- **Citation to State Review Officer Decisions:**

The State Review Officer's written decisions may be found at <http://www.sro.nysed.gov/>

- **Citation to New York State Commissioner of Education Decisions:**

The Commissioner of New York State Education Department decisions may be found at <http://www.counsel.nysed.gov/Decisions/>

## THE SPECIAL EDUCATION PROCESS

### What is Special Education?

Special education means specially designed individualized or group instruction or special services or programs to meet the unique needs of students with disabilities. Special education services and programs are provided at **no cost** to the parent. *8 NYCRR 200.1 (ww) \* please see page 5*

### What are the steps in the Special Education Process?

#### Step 1: Initial Referral for Special Education Services

Students suspected of having a disability are referred to a multidisciplinary team called the Committee on Preschool Special Education (age 3– 5) or the Committee on Special Education (age 5-21). *8 NYCRR 200.4 (a)*

#### Step 2: Individual Evaluation Process

The Committee arranges for an evaluation of the student's abilities and needs. *8 NYCRR 200.4(b)*

#### Step 3: Determining Eligibility for Special Education Services

Based on evaluation results, the Committee, which includes the child's parent, decides if the student is eligible to receive special education services and programs. *8 NYCRR 200.4 (c)*

#### Step 4: Individualized Education Program (IEP)

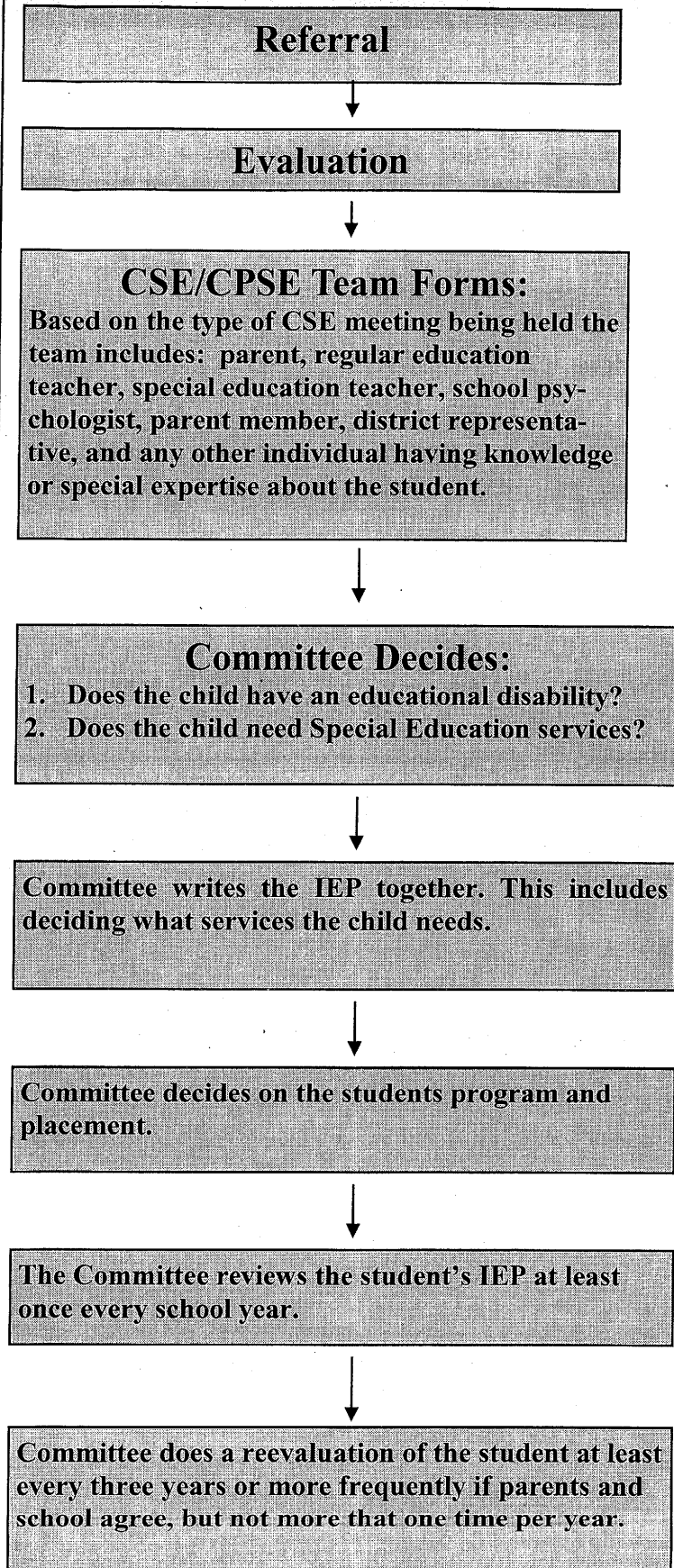
If the child is eligible to receive special education services, the Committee develops and implements an Individualized Education Program (IEP). The IEP is a document that describes the student's needs, the special education supports and services the student will receive, and the student's year long goals. The Committee must also determine the student's placement, ensuring that services are provided in the least restrictive environment (LRE). Placement must be as close as possible to the student's home, and unless the student's IEP requires some other arrangement, the student must be educated in the school he or she would have attended if not disabled. *8 NYCRR 200.4 (d)(2); 8 NYCRR 200.4 (d)(4)(ii)(b)*

#### Step 5: Annual Review/Reevaluation

The Committee must review the IEP at least once a year (annual review). The student must be reevaluated at least once every three years. *8 NYCRR 200.4(f); 8 NYCRR 200.4(b)(14)*

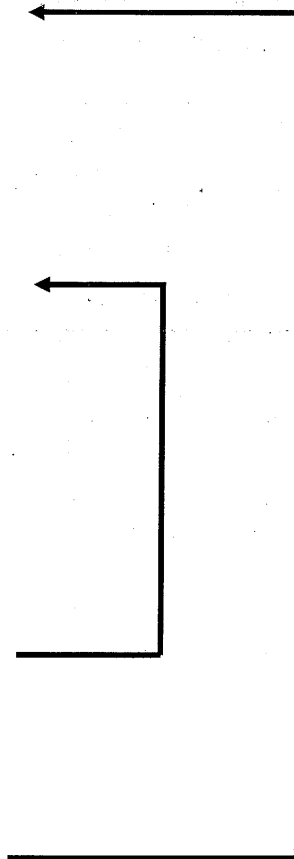
Timelines are in place so that delays are avoided. (See Page 15) Parents are an integral part of this process and their involvement is strongly encouraged.

# OVERVIEW OF THE SPECIAL EDUCATION PROCESS



Although this chart shows a series of decisions, all the decisions are connected. All the decisions are centered on the needs of the child.

For some children, all the CPSE/CSE's decisions can be made in one meeting. For other children, the Committee will need to meet together more than once. Anyone on the Committee can ask for more time if it is needed. Anyone on the Committee can also ask for another CPSE/CSE to be held if there are changes to be talked about.



## INITIAL REFERRAL FOR SPECIAL EDUCATION SERVICES

### What should you do if you feel your child needs special education?

#### Preschool Children (Age 3-5)

If your child is preschool age (3-5) and is not developing skills such as walking, talking or playing like other young children, you may want to talk to the child's doctor. He or she may be able to reassure you that children develop at different rates and your child is within the normal developmental scales. If, however, the doctor is concerned, or you or your child's teachers are still not comfortable with your child's progress, you may wish to make a referral to the school district's Committee on Preschool Special Education (CPSE). *Please see Sample Letters starting on page 40.*

#### School-Age Children (Age 5-21)

If you have a school-age child and you have noticed difficulty that your child has been having in school you may want to talk with your child's teacher. Your child's teacher may be able to help you understand the problems your child is having in school. You may also talk with your child's doctor. If your child's doctor, teacher or if you are still concerned about your child's progress in school, you may wish to make a referral to your school district's Committee on Special Education. *Please see Sample Letters starting on page 40.*

### What is response to intervention (RtI)?

RtI is a process that your school district may use to try and determine if general education school-wide supports can effectively address your child's need and prevent the need for your child to be classified for special education services. RtI attempts to close the gap for all students, including students at risk, students with disabilities and English language learners, by addressing smaller learning problems so that they do not become insurmountable gaps. The process can also be used to gather data about your child to make more appropriate identification of your child's learning issues and allow for more appropriate interventions for children with learning disabilities. RtI requires each school district to establish a **plan and policies for implementing school-wide approaches** and prereferral interventions in order to address a student's performance issues prior to referral for special education. Each school district must select and define the specific structure and components of its RtI program, including:

- Criteria for determining the levels of intervention to be provided to students;
- Types of interventions;
- Amount and nature of student performance data that will be collected; and
- Manner and frequency for progress monitoring. *8 NYCRR 100.2(ii)*

If you would like more information about your school district's RtI process you should contact your child's school district principal.

### Do I have to wait until the RtI process is completed before I can refer my child for special education?

No, you can make a referral for special education and do not have to wait until the RtI process has been completed.

## INITIAL REFERRAL FOR SPECIAL EDUCATION SERVICES

### What is a referral for special education?

A referral is a **written letter** asking that the school district evaluate your child to determine if he or she needs special education services. The letter should be addressed to the chairperson of your school district's Committee on Special Education or if you do not know your school district's chairperson then it should be addressed to your school principal. *8 NYCRR 200.4(a)*

### Who can make a referral for special education?

A referral may be made by you, the parent, a professional staff member designated by your school district, a licensed physician, a judicial officer, or your child. *8 NYCRR 200.4(a)(1)(i)-(iv)*. Your child's teacher may request that your child be referred for special education services but may not have the legal authority to make a referral. This means that the timelines that the school district must comply with (See *Timelines* on page 15) will not start upon a teacher's request for special education services. To assure that your child is evaluated in the most timely fashion you should make a written referral for your child to be evaluated for special education services.

### What must be included in my referral?

The **written** letter should include:

- Your child's name.
- Your child's date of birth.
- Your address and telephone number.
- A request that the school district evaluate your child for special education services.
- Your reasons or concerns for requesting the evaluation.

It is important to list all of your concerns which may include, academic, behavioral, physical and social problems or delays that your child is experiencing. The District must evaluate all areas of suspected disability. *8 NYCRR 200.4*

**You should keep a copy of this letter as well as any other written communications, for your records.** Please see *Sample Letters* starting on page 40.

### Why does my child need to be evaluated and how long will an evaluation take?

If a student is being evaluated for the first time, the District must complete the evaluation within **60 days of the date you signed the permission to evaluate form**. Therefore, you should make sure that you obtain and sign the "permission to evaluate form" immediately. *8 NYCRR 200.4(b)(7)*

The purpose of the evaluation is to find out whether your child has a disability and needs more support than is available through school-wide services. The evaluation will also help your school district understand what kind of special education services and supports your child needs.

## COMMITTEE ON SPECIAL EDUCATION (CSE/CPSE) MEETING

### What happens after the District completes its evaluation of my child?

After the school district has completed the evaluation of your child a meeting must be held. The meeting is called a Committee on Special Education (CSE) meeting or an IEP Team meeting. If your child is a preschool student (age 3-5) the meeting is called a Committee on Preschool Special Education (CPSE) meeting. 8 NYCRR 200.4(c)

### Who are members of a CSE or IEP Team? 8 NYCRR 200.3(2)

The Committee includes:

- You as the parent or caregiver;
- Your child, (if you and the school district agree that it is appropriate for your child to attend this meeting);
- A special education teacher;
- A general education teacher (if your child is or may be participating in general education program);
- A representative of the school district who is qualified to provide or supervise the provision of special instruction (this person is typically called a chairperson);
- Someone who can interpret the instructional implications of the evaluation (this person is typically the school psychologist).
- A parent member (this person is a parent in your school district whose child is receiving special education services).
- The school district physician, **only** if you or the school district request his or her presence *in writing* at least 72 hours prior to the meeting.
- Any other person having knowledge or special expertise about your child. You and the school district can invite anyone that you believe has special knowledge about your child to be a member of the committee on special education.

### What is the role of the parent member?

- Help bridge the gap between you and the CSE
- Promote mutual respect
- Help you understand the CSE process
- Support you as the parent of a child with a disability
- Maintain confidentiality

The parent member is **not** your personal advocate. If you are interested in assistance in advocating for you or your child during a Committee meeting, please see the *Resource* section of this guide for a list of organizations in your area.

## COMMITTEE ON SPECIAL EDUCATION (CSE/CPSE) MEETING

### What happens at the CSE/CPSE or IEP Team Meeting?

After the evaluation is completed, your child's evaluators will explain the test results and you will be invited as a member to a CSE/CPSE meeting to talk about the results. **You should attend this meeting** because you have important information to share about your child. If you cannot attend, you have the right to request that the meeting be held at a **mutually convenient time and location**. The District must provide the opportunity to participate by phone if you are unable to attend in person. At the meeting, the Committee will review the evaluation results. Based on that information, and information that you provide, the Committee decides if your child is eligible or ineligible to receive special education programs and/or services. *8 NYCRR 200.4(c)*

In order to be eligible a child must have a disability because of mental, physical or emotional reasons that affects his/her ability to learn. *8 NYCRR 200.1(zz)* The Committee must determine if you child falls into one of the following classifications:

- Autism;
- Deafness;
- Deaf-blindness;
- Emotional disturbance;
- Hearing Impairment;
- Learning disability;
- Mental Retardation;
- Multiple disabilities;
- Orthopedic Impairment;
- Other Health-impairment;
- Speech or language impairment;
- Traumatic brain injury; and
- Visual impairment including blindness. *8 NYCRR 200.1 (zz)(1)-(13)*

### What happens if your child is ineligible for special education services?

If you, with the Committee, decide that your child does not require special education services or programs, the Committee must provide you with information indicating why your child is ineligible. If your child is of school-age (5-21) the Committee must:

- Send information to the principal of your child's school. The principal will be able to work with professionals in the school or with your child's current teacher, the reading teacher, the guidance counselor, or another specialist to help your son or daughter; and
- Consider making a referral under Section 504 of the Rehabilitation Act of 1973 (a Federal civil rights law) to another multidisciplinary team within the school. Additional information about section 504 plans are available at <http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html>

If you disagree with the decision of the Committee you have several options which are detailed in the *Due Process* section of this document starting on page 22.

### What happens if your child is eligible for special education services?

If you and the other members of the Committee decide your child is eligible for special education services, the Committee will create an Individualized Education Program (IEP). *8 NYCRR 200.4(d)(2)*

## INDIVIDUALIZED EDUCATION PROGRAM (IEP)

### What is an IEP?

An Individualized Education Program (IEP) is a written plan that tells a school district how to educate your child with a disability. The IEP describes the special help your child must receive in school. The IEP must be based on your child's individual needs, and must respond to the concerns raised by your child's evaluations. 8 NYCRR 200.1(y)

### How is an IEP developed?

The Committee must consider:

- Your child's strengths;
- Your concerns for your child's education;
- The results of your child's evaluation;
- The results of any State or district-wide tests or assessments; and
- Any unique needs related to your child's disability (such as communication needs, behavior, etc.) 8 NYCRR 200.4(d)(2)

The Committee should create the IEP in a specific order. This order is established by the IEP document.

**FIRST: The Committee discusses the classification of the child.** The Committee must choose from one of the thirteen classification listed on page 11. 8 NYCRR 200.4(d)(2)(ii)

**SECOND: The Committee discusses how your child is doing in school (current level of functioning), your child's strengths and weaknesses.** The Committee must discuss your child's strengths and weaknesses in four categories including:

*Academic achievement, functional performance and learning characteristics* (Your child's current level of knowledge and development in subject and skill areas, including activities of daily living, level of intellectual functioning, adaptive behavior, expected rate of progress in acquiring skills and information and learning style).

*Social Development* (The degree and quality of your child's relationship with peers and adults, feelings about self and adjustment to school and community environments).

*Physical Development* (The degree and quality of your child's motor and sensory development, health, vitality, and physical skills or limitations that pertain to the learning process).

*Management Needs* (The nature of and degree to which environmental modifications and human or material resources are required to enable your child to benefit from instruction. 8 NYCRR 200.1(w)(3)(i)

## INDIVIDUALIZED EDUCATION PROGRAM (IEP)

**THIRD: The Committee agrees on the goals your child should be working towards in this school year.** The IEP must list *measurable* annual goals, which means that your child's progress towards these goals can be tracked by some form of evaluative criteria or data collection. These goals are created from the weaknesses that the Committee documented in the SECOND step above. These goals must also address your child's weaknesses so that he or she can make progress in the general education curriculum and meet your son or daughter's other educational needs. 8 NYCRR 200.4(d)(2)(iii)

**FOURTH: The Committee discusses the supports, services and modifications that your child needs.** The Committee must write in the IEP the specific special education supports and services your child needs. These services must be individualized (or specific to your child's unique needs and assist your child in reaching his or her goals from the THIRD step. 8 NYCRR 200.4(d)(2)(v)

**FIFTH: The Committee determines where those special education services will be provided (location and placement).** The location and placement of the services must be in the *least restrictive environment* which means a location that look as much as possible like the classroom and location that student's without disabilities attend. If the services are not going to be provided in the general education classroom setting, the Committee must explain why your child cannot receive those services in the general education setting in the IEP document. 8 NYCRR 200.4 (d)(2)(xii); 8 NYCRR 200.4(d)(4)(ii)

### The Five Steps to Developing an IEP

Committee discusses classification of your child and picks one of thirteen classifications.



Committee discusses your child's strengths and weaknesses in four areas.



