

SC APPLESEED

# K-12 EDUCATION FAQ FOR SOUTH CAROLINA PARENTS



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## INTRODUCTION

The South Carolina state constitution guarantees all children the right to a free public education. But navigating the education system can be tough. Many parents/guardians run into complications with some aspect of their child's education at some point or another. The goal of this guide is to answer the most frequently asked questions that parents have about education rights. This guide is for parents and guardians of school aged children. It is our hope that this guide is easy to understand and can help give you the basics that you need to get the most out of the education system for your child. It is our belief that a quality education is one of the best ways to begin to break the cycle of poverty in our state.

This guide is broken into topic areas. If you are having difficulty on enrolling your child in school, then check out our school enrollment section. If your child is struggling academically, or has a disability check out the section on Special Education. If your child is in trouble and being disciplined, you should check out our section on school discipline. If your child is getting in trouble and being disciplined frequently, you may want to check out the special education section in addition to the school discipline section. This guide also contains some information about bullying, the rights of LGBTQ students, and immigrant children.

If you have consulted this guide and don't see an answer you need, please feel free to reach out to us and we will do our best to get you the help you need.

Thank you to Glynnis Hagins for all your help with drafting this guide. Thank you to Mary Reaves at Beginnings SC and University of South Carolina Professor Claire Raj for help with edits to this guide.

Finally, a very special thank you for the contribution of D. Elliott Tait, Education Unit Head at South Carolina Legal Services for all his help in brainstorming, drafting, and editing this guide.

We want to empower the parents and guardians of South Carolina to know their education rights and fight for the education that their students are entitled to.

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# SCHOOL ENROLLMENT



## HOW CAN I ENROLL MY CHILD IN SCHOOL IF I DON'T HAVE ALL THE DOCUMENTS THAT I NEED?

**If you need a birth certificate, you can request one from the state vital statistics office where your child was born.** If your child was born in South Carolina, you can request one from DHEC. To learn more, click here: <https://scdhec.gov/vital-records/birth-certificates>

If your child does not have a birth certificate or you are not able to obtain one, you will need proof of how old your child is to enroll them in school. The easiest way to prove a child's age is through medical records. You will also have to provide proof of immunization, and typically a child's birthdate is listed on that form.

You will also have to prove to the school district that you live in their district. This can be done with a lease agreement or a copy of a water or electric bill in your name. If you don't have a fixed place to live, or you stay in a motel or shelter, you should ask to speak to the school district's McKinney Vento Coordinator. They will be able to help you get your child enrolled without having to provide any further documentation.

## WHAT IS A MCKINNEY-VENTO COORDINATOR?

**All school districts are required to have a McKinney- Vento Coordinator. This person helps students whose families are experiencing homelessness.** The term "homeless" applies to any student without a fixed, regular, and adequate nighttime residence. Examples of living situations that may qualify a student for McKinney Vento protections are listed below.

- Living in a motel, hotel, or campground
- Living in a shelter
- Couch surfing or staying with different friends or family members each night
- Migrant children or unaccompanied youth

Students who get help under McKinney-Vento must get the same education services as their peers. Students and their families should get resources for healthcare, mental health, and housing. Students should receive transportation to their home school.

## THE SCHOