



SPECIAL EDUCATION AND YOUR RIGHTS: How to Be An Effective Advocate for Your Child

This packet is designed to help you as a parent, guardian or caregiver understand and advocate for your child's special education rights. The special education process can be complicated and confusing, and these sheets help explain some of the key steps and decisions along the way. If you have questions or concerns about your child's education that are not addressed in these materials, the last page of this packet lists organizations that can provide further information and assistance.

What to do if:

You believe your child has special needs, but they are not currently receiving special education services

⇒ Request an assessment, **p. 3**

The district has assessed your child, but you disagree with the findings or conclusions from that evaluation

⇒ Request an Independent Educational Evaluation (IEE), **p. 3**

Your child is receiving special education but you do not feel that they are receiving adequate services, or that their IEP is not being followed

⇒ Request an IEP meeting, **p. 5**

Your child is receiving special education, or you believe that they are eligible for such services, and they are suspended, expelled, or repeatedly removed from school

⇒ Know which procedures the district is required to follow, and which services they must provide, **p. 7**

Remember:

-No one knows your child better than YOU. **You are the expert** on your child's needs.

-**Do not feel intimidated** or pressured to consent to anything you not understand or agree with.

-The law gives you the right to be listened to by the school and the district, and **you are a very important voice** in this process.

-The law also requires that, if needed, the **district must provide an interpreter** at all meetings, and must provide all written communication and documents in your primary language.

-**Write down and keep copies** of all of your correspondence to and from the school district. If you do come to a point of disagreement, it is very helpful to have a record of your communication

-**You can always ask for help.** At the back of this packet is a list of organizations and individuals who can provide additional information and assistance with the special education process.

REQUESTING A SPECIAL EDUCATION ASSESSMENT

You have the right to have your child evaluated for special education. This sheet describes the steps to take to request an assessment from your child's school district.

1. Fill out the assessment request form at the end of this packet, and send it to your District's special education office and the principal of your child's school.
 - On the form, explain why you think your child would benefit from special education services. Describe any challenges your child has at school and at home, and any behavioral, emotional, or medical issues.
2. Within 15 days of receiving your written request, the district **must** provide you with an assessment plan for your child or with "prior written notice" – a document that explains why the district is refusing to conduct the assessment. The notice must also inform you of your legal right to challenge the district's decision.
3. The assessment plan provided by the district must:
 - a. Be in your primary language
 - b. Explain the assessments that they will conduct
4. Once you receive the assessment plan from the district, you have at least 15 days to respond to or approve the plan.
5. Once the district receives your signed consent to the assessment plan, they must complete the assessment within 60 days.
6. The district must also convene an IEP meeting to determine whether your child is eligible for special education during this 60 day period.
7. If the district does not find your child eligible for special education services, you have the right to challenge this decision.

What to do if you disagree with the assessment:

If you do not agree with the conclusions of the assessment conducted by the district, **you have the right to request that they pay for an Independent Educational Evaluation (IEE)** – which is basically a second opinion about your child's needs. The district has two options: (1) they can approve your request or (2) they can file for due process and have an administrative law judge decide whether an IEE is appropriate.

To request an IEE, fill out the form attached at the end of this packet, and send it to the district's special education office and the school principal.

THE IEP MEETING AND PROCESS

What is an IEP Meeting?

An Individualized Education Program (IEP) is the name for the plan created by a student's parents and school district to meet their special education needs. These plans are developed during IEP meetings. **IEP meetings are supposed to be collaborative and cooperative**, and the law requires that the district include parents in the decision making process.

There are 4 general kinds of IEP meetings:

1. Initial: This meeting happens after the first time the district evaluates your child in order to determine whether he or she is eligible for special education.
2. Annual: These meetings are held every 12 months after your child is first found eligible for special education. The focus of the meeting is to determine whether your child has met his or her IEP goals and to develop new ones for the coming year.
3. Triennial: These meetings are held at least every 3 years after your child is first found eligible for special education. Before every triennial IEP, the district must re-evaluate your child to assess their current level of need and to update their special education services.
4. Amendment: It is important to know that you or another member of your child's IEP team may request an IEP meeting at any point during the school year. These meetings are called "amendment" meetings, as they are an opportunity for the IEP team to amend or add to the student's current IEP plan.