Committee agrees on measurable annual goals to address your child's weaknesses.



Committee discusses special education supports, services and modifications your child needs to meet his or her annual goals.



Committee discusses the location and placement of the special education services in the *least restrictive environment*.

## ANNUAL REVIEW/REEVALUATION

### What happens after the Committee creates the IEP?

The Board of Education for your school district must make arrangements to implement the special education programs and services on your child's IEP. There are timelines for implementing (starting) your child's IEP. There should not be any delay in implementing the IEP while the school district decides how it will pay for the special education services.

You will receive a copy of your child's IEP at no cost to you, and your child's teachers and service providers (who are involved in implementing the IEP) will have access to a copy of the IEP. Each teacher and service provider must be informed about his or her specific responsibilities to implement the IEP and specific accommodations, modifications and supports that must be provided to your child. 8 NYCRR 200.4 (e)(1)(i); 8 NYCRR 200.4 (e)(3)(iv); 8 NYCRR 200.4(e)(3)(iii)

### What is annual review?

Once the Committee agrees on an IEP your child must receive the services listed in the IEP. These services will be provided until another Committee meeting is held. At least once a year, you and other members of the Committee will review your child's IEP. If you would like to discuss your child's program you may request a meeting at anytime by *written* letter to your CPSE/CSE chairperson. 8 NYCRR 200.4(e)(4); 8 NYCRR 200.4(e)(7)

Your yearly meeting to discuss changes in your child's IEP is called *annual review*. Together, you will make decisions about any necessary changes to your child's program. If you intend on suggesting changes to your child's IEP it is recommended that you let the CSE/CPSE chairperson and your child's teachers know of your suggestions prior to the time of your meeting. You are not required tell the Committee members of your suggestions prior to the meeting and you may make additional suggestions that were not discussed prior to the meeting during your Committee meeting. If you believe that the Committee will need additional time to discuss your suggestions, you should tell your chairperson before the meeting is scheduled so that more time can be allotted for your meeting. 8 NYCRR 200.4(f)

### What happens at my annual review?

The Committee must follow the same steps as you followed from your first CSE/CPSE meeting. See **Chart on page 13**. 8 NYCRR 200.4(f)(1)

### When is my child reevaluated?

At least every three years, your school district must reevaluate your child. The school district must have your written consent prior to conducting this evaluation. The results of the reevaluation will be used to determine your child's individual needs and progress, whether your child still requires special education services, and what should be changed to address your child's needs. Your child can be reevaluated more frequently if the school district and you agree but not more than one time per year. 8 NYCRR 200.4(b)(4)

## TIMELINES

### What are the time periods a school district must follow?

#### Pre-School Student (3-5)

##### Initial Evaluation (Your Child's First Evaluation)

If your preschool child is being evaluated for the first time to decide whether he or she has a disability, the CPSE must make its recommendation of eligibility for special education supports and services within **30 school days** of when the school district received your written consent to evaluate. *8 NYCRR 200.16(f)(1)*

##### Review (Your Child's Reevaluations)

The school district must arrange for your preschool child with a disability to receive his or her special education program either starting with the July, September, or January start date on the IEP **or** no later than **30 school days** from the date the CPSE made its recommendations on the IEP. *8 NYCRR 200.16(f)(1)*

#### School-Age Student (Age 5-21)

##### Initial Evaluation (Your Child's First Evaluation):

If your child is being evaluated for the first time to decide whether he or she has a disability, the school district must provide the special education services and programs in your child's IEP within **60 school days** of receiving your written consent to evaluate your child. *8 NYCRR 200.4(e)(1)*

##### Review (Your Child's Reevaluations)

If your child is a child with a disability whose special education program and services are being reviewed (annual review) the school district must provide the approved special education services on the IEP within **60 school days** of the referral for review. The referral for review means either the projected date of review which is located on your child's IEP *or* the date that you or your child's teachers asked the Committee to review your child's IEP. *8 NYCRR 200.4(e)(2)*

**The school district must not delay in implementing a preschool or a school-age student's IEP, even if the payment source for providing or paying for special education is being determined.**

**The school district must make sure that each student with a disability has an IEP in effect at the beginning of each school year.** *8 NYCRR 200.4(e)(1)(i)-(ii)*

## LEAST RESTRICTIVE ENVIRONMENT/CONTINUUM OF SERVICES

### Where must services be provided to my child?

When creating an IEP for your child, the CSE must be sure that services will be provided in the *Least Restrictive Environment* (LRE). Least restrictive environment means that students with disabilities will not be placed in special classes, separate schools or otherwise removed from the regular classroom unless the nature or severity of the disability is such that even with the use of *supplementary aids and services* and *program modifications and accommodations*, education cannot be satisfactorily achieved.

In addition, placement of a student in the least restrictive environment shall:

- (1) provide the special education needed by the student;
- (2) provide for education of the student to the maximum extent appropriate to the needs of the student with other students who do not have disabilities; and
- (3) be as close as possible to the student's home. *8 NYCRR 200.1(cc)*

### What are supplementary aids and services?

*Supplementary aids and services* means aids, services, and other supports that are provided in regular education classes, other education-related settings and in extracurricular and nonacademic settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate in accordance with the least restrictive environment. *8 NYCRR 200.1(bbb)* Some examples of supplementary aids and services include a note taker; assignment of paraprofessional staff; study guide outlines of key concepts, etc.

### What are Program Modifications and Accommodations?

*Program modifications* may be used to describe a change in the curriculum or measurement of learning, for example, when a student with a disability is unable to comprehend all of the content an instructor is teaching (e.g., reduced number of assignments; alternate grading system).

*Accommodations* means adjustments to the environment, instruction or materials (e.g., instructional materials in alternative format such as large print or Braille, fewer items on each page; extra time to complete tasks) that allow a student with a disability to access the content or complete assigned tasks. Accommodations do not alter what is being taught.

## LEAST RESTRICTIVE ENVIRONMENT/CONTINUUM OF SERVICES

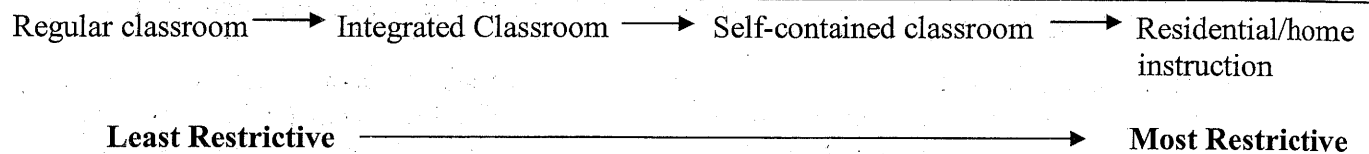
### Is there a range of services and placements available to my child?

Yes. Each school district must provide a “**continuum of services**” to meet the special education needs of every student with a disability. The continuum of services is an array of services to meet an individual student's needs that includes:

- consultant teacher services (direct and/or indirect);
- resource room services;
- related services;
- integrated co-teaching services special and/or self-contained class.

These services can be provided alone or in combination, and may be offered in any placement. In addition, supplementary services, program modifications, and accommodations may be provided in any placement. 8 NYCRR 200.6

The **continuum of placement** options in NYS includes: public schools, boards of cooperative educational services (BOCES), private approved day and residential schools and home and hospital instruction. Note that placement refers to location, not services.



### Can my child be placed with children who have substantially different needs?

No. Students with disabilities who are placed together for purposes of special education (including resource room, special class, consultant teacher services, integrated co-teaching and related services groups) must be grouped by **similarity of individual needs** in accordance with these four areas:

1. *Academic achievement, functional performance and learning characteristics*
2. *Social development*
3. *Physical development*
4. *Management needs*

**For more information on the Continuum of Services and Least Restrictive Environment, see *Continuum of Special Education Services for School-Age Students with Disabilities*, NYS Education Department, April 2008: <http://www.vesid.nysed.gov/specialed/publications/policy/schoolagecontinuum.html>.**

## YOUR GENERAL RIGHTS AS A PARENT

As a parent you are a necessary member of your child's educational planning team. When a parent is involved and well-informed a child benefits more from the educational program. As a team member, you need to understand the special education process, your rights, and how to become involved in your child's program. Now that you are familiar with the special education process, you will want to know more about your rights and protections under the law and regulations.