For each type of IEP meeting, the district is required to send you a notification of the proposed time and date in the mail. However, you do **not** have to agree to this appointment. Schools are legally required to schedule IEP meetings for times that are mutually convenient for both the district and the parent. If the proposed time does not work for you, the school must reschedule the IEP meeting. To ask for a different time and/or date, contact the school or district.

Why You Might Want To Request An IEP Meeting:

As a parent, **you have the right to request an IEP meeting at any time**. You may want to request a meeting if:

- You feel that your child is not making progress toward meeting their IEP goals.
- You feel that your child's IEP is not being adequately followed.
- You feel that your child may require a different educational placement.

REQUESTING AN IEP MEETING

To request an IEP meeting, fill out the form at the end of this packet. Send one copy to your district's special education office and another to your school principal. During the school year, the district must hold the meeting within 30 days of receiving your request.

Preparing for an IEP meeting:

Before your child's IEP meeting, it is important to **think through their strengths and challenges**. Try making a list of observations about your child's educational and behavioral needs.

- What do they say about school?
- What do they seem to struggle with?
- What do they seem to enjoy?
- How do they behave at home and outside of school?
- What are your long-term goals for your child?

Before the IEP meeting, you should also **review your child's previous IEPs**, if you have them. If you do not have copies of your child's records, you can request them from the district. You must be provided with a copy of these records within 5 business days of your request.

In addition, **you also have the right to make an audio recording** of the IEP meeting. If you do decide that you want to record the meeting, you must tell the school at least 24 hours in advance. Audio recordings are sometimes useful to help remember and have a record of what was discussed at the meeting.

You might also want to think about whether there is anyone who you would like to bring with you to the meeting. Think about asking someone who knows your child and their needs well. **You have the right to bring additional advocates**, such as a therapist, social worker, or attorney, with you to the IEP meeting.

Finally, you should **tell the school if you will be needing an interpreter**. The district is required to provide this, but it is important to make sure that they know you will be needing these services.

During the IEP meeting:

The IEP meeting will likely take place at your child's school. The law requires that a number of individuals be present at the meeting:

- One or both of the child's parents, and/or a representative selected by the parent
- At least one general education teacher if the child is, or may be, in a general education environment

- At least one special education teacher or service provider
- A school district representative who is able to provide or supervise specialized instruction, and is knowledgeable about the resources in the district.
- The person who conducted the assessments of the student, or someone who is knowledgeable about the assessments and is qualified to interpret the educational meaning of the results.
- Other people with specific expertise or knowledge of the student, at the parent or district's request
- The student, when appropriate

You may be asked to “waive” the requirement that some of these individuals – such as a gym teacher or the principal – be present at the meeting. It is your choice to decide whether the person must be present, or whether the meeting can continue without them. If the individual who cannot attend would be able to give an important perspective on your child and their needs, or could help in setting new goals, you can ask that the meeting be postponed until they can attend.

During the meeting, the District may present a “proposed” or “draft” IEP. **You do not need to agree** to this document, and it can be changed during and after the meeting. Do not feel pressured by this document in discussing your child's challenges, needs, and goals. IEP meetings are a conversation between you and the rest of your child's educational team, and you have a right to help create the final IEP.

At the end of the meeting, the District may give you the IEP to sign. **You do not need to sign** the IEP during the meeting. Instead, you have the right to take the proposed IEP home, to think it over, and to sign only when and if you feel comfortable with what it says. Also, if you agree with some parts of the plan, but disagree with others, you can note which parts you disagree with on the IEP when you sign. In addition, if you change your mind about agreeing to an IEP, you can revoke your consent at any time.