### What are my rights to be involved in the development of my child's educational program?

You must be given opportunity to participate in the discussion and decision-making process about your child's need for special education. You will receive notice **at least five school days** before the meeting with the CSE or CPSE inviting you to participate in the development of your child's educational program. This notice also tell you the school personnel that will be attending your meeting. You may invite someone to your meeting that is not listed on this notice. If you would like a particular school district person to attend your meeting you should make this request **in writing** to your CPSE/CSE chairperson. If you are unable to make the scheduled time of the meeting you may request **in writing** that the meeting be postponed to a *mutually convenient time and location*. 8 NYCRR 200.5 (c); 8 NYCRR 200.5 (d)

You have a legal due process right under Federal and State laws to be involved and make sure that your child receives an appropriate education:

- You must receive **written notice** several times during the process of identifying, evaluating, placing your child and providing your child with special education services and/or programs. If your school district refuses to do any of these things, you must be notified. See *Prior Written Notice* later in this document. 8 NYCRR 200.5(a)
- Certain actions may not be carried out without your written **consent**. See *Written Consent* later in this document. 8 NYCRR 200.5(b)
- If you **disagree with decisions** made by the Committee, you may ask for meetings, mediation and/or impartial hearings to resolve (settle) disagreements between you and your school district about your child's evaluations, identification (classification), placement or educational program. See *Due Process Rights* starting on page 22. 8 NYCRR 200.5(h); 8 NYCRR 200.5(i)

## WHAT ARE MY RIGHTS TO ACCESS MY CHILD'S EDUCATIONAL RECORDS?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that gives parents certain rights with respect to their children's education records. You have the right to **inspect and review** your child's educational records unless the district has been legally notified in writing that your rights have been terminated or otherwise limited by a court order. *20 U.S.C.A. 1232g(1974)* \*\* Please see page 5.

### What are my rights to inspect and review my child's school records?

Upon your request, the school district must make your child's records available to you:

- Within a reasonable time;
- In no case more than 45 calendar days after you ask;
- Before any meeting about your child's individualized education program (IEP);
- Before any due process hearing about your child's special education needs. *20 U.S.C.A. 1232g(a)(1)(A)*

### What if I have a question about my child's records?

You have a right to ask for and read records about your child. If you do not understand something in your child's records you have a right to ask for an explanation of these records. If you are unable to read your child's records you have a right to have a person **you choose** read your child's records to you. *34 C.F.R. 99.10(a);(c);(d)(2)*

### Can I get a copy of my child's records?

You have a right to ask for and receive copies of your child's education records. The school district may charge you a reasonable cost for copies of records, unless the cost would prevent you from inspecting or reviewing those records. The school district **cannot charge you any cost** if you want to make an appointment to view your child's records. *34 C.F.R. 99.11(a)-(b)*

### Who else can see my child's records? *20 U.S.C.A. 1232g(b)(1)(A);(4)(A)*

Each school district must keep a record of who has looked at your child's educational records including the person's name, the date permission was given, and the reason the person asked for the records. However, the school district does not have to keep a record when you and authorized employees of the school district look at your child's records. Authorized employees are school officials such as your child's teacher who have been determined by the school district to have appropriate educational interest in your child.

### Can I have documents removed from my child's records?

You have a right to request that a school correct records which you believe to be inaccurate or misleading. If the school district decides not to change the record, you then have a right to a formal hearing. After the hearing, if the school still decides not to amend the record, you have the right to place a statement with the record setting forth your view about the inaccuracy or misleading portion of your child's educational records. *20 U.S.C.A. 1232g(a)(2); 34 C.F.R. 99.21(b)(2)*

For additional information or technical assistance, you may call (202) 260-3887 (voice). Individuals who use TDD may call the Federal Information Relay Service at 1-800-877-8339.

## INDEPENDENT EDUCATIONAL EVALUATION

### What do I do if I disagree with the school district's evaluation?

The school district must complete its evaluations of your child and hold a Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) meeting to discuss the results. If you disagree with the evaluation, you may obtain an **independent educational evaluation (IEE)** and request that it be paid for by the school district. *8 NYCRR 200.5(g)*

### What is an Independent Educational Evaluation (IEE)?

An IEE is an independent evaluation paid for by the school district where the *parent* selects the evaluator. An IEE of your child is an evaluation done by a qualified examiner who does not work for the school district or other public agency responsible for your child's education. You may get the IEE entirely paid for by the school district if you disagree with the evaluation conducted by the school district. *8 NYCRR 200.1(z); 8 NYCRR 200.5(g)*

In order to obtain an IEE you **must** make a *written* request to the school district stating that you disagree with a school district's evaluation and you want the school district to pay for an IEE. When a parent requests that the school district pay for the costs of the IEE, the school district **must, without unnecessary delay**, either:

- Pay for the IEE; **or**
- Initiate an impartial hearing so that the district can demonstrate that its evaluation is appropriate.

*Please note, these are the ONLY two options the school district has in response to a letter requesting an IEE. 8 NYCRR 200.5(g)(iv)*

If you ask the school district to pay for the IEE, the school district may ask, but **not require** that you explain the reason why you object to the district's evaluation. *8 NYCRR 200.5(g)(iii)*

### How do I find an Independent Educational Evaluator?

The school district must provide you, when you request an IEE, information about where an IEE may be obtained. However, you are not required to use the persons or organizations provided by the District. You may also use the *Resource* section of this document to find individuals that may be able to assist you in finding an Independent Educational Evaluator. *8 NYCRR 200.5(g)(i)*

### How will an IEE assist me in getting special education for my child?

You have a right to have the results of an IEE discussed by the Committee as part of its review in the development of your child's Individualized Education Program (IEP). You may also have your Independent Educational Evaluator present at your Committee meeting or participate by phone. If you are interested in your evaluator attending your meeting you should discuss this with your evaluator prior to the completion of your child's evaluation. The results of an IEE can also be used as evidence at an impartial hearing. *See Impartial Due Process Hearings* starting on page 25.

## CONSENT

### What does it mean to give my consent?

Consent means that:

- You have been informed in the language you speak, or your form of communication, of all the information about the activity for which your permission is asked;
- You understand and agree in writing to the activity for which your permission is needed;
- Your permission is given freely and may be withdrawn at any time. However, if you withdraw your consent, it is not retroactive (which means that it does not apply to actions the school district has already taken). *8 NYCRR 200.1(1)*

### When is my consent required?

Your consent is required when:

- You want your child evaluated for the first time to decide if her or she has a disability and needs special education.
- Your child is recommended to receive special education services and programs for the first time.
- Your child is recommended to receive twelve-month special education services (programming during July and August) for the first time.
- Your child will be reevaluated;
- The school district wants to use your private insurance. In this case, you must be notified that if you refuse to allow the school district to access (use) your private insurance, the district is still responsible to provide all required services at no cost to you.
- Another agency other than a school district requests to review your child's educational records. The request for consent will include information about the records that will be released and to whom they will be given. *8 NYCRR 200.5(b)*

If you, as a parent, do not consent to an initial evaluation of your child, your child may not be eligible for special education supports and services. *8 NYCRR 200.5(g)(4)*

## DUE PROCESS RIGHTS

### What should I do if I disagree?

#### Informal discussions

If you have concerns about your child's educational program, discuss these concerns with appropriate staff at the school district (e.g. therapists, psychologist, social worker). The staff may also include your child's teachers, your child's related service providers, your child's principal or your CPSE/CSE chairperson.

If you disagree with evaluation results or other proposed actions of the Committee, such as the recommendation, placement, or implementation of the program, you should express your disagreement and dissatisfaction. By clearly stating your concerns and the reasons for your concerns, you are making sure that the other members of the Committee understand your point of view. Try to work out differences informally with your school district as soon as they happen.

Ask for a meeting to talk in person or schedule a phone conference to discuss your concerns with

- (a) your child's teacher and/or related service providers,
- (b) principal or assistant principal,
- (c) Chairperson of the CSE or CPSE or
- (d) Instructional Support Team.

Write down what was discussed at the meeting, the people that were present and steps that were discussed to resolve your concerns. If necessary, request a follow-up meeting with a reasonable amount of time to revisit your concerns and to ensure that the steps identified above were implemented as planned. If it is not possible to resolve disagreements informally, you may consider more formal processes including *mediation* and *impartial hearings* which are discussed later in this document.

### Who should I contact at my school district for an informal discussion?

You should always contact your child's teachers or principal if you want an informal discussion. You may ask that a district representative responsible for overseeing special education be present at that meeting. If you are not satisfied with the way or time in which your concerns are addressed, you should ask for a formal CPSE/CSE meeting.

## DUE PROCESS RIGHTS PRIOR WRITTEN NOTICE

### What is prior written notice?

Prior written notice is a *written* statement provided to you a reasonable time before the school district proposes to or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child. 8 NYCRR 200.5(a)

Therefore, *before* the school district proposes to or refuses to change your child's IEP, they must provide you with prior written notice. If you believe that you are entitled to prior written notice, but have not received this notice, you should send a letter to the CSE/CPSE chairperson requesting prior written notice. 8 NYCRR 200.5(a)

### What information does prior written notice give me?

Prior written notice must include:

- A description of the action proposed/refused by the district;
- An explanation of why the district is proposing/refusing to take action;
- A description of any other options the district considered and the reasons why those options were rejected;
- A description of each evaluation procedure, test, record, or report the district used as a basis for the proposed or refused action;
- A description of the factors that are relevant to the district's proposal or refusal;
- A description of the student's rights under the *Procedural Safeguards Notice*; and
- Sources for parents to contact to obtain assistance in understanding prior written notice.

You can obtain a copy of your *Procedural Safeguards Notice* at [www.vesid.nysed.gov](http://www.vesid.nysed.gov) (search "Procedural Safeguards Notice").

## DUE PROCESS RIGHTS MEDIATION

### What is Special Education Mediation?

Parents have the ability to resolve disputes involving any matter for which an impartial due process hearing may be brought through a mediation process. Mediation is voluntary on the part of the parent. All school districts must offer mediation to parents. The mediation process cannot be used to deny or delay a parent's right to a due process hearing. *8 NYCRR 200.5 (h)(1); 8 NYCRR 200.5(h)(1)(i) -(ii)*

The mediation session is conducted by a qualified and impartial mediator who is trained in effective mediation techniques, and is knowledgeable in laws and regulations relating to the provisions of special education services. Each mediation session must be scheduled in a timely manner and must be held at a location that is mutually convenient for both you and the school district. *8 NYCRR 200.5(h)(iii); 8 NYCRR 200.5(iv)*

### How do I request mediation?

If you decide to use mediation, you must ask for it by writing to the Board of Education for your school district. A parent may also elect to engage in mediation while also pursuing an impartial hearing. In this instance the request for mediation can be submitted with the request of an impartial hearing.

### What happens at mediation?

Mediation is a discussion facilitated by a mediator between you and a school district representative. All discussions during a mediation session are **confidential** and may not be used as evidence against you or the school district in any due process hearings or civil proceedings. You and the school district may be required to sign a confidentiality pledge prior to the commencement of the process. *8 NYCRR 200.5(h)(1)(v)*

If you and the school district reach a resolution you will execute a legally binding written agreement that sets forth the resolution and that states that all discussions that occurred during the mediation process are confidential. The agreement must be signed by both you and a representative of the school district who has authority to bind the school district. If the written agreement is different than the current IEP, then the IEP must be immediately amended to be consistent with the mediation agreement. *8 NYCRR 200.5(h)(1)(vi); 8 NYCRR 200.5(h)(3)*

### What does mediation cost?

Mediation does not cost you or the school district any money. *8 NYCRR 200.5(h)(4)*

### What are the benefits of mediation?

Unlike an impartial hearing where the hearing officer makes the final determination as to what is appropriate for your child, a mediator assists you and the school district to reach a mutually agreeable determination. By asking questions and discussing information with you and the school district representative, the mediator helps both parties to have a more complete understanding of each others concerns and reach an agreement about your child's special education program in a cooperative and timely manner.

## DUE PROCESS RIGHTS IMPARTIAL DUE PROCESS HEARINGS

### What is an impartial or “due process” hearing?

An impartial hearing is a **formal** legal process where the disagreements between you and the school district are presented to an Impartial Hearing Officer (“IHO”). An impartial hearing can be held regarding any matter relating to the identification, evaluation or educational placement of your child, or the provision of a free appropriate public education to the student. *8 NYCRR 200.5(j)(1)*; *8 NYCRR 200.5(k)*; *8 NYCRR 200.5(j)(3)(xii)*; *8 NYCRR 200.5(j)(5)*.

### When do I request an impartial hearing?

You may make a written request for an impartial hearing any time you disagree with a decision or action by the school district related to your child’s special education needs. For example, an impartial hearing might be requested if the district refuses to classify your child, refuses to provide a service or program, or fails to implement your child’s Individualized Education Program. **You must file your due process complaint within (2) two years of when the action(s) occurred or within (2) two years of when you discovered the action(s) with which you disagree.** It is generally preferable to request an impartial hearing when the action(s) you disagree with occur, or as soon as possible thereafter. *8 NYCRR 200.5(j)(i)*.

### How do I request an impartial hearing?

A request for an impartial hearing is called a “Due Process Complaint Notice.” This Notice must be in writing and mailed to the Board of Education of the school district. In addition, a copy of the Notice must be sent to the New York State Education Department, Office of Vocational and Education Services for Individuals with Disabilities, Room 1624 One Commerce Plaza, Albany, New York, 12234: Attention Impartial Hearing Reporting System. *8 NYCRR 200.5(i)(1)*

A Sample Due Process Complaint Notice developed by the State Education Department is available at [www.vesid.nysed.gov/specialed/publications/policy/dueprocess7105.htm](http://www.vesid.nysed.gov/specialed/publications/policy/dueprocess7105.htm). You may use this form or write your own letter as long as it includes the required information.

### What is the required information that must be in my due process complaint notice?

The Due Process Complaint Notice must include the following information:

1. The name of your child.
2. The address of the residence of your child (or in the case of a homeless student, additional contact information and the name of the school the student is attending).
3. The name of the school your child is attending.
4. A description of the problem (why you believe your child is being denied a free and appropriate public education; what did the school district do or not do?)
5. A proposed resolution of the problem (what do you want the district to do to resolve this problem?)  
*8 NYCRR 200.5(i)(1)(i)-(v)*

## DUE PROCESS RIGHTS IMPARTIAL DUE PROCESS HEARINGS

### **Where does my child go to school if I file a hearing request?**

During any hearing you have a right to insist that your child's placement and services remain the same as specified in the last IEP that you and the school district agreed on. This right is often called "pendency" or "stay put." This right does not mean that you have a right to have your child stay at a specific placement or location, instead, this means you have a right to have your child attend a program that offers the particular services, setting, and level of support written on your child's IEP. You and the school district can agree in writing to another placement than the one your child is currently attending during the time that you are at a hearing. 8 NYCRR 200.5(m)(1)

If your child has never been recommended for services and does not have an IEP, special education services can be obtained during the impartial hearing **ONLY** if the school district agrees to provide the services. 8 NYCRR 200.5(j)(1)

### **What happens after I file my hearing request?**

Within two days of receiving your Due Process Complaint Notice (your written request), the school district must appoint an impartial hearing officer (IHO). The IHO may contact you to schedule dates for your hearing. The school district must make arrangements for a "resolution session." 8 NYCRR 200.5(j)(3)(i)(a); 8 NYCRR 200.5(j)(3)(xi). See *Resolution Session* on Page 27.

### **Who is the impartial Hearing Officer?**

The impartial hearing officer is a person (usually an attorney) who has been trained and certified by the New York State Education Department to conduct hearings. This hearing officer acts as a judge would in a trial. The hearing officer cannot be an employee of the Department of Education or your school district. The hearing officer cannot have an interest in the outcome of the hearing. 8 NYCRR 200.1(x)(3)-(4)

### **How much does an impartial hearing cost?**

Generally, the hearing is conducted at no cost to the parent. However, if you would like to have an advocate or attorney represent you at this hearing you will have to pay any fees that your advocate or attorney charge you for representation. If you win your hearing, you will likely be entitled to reimbursement of the cost of your attorney's fees unless the school district appeals the case and wins. The district must provide you with a list of free or low-cost legal service providers when you request a hearing. You may also refer to the *Resource* page of this document for a list of advocacy organizations. 8 NYCRR 200.5(j)(1)(iii)

## **DUE PROCESS RIGHTS RESOLUTION SESSION**

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

A resolution session is a meeting between you and an employee of the school district who has, "decision-making authority" to try to settle the issues you raised in your due process complaint notice (hearing request). The meeting is an opportunity to try and resolve your issues so that you do not have to go to a hearing. 8 NYCRR 200.5(j)(2)(i)

### **When does the resolution session happen?**

A resolution session must happen within 15 days from when the school district received your due process complaint (hearing request). 8 NYCRR 200.5 (j)(2)(i)

### **Do I have to attend the resolution session?**

Yes, you must attend this meeting unless you and the school district agree, in writing, to waive the resolution session or agree to use the mediation process instead. 8 NYCRR 200.5(j)(2)(iii)

### **Can I bring an attorney to the resolution session?**

You may bring an attorney or any other person to represent you at the resolution session. If you do not bring an attorney, the school district may **not** have an attorney represent them during this session.

### **Do I have to settle my complaint at a resolution session?**

You do not have to agree to settle your hearing complaint at this session. You *may* agree to resolve a portion of your concerns during this session, in which case you must be certain that any agreement papers you sign say that this settlement is only partial and that you still want to have a hearing on the remaining issues.