What To Do If You Disagree with the District's IEP Proposal:

If you do not agree with the proposed IEP, and refuse to sign, you can:

- Write a letter explaining your disagreement and position, and requesting that the district respond in writing.
- Request an Independent Educational Evaluation (IEE), if you feel that your child was not sufficiently assessed, or that the evaluation the district concluded did not identify their needs.
- Ask the district to hold a mediation session, during which a neutral mediator is brought in to help you and the district discuss the IEP.
- Finally, you can file for a “due process hearing.” This is a legal challenge to the district's determination of your child's needs. Due process hearings are like trials and take a lot of preparation. You will likely need legal assistance. If you think you need to file for due process please contact one of the organizations or individuals listed on the referral sheet in this packet.

SCHOOL DISCIPLINE AND SPECIAL EDUCATION

Children with special education needs have a lot of protections when it comes to school discipline. If your child has an IEP or 504 plan, or if you think they have special needs that have not been identified, the district must follow special disciplinary procedures.

If your child is suspended or expelled and has an IEP:

Students with disabilities can be suspended or expelled for the same reasons as nondisabled students. However, a student with disabilities cannot be kept out of school for more than 10 consecutive days without the district having a “**manifestation determination review**.” If a student is removed from their school for more than 10 days for any reason, the law considers this a “change in placement.”

A manifestation determination review is a meeting between school officials, parents, and district administrators to decide whether the student’s misconduct is a result of their special needs. If your child’s behavior has a direct and substantial connection to their disability, or if it is the result of the district’s failure to implement their IEP, they cannot be expelled or kept out of school.

To prepare for a manifestation determination review, consider whether the district has been implementing your child’s IEP. Look at a copy of the current IEP, and determine whether the services written into the plan were actually being provided at the time of your child’s misconduct. It is especially important to ask whether any behavior plans in your child’s IEP were being fully implemented. If not, your child’s misconduct could be connected to the district’s failure to follow the IEP.

If your child has an IEP and they are removed from school for more than 10 days, the district is required to continue to provide them with special education services. These services must continue to allow your child to make progress toward meeting their IEP goals.

If your child has been recommended for expulsion and does not have an IEP, but you believe that they have a disability that caused their misconduct:

The district is obligated to identify students with special needs. If they “had knowledge” that your child had a disability, but did not evaluate them for special education, a district may still have to treat them as if they have an IEP during disciplinary proceedings. The law says that a district has knowledge of a child’s disability if:

1. A parent had expressed concern that the child had special education needs in writing before the misconduct leading to the disciplinary action;
2. A parent requested that their child be evaluated for special education before the misconduct, and the district did not do so; or
3. A teacher or other school official had expressed concern about the student’s pattern of behavior to the special education director or other supervisors before the misconduct.

ADDITIONAL RESOURCES

The following organizations provide more in-depth and detailed information about special education and disability rights:

-Disability Rights Education and Defense Fund:

<https://dredf.org/special-education/students-k-12/>

-The IEP process:

<http://dredf.org/special-education/special-education-resources/the-iep-cycle/>

-Due process proceedings:

https://dredf.org/special_education/dueprocess.pdf

-Disability Rights California:

<http://www.disabilityrightsca.org/pubs/PublicationsSpecialEducation.htm>

-Special education rights and responsibilities manual:

<http://www.disabilityrightsca.org/pubs/PublicationsSERREnglish.htm>

-Bullying and harassment of students with disabilities:

<http://www.disabilityrightsca.org/pubs/551201.pdf>

-California Department of Education, Special Education Resources:

<http://www.cde.ca.gov/sp/se/fp/>

-Special education rights of parents and children:

<http://www.cde.ca.gov/sp/se/qa/documents/pseng.pdf>

-Summary of parents' rights:

<http://www.cde.ca.gov/sp/se/qa/pssummary.asp>

The following organizations help parents and students in special education proceedings. If you are seeking legal assistance, please contact one of the following resources:

Disability Rights Education and Defense Fund (DREDF)