If you and the school district agree on some or all of the issues, a resolution agreement is written and signed by you and a representative of the school district. This document is a legally binding contract that is enforceable in a court. You and the school district have (3) three business days to change your minds and withdraw the agreement. 8 NYCRR 200.5(j)(2)(iv)

### **What happens if the school district and I cannot agree to a resolution?**

If you and the school district cannot agree to resolve your issues within 30 days of when you filed your due process complaint notice, the hearing must begin. In most cases, the impartial hearing officer will contact you and the school district to select a date for your hearing. 8 NYCRR 200.5(j)(2)(v)

## **DUE PROCESS RIGHTS IMPARTIAL DUE PROCESS HEARINGS**

### **Where is the impartial hearing held?**

The hearing must be conducted at a time and place that is reasonably convenient for you and your child. The hearing is not open to the public unless you request an open hearing. In areas outside of New York City, the impartial hearing is typically held at the school district's district office or in a conference room at one of the school district's schools. *8 NYCRR 200.5(j)(3)(x)*

### **Who attends the impartial hearing?**

You and a representative from the school district must attend the hearing. You can represent yourself or bring an advocate or an attorney to represent you at this hearing. You may also bring witnesses, such as a therapist that works with your child, to testify at this hearing. These witnesses may testify by telephone if they are unable to appear in person at the hearing. The school district will likely have its own attorney, even if you do not. The district can have its own witnesses including your child's teachers, providers and school psychologist. In addition to the impartial hearing officer a court reporter will also be present. A court reporter will transcribe the hearing and provide you with a written transcript of the hearing at no cost to you. Your child also may attend the hearing, but is not required to do so. Parents usually determine whether it is appropriate for the student to attend. *8 NYCRR 200.5(j)(3)(xii)-(xiv)*

### **What happens at the impartial hearing?**

The impartial hearing is an administrative hearing and is similar to a trial in a court house. Before the hearing begins there is often an off-the-record discussion (not recorded) led by the hearing officer to understand the issue(s) you raised and discuss evidence, order of witnesses, timing, ground rules, and other issues. The hearing officer may then summarize these discussions "on-the-record." You will have a right to present evidence about your case, ask your witnesses questions, and question the school district's witnesses. All witnesses must take an oath of truthfulness. *8 NYCRR 200.5(j)(3)(xii); 8 NYCRR 200.5(j)(3)(iv)*

Unless specifically noted by the impartial hearing officer, everything that occurs at the hearing is "on the record" including witness testimony and communications among parties, attorneys and the hearing officer. All documents admitted into evidence are also part of the "Record." Only statements or documents included in the "Record" will be considered by the hearing officer and any officer or judge in a future appeal. *8 NYCRR 200.5(j)(5)(v)*

### **Can the school district stop me from presenting evidence at my hearing?**

Both you and the school district have a right to prohibit the introduction of any evidence that was not shared at least five business days before the hearing. This means if you want to present a document, a witness, an evaluation or any other evidence at your due process hearing you must share it in writing with the school district at least 5 business days before the hearing, **even if you know that the school district already has the information.** *8 NYCRR 200.5(J)(3)(xii)*

## **DUE PROCESS RIGHTS IMPARTIAL DUE PROCESS HEARINGS**

### **How long does a hearing last?**

The hearing may last several hours to several days depending on the number of witnesses and the difficulty of the case.

### **When will I receive the decision of the impartial hearing officer?**

The IHO must provide you with a written decision within 45 days from when he was appointed as your hearing officer. However, in most cases, the IHO has the authority to grant extensions of up to 30 days during any phase of the process after the time for the resolution session has passed. This means that either you or the school district may ask that the hearing time frame is extended and this would extend the time period that the hearing officer has to render a decision. In making the decision to grant an extension, the hearing officer must consider the following factors:

- the impact on the child's educational interest or well-being which might be occasioned by the delay;
- the need of a party for additional time to prepare or present the party's position at the hearing in accordance with the requirements of due process;
- any financial or other detrimental consequences likely to be suffered by a party in the event of delay; and
- whether there has already been a delay in the proceeding through the actions of one of the parties. 8 NYCRR 200.5(j)(5)(i)-(ii)

### **Do I need an attorney for an impartial hearing?**

You do not need an attorney to represent you at the impartial hearing. However, in most cases, the district will be represented by an attorney even if you are not. If you decide to represent yourself, it is very important that you become familiar with the specific regulations governing impartial hearings. These regulations can be found on the New York State Education Department's website at <http://www.vesid.nysed.gov/specialed/publications/lawsandregs/sect2005.htm>. 8 NYCRR 200.5 (i), (j), (k)

### **Can I challenge the decision of the hearing officer?**

Yes, the impartial hearing officers' decision may be appealed by both you and the school district. An appeal of the decision of the IHO must be made in writing to the State Review Officer within 30 calendar days after you and the school district receive the decision of the IHO. There are specific procedures and time lines for appealing to the State Review Officer. The State Review Officer will make an independent decision after a complete review of the hearing record within 30 calendar days after receiving the request for review. 8 NYCRR 200.5(k)(1)-(2)

### **Where can I find more information about appealing to the State Review Office?**

The State Review Officer's website at <http://www.sro.nysed.gov>. 8 NYCRR 200.5(k)

## **DUE PROCESS RIGHTS NEW YORK STATE EDUCATION DEPARTMENT COMPLAINT**

### **What is a New York State Education Department Complaint?**

If you, or any other individual or organization believes that a school district or public agency (such as a Board of Cooperative Educational Services (BOCES), charter school or school operated by a State agency) has violated the education rights of students with disabilities, you may submit a written, signed State complaint to the New York State Education Department (NYSED).

### **How do I file a complaint with the New York State Education Department?**

Your complaint must be made in writing. New York State Education Department has a form that you can use to submit a complaint. This form can be found at <http://www.vesid.nysed.gov/specialed/publications/policy/samplecomplaint.htm>. You do not need to use this form to submit a complaint, but if you decide to write a letter you must provide the required information, as appropriate, as indicated on the sample form. *8 NYCRR 200.5(l)*

Your complaint must include:

- a statement that a school district or public agency has violated a requirement of Part B of IDEA or State law/regulation related to students with disabilities;
- the facts on which the statement is based;
- the signature and contact information of the person filing the complaint;
- if alleging violations with respect to a specific child, include:
  - the name and address of the residence of the child;
  - the name of the school the child is attending;
  - in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;
  - a description of the nature of the problem of the child; and
  - a proposed resolution of the problem to the extent known and available.

### **When must I file my complaint?**

The NYS Education Department will not consider complaints about violations that occurred more than one year ago. Therefore your complaint should be filed as soon as possible after the violation but must be filed within one year of the violation. *8 NYCRR 200.5(l)(1)(iii)*

### **Do I have to notify the school district that I have complained?**

Yes, the individual filing the complaint must forward a copy of the complaint to the school district or other public agency serving the child at the time the person files the complaint with NYSED. *8 NYCRR 200.5(l)(1)(v)*

## **DUE PROCESS RIGHTS**

### **NEW YORK STATE EDUCATION DEPARTMENT COMPLAINT**

#### **What happens after I submit my complaint?**

After New York State Education Department receives your written complaint it will determine if the alleged violation occurred and issue a written decision of its findings. The school district or public agency must give the procedural safeguards notice to you upon receipt of the first State complaint in a school year. You will be given an opportunity to submit additional information, either orally or in writing, about the allegations in the State complaint. The school district or public agency has the opportunity to respond to the State complaint, including, at a minimum: (a) at the discretion of the school district or public agency, a proposal to resolve the complaint and (b) an opportunity for the school district or public agency and the parent who filed the complaint to voluntarily engage in mediation. *8 NYCRR 200.5(l)(2)*

#### **How long does New York State Education Department have to respond to my complaint?**

Within 60 calendar days after a complaint is filed (received), NYSED will issue a written decision to you that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the final decision. NYSED will include, if needed, procedures for effective implementation of its final decision, including technical assistance, negotiations and corrective actions to achieve compliance. *8 NYCRR 200.5(l)(2)(vi)*

NYSED can grant an extension of the 60-calendar-day time limit only if exceptional circumstances exist with respect to a particular State complaint or the parent, individual or organization and school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation. *8 NYCRR 200.5(l)(2)(vi)(1)-(2)*

#### **What if I request a due process hearing and file a complaint at the same time?**

New York State Education Department will stop investigating your complaint as soon as a due process hearing request is filed until the hearing is concluded. Any issues in the complaint that are not part of the due process hearing must continue to be investigated and resolved. If you receive a decision from the impartial hearing officer that is binding, New York State Education Department must send you a notice stating that they cannot investigate your complaint because the decision of the hearing office is binding. *8 NYCRR 200.5(l)(2)(viii)*

## GENERAL SCHOOL DISCIPLINE ISSUES

### What are my child's rights when disciplined by a public school?

Before a school can suspend any student from school, the school must first follow certain rules (Due Process). A student with a disability may have more rights when being disciplined than a student without a disability. Please see the next section *Disciplining Students with Disabilities*.

### Why might my child be suspended from school?

A school district may suspend a student for violating any part of the school's disciplinary code which is available upon request to the school. This could include misconduct such as:

- (1) insubordination (Ex. back talk);
- (2) disorderly or disruptive conduct;
- (3) conduct which endangers the safety, morals, health or welfare of others; or
- (4) violent conduct

"Violent conduct" generally includes:

- (1) any acts of violence against teachers, administration, staff or other students while on school property
- (2) *possession* of dangerous instruments on school property.
- (3) *threatened use* or dangerous instruments, and
- (4) the intentional damaging or school district's property or property of another person. *NYS Educ. Law 3214(2)(a)* \* See Page 5.