3075 Adeline Street, Suite 210

Berkeley, CA 94703

510.644.2555 (Voice)

510-841-8645 (Fax/TTY)

info@dredf.org

www.dredf.org

Disability Rights California (DRC)

1330 Broadway, Suite 500

Oakland, CA 94612

(510) 267-1200

Fax (510) 267-1201

<http://www.disabilityrightsca.org/index.htm>

Community Alliance for Special Education (CASE)

Joseph Feldman
1550 Bryant Street, Suite 738
San Francisco, CA 94103
415-431-2285 (phone)
case_jfeldman@yahoo.com
www.caseadvocacy.org

Disability Rights Advocates

Disability Rights Advocates Home Office
2001 Center Street, Fourth Floor
Berkeley, CA 94704-1204
<http://www.dralegal.org/seeking-legal-help>

Private Attorneys

Office of Administrative Hearings Low Cost or Free Attorney/Advocate List

<http://www.dgs.ca.gov/oah/SpecialEducation.aspx>

Adams ESQ

Jean Murrell Adams, Brett Allen
1300 Clay Street, Suite 600
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510-832-6000
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925.848.0600 (f)
www.dunfordlaw.com

Christian M. Knox

Ruderman & Knox, LLP
1300 National Drive, Suite 120
Sacramento, CA 95834
Phone: (916) 563-0100
Fax: (916) 563-0114

Sheila L. Brogna, JD, CW

LSF Children's Law
440 Hoffman Ave
San Francisco, CA 94114
(415) 317-2508
(415) 889-6979 Fax
sheila@sfchildrenslaw.com

Date:

RE: Special Education Assessment Request for _____, DOB _____

To Whom It May Concern:

I am the parent of _____, who is currently enrolled in the ____ grade at _____. I am writing to make a referral for assessment for special education services due to the following concerns

I am requesting that _____ be given a comprehensive assessment in all areas of suspected disability, and that an IEP meeting be held at a mutually agreeable time and place, within sixty (60) calendar days of receipt of my consent to the assessment plan.

As part of the assessment process, I also request that _____ be assessed under Section 504 of the Rehabilitation Act of 1973 to determine whether he/she should be identified as handicapped pursuant to that law and to determine what, if any, accommodations might be required in his/her educational program in the event that he/she does not qualify for special education services, or in addition to special education services. I also request that the district's 504 Coordinator be present at the IEP meeting to discuss the results and recommendations of assessment.

I look forward to receiving an assessment plan within fifteen (15) calendar days for my review and consent. If the district refuses to evaluate, I expect Prior Written Notice that meets the requirements of the IDEA.

Thank you for your cooperation and assistance.

Sincerely,

Parent Name (Print): _____

Parent Address: _____

Parent Phone: _____

Date:

RE: IEP Meeting Request for _____, DOB _____

To Whom It May Concern:

I am the parent of _____, who is currently enrolled in the ____ grade
at _____. I am writing to request that an IEP meeting be held for my child to
discuss

I am requesting that an IEP meeting be scheduled as soon possible. In any event, the meeting should be scheduled no later than thirty (30) days from the date of receipt of this request. Cal. Educ. Code § 56343.5.

Thank you for your cooperation and assistance.

Sincerely,

Parent Name (Print): _____

Parent Address: _____

Parent Phone: _____

Date:

RE: IEE Request for _____, DOB _____

To Whom It May Concern:

I am the parent of _____, who is currently enrolled in the ____ grade at _____. I am writing to that an Independent Educational Evaluation (IEE) for my child. He/she was assessed by the District on _____ (date).

I disagree with the findings of that evaluation, due to the following reasons:

I am therefore requesting that an IEE be provided at the district's expense. 34 C.F.R. § 300.502; Cal. Educ. Code § 56329(b). Please let me know, without unnecessary delay, whether the district will grant this request, or whether a due process hearing will be requested.

Thank you for your cooperation and assistance.

Sincerely,

Parent Name (Print): _____

Parent Address: _____

Parent Phone: _____