### Who is allowed to suspend my child?

Only a building principal, superintendent of schools, or a Board of Education may suspend a student. An assistant principal is not authorized to suspend a student out of school. *NYS Educ. Law 3214(3)(a)*

### How long can my child be suspended for?

A violation of a student disciplinary code can be punished by suspensions ranging from 1 day to expulsion but generally out-of-school suspensions can be generally thought of in two groups:

- (1) suspensions carrying a penalty of 5 days or less
- (2) suspensions carrying a penalty of more than 5 days

### Is the school district required to do anything before suspending my child out of school for 5 days or less?

Yes, to suspend a student for 5 days or less, the school district must give notice to the student and his/her parent of the charged misconduct. If the student denies the misconduct, the district must give an explanation of the basis for the suspension. The student and his/her parent or guardian also have the right to an informal conference with the school principal if the parent or guardian requests it. At the informal conference the parent must be allowed an opportunity to question both the complaining witness and the principal at the same time. *NYS Educ. Law 3214(3)(b)(1)*

## GENERAL SCHOOL DISCIPLINE ISSUES

### What kind of "notice" is required?

The school district must contact the parent or guardian by telephone. However, oral communication alone is not sufficient. Notice must be delivered within 24 hours of the decision to suspend, by personal messenger, express mail, or an "equivalent means reasonably calculated to assure receipt." The notice must include a description of the violation. The notice must inform the parent of their right to request an informal conference with the school principal. The notice must be in the parent's dominant language or mode of communication. *NYS Educ. Law 3214(3)(b); 8 NYCRR 100.2(l)(4)*

### What must the school district do to suspend my child out of school for more than 5 days?

No student may be suspended for more than five days unless the student and his or her parent or guardian has an opportunity for a fair hearing ("Superintendent's hearing") after being given reasonable notice. *NYS Educ. Law 3214(3)(c)*

### How do I know if I got "reasonable notice" prior to my child's fair hearing? What does the school district have to tell me?

In addition to the notice that is required for a suspension of 5 days or less (see above), a school district intending to suspend a student for more than 5 days must also provide the following information to the parent:

- (1) the parent has the opportunity for a fair hearing
- (2) the parent and student have the right to be represented by a lawyer at the hearing
- (3) the student has the right to call and examine witnesses, and present evidence on his/her behalf
- (4) a hearing officer or the Superintendent will hear the case
- (5) the student's prior disciplinary record may be reviewed at the hearing

### What is a fair hearing or a Superintendent's hearing?

The Superintendent for a district will hold a two-part hearing, similar to a trial. First, the Superintendent will determine if the child is guilty of the charged misconduct. Then, if found guilty, the Superintendent will make a determination of punishment. The Superintendent could also appoint a hearing officer to run the hearing instead. If a hearing officer is appointed, his or her report is advisory only. The final decision is then made by the Board of Education or the Superintendent. *NYS Educ. Law 3214(3)(c)*

### What are my child's rights during a Superintendent's hearing?

During a Superintendent's hearing: A student has the right to be represented by a lawyer. A student has the right to question and/or call appropriate witnesses and to present evidence on his behalf. (The witnesses that are called should have some direct knowledge of the facts that led to the disciplining charge.) A student's prior disciplinary record may be used against him/her at a hearing when determining the penalty for a disciplinary violation. A student's prior disciplinary record may not be used when determining the guilt of the student. The school district is obligated to keep a record of a Superintendent's hearing. Generally, a tape recording of the hearing is sufficient. *NYS Educ. Law 3214(3)(c)*

## GENERAL SCHOOL DISCIPLINE ISSUES

### **If I disagree with the Superintendent's opinion, is there anything that I can do?**

Yes, a student may appeal a Superintendent's determination to the local Board of Education and then to the Commissioner of Education. *NYS Educ. Law 32114(3)(c)* An appeal to the Commissioner of Education must be made within 30 days from the date on which the district decided to suspend the student. *8 NYCRR 275.16* Although there is no specified time limit for appeals to the local Board, the appeal should be done as soon as possible. Commissioner decisions have dismissed appeals when the appeal to the local Board was not timely. For suspensions of five days or less, a student should ask the local school district about the district's policy for appealing such a suspension, which generally will vary from school to school.

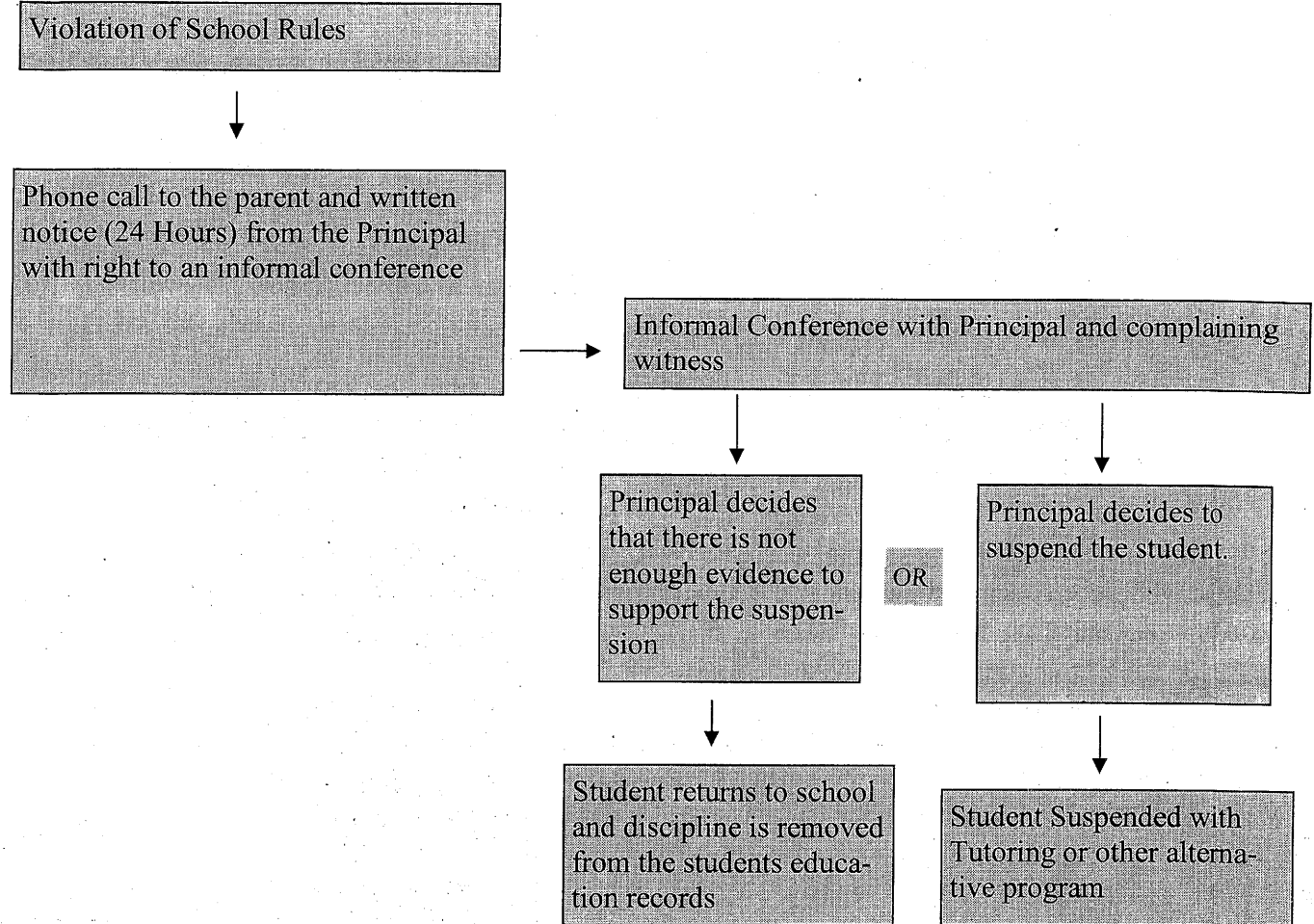
### **If my child is suspended, does the school have to provide any educational services while he/she is out of school?**

Yes, students between the ages of 6 & 16 are considered compulsory school age, and by law must attend school. When such a student is suspended, the district must take immediate steps for alternate instruction no matter the length of the suspension. *NYS Educ. Law 32114(3)(e)*

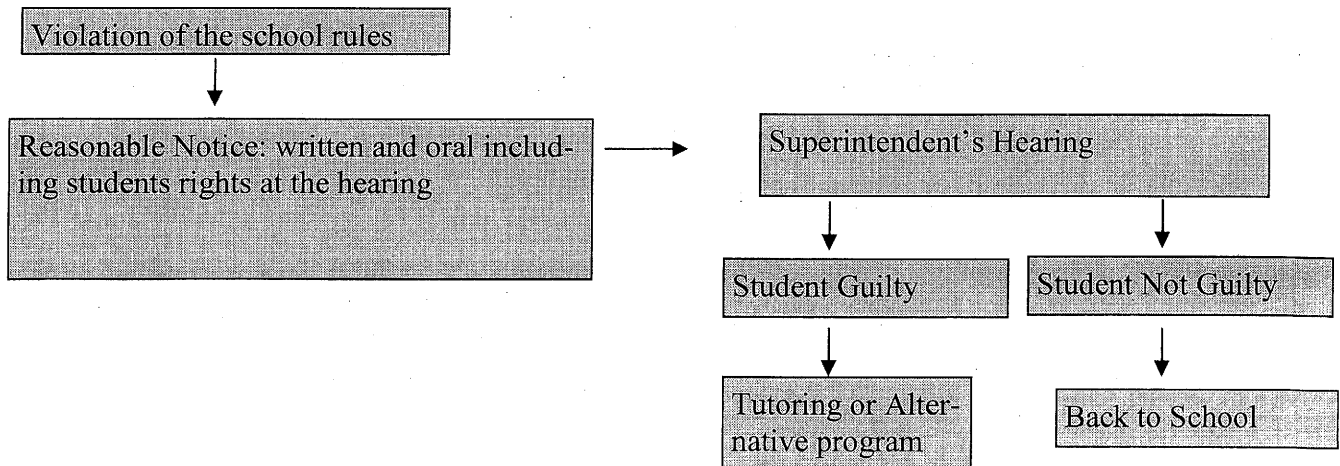
Alternative instruction should be started as soon as is reasonable after a suspension is handed down. Alternative instruction does not need to provide the same amount, or quality of instruction as does the student's regular program, but must be sufficient so the student can complete all his/her required course work. The Education Law suggests that children in elementary school must receive at least 5 hours or instruction (tutoring) per week, while middle school and high school students must receive at least 10 hours of instruction per week. *8 NYCRR 175.21; Appeal of A.L., Jr., 42 Ed. Dept. Rep. \_\_\_\_\_, Decision No. 14,883 (2003). See Page 5.*

# GENERAL SCHOOL DISCIPLINE ISSUES

## Suspension of 5 days or less



## Suspension of 5 days or more



## DISCIPLINING STUDENTS WITH DISABILITIES

### **Can my child be suspended from school even though s/he has a disability?**

Yes, any student may be suspended from school for violating the schools disciplinary rules. Students that are identified as having a disability are subject to the same disciplinary procedures and suspensions as all other students, unless the resulting suspension lasts for more than 10 days or it constitutes a "disciplinary change in placement.

### **Can my child with a disability be suspended for more than 10 days over the course of the school year?**

Yes, generally, a child with a disability may be suspended for more than 10 days, and in certain situations (see discussion of IAES's below) for periods up to 45 days. However, if a child with a disability is suspended for more than 10 days, then a "change in placement" is said to have occurred. This 10 day limit does not have to be reached by a single suspension. If your child with a disability has been suspended multiple times, for similar conduct or similar lengths of time, then these suspensions may be added together and if greater than 10 days, could be equal to a change in placement. *8 NYCRR 201.2(e)*

If the school district plans to give a suspension that results in a disciplinary change in placement your child is entitled to a "manifestation determination" once he or she is suspended. *8 NYCRR 201.4(a)*

### **What does the District have to do if my child's suspension does not result in a disciplinary change of placement?**

If the suspension does not amount to a disciplinary change in placement the school district is still obligated to provide alternative instruction, usually in the form of tutoring or special programming; however, the school district must only provide the level of instruction that they would otherwise be obligated to provide to non-disabled children. *8 NYCRR 201.10(b)*

The Education Law suggests that children in elementary school must receive at least 5 hours of instruction (tutoring) per week, while middle school and high school students must receive at least 10 hours or instruction per week. *8 NYCRR 175.21; Appeal of A.L. Jr., 42 Ed. Dept Rep \_\_\_\_\_, Decision No. 14,883 (2003).*

### **What does the District have to do if my child's suspension does result in a disciplinary change in placement?**

When a disciplinary change in placement occurs a school district is to conduct a manifestation determination. Additionally, the district must perform a "functional behavioral assessment" (FBA) and then put in place a behavioral plan that is designed to prevent the behavior which lead to the suspension, from happening again. Please see question below for more on Manifestation Determination and FBA. *8 NYCRR 201.10(e)*

## DISCIPLINING STUDENTS WITH DISABILITIES

### What is a manifestation determination?

A manifestation determination is a meeting held to decide if there is a relationship between the student's disability and the behavior that is the subject of the disciplinary action. This meeting should be held immediately, but no longer than 10 days after a student with a disability has been suspended in a way that constitutes a change in placement. This meeting must take place within 10 days of the district's decision to suspend the child for 10 or more days, or for a period of time that otherwise constitutes a disciplinary change in placement.

Generally, at a manifestation meeting two main questions will try to be answered:

- 1) Was the misconduct caused by or did it have a direct and substantial relationship to the student's disability? OR
- 2) Was the conduct in question the direct result of the school district's failure to implement the IEP?

Ex.) If a student with Attention Deficit Hyperactivity Disorder (ADHD) was accused of getting into a fistfight at school, the manifestation determination team would consider whether the child's ADHD caused the child to engage in the fistfight. *8 NYCRR 201.4(c)*

### Who will take part in a manifestation determination?

Generally, the manifestation team is composed of the following people: a representative of the school district who is knowledgeable about the child, and is trained to interpret information about the child's behavior, the parent or guardian of the child, and any other members of the CSE that the parent or school district think would be helpful at the hearing. Additionally, the parent must receive prior written notice of the manifestation meeting to ensure that the parent has the opportunity to attend. *8 NYCRR 201.4(b)-(c)*

### What things will be considered at a manifestation determination?

The manifestation determination team should consider all relevant information that is in the student's file, such as IEPs, past disciplines, and teacher observations, or other information provided by the parent.

### What happens if the manifestation team finds that my child's actions were not a result of his/her disability?

If the manifestation team determines that your child's actions were not a result of his/her disability then the child will serve the punishment that was decided at the superintendent's hearing. Essentially, the child will be disciplined just as a non-disabled student would be. In this case the student should immediately begin to receive home tutoring and other services necessary to meeting the goals set forth on the IEP.

## DISCIPLINING STUDENTS WITH DISABILITIES

### What happens if the team finds that my child's actions were a result of his/her disability?

If the manifestation team decides that your child's actions were a result of his/her disability then a CSI meeting must be called, and a "functional behavioral assessment" (FBA) must be conducted. The results of the FBA will be formed into a "behavioral intervention plan" (BIP). Once the BIP is in place, the child should be returned back to his/her original program, unless you agree to change your student's placement as part of modifications of the IEP. *8 NYCRR 201.4(d)* However, if your child's conduct involved serious bodily injury, weapons, illegal drugs or controlled substances, the Superintendent has the right to remove your child to an Interim Alternative Education Setting (IAES) for up to 45 days even if it was determined that the student's conduct was a manifestation of his/her disability. *8 NYCRR 201.7(e)*

### What is a functional behavioral assessment and behavior intervention plan?

A functional behavior assessment (FBA) involves the process of determining why a student engages in problem behaviors that disrupt learning. Additionally, the assessment also considers the relationship of those behaviors to the student's school placement. *8 NYCRR 200.1(r)* This evaluation results in a behavioral intervention plan (BIP). A behavioral intervention plan should at least include:

- a description of your child's problem behaviors
- suggestions as to what causes the problem behavior
- description of strategies that will be used to prevent the behavior in the future. *8 NYCRR 201.2(b)*

*Detailed information about FBAs and BIPs can be found at 8 NYCRR 200.22*

### What happens if my child's actions were a result of the school not following my child's IEP?

If the manifestation team determines that your child's conduct was a result of the school district's failure to follow the IEP or that the current IEP is defective for any reason, then the CSE must take immediate steps to fix the IEP or determine ways to better implement the current IEP. In either case, your child should be placed back into his/her original program as soon as possible. *8 NYCRR 201.4(e)*

### Can I appeal the team's determination that my child's actions were not a manifestation of his/her disability?

Yes, a parent can appeal both the decision to place a student in an IAES or a decision that a child's action was not a manifestation of his/her disability. The appeal should be made to the Superintendent of Schools and the Board of Education for your district. If a parent makes such an appeal, the school district must conduct a hearing within 15 days of the request. During the appeal process, your child will remain in the IAES or suspended until the conclusion of the case, unless the suspension would expire prior to that time anyway. *8 NYCRR 201.11(c),(e)*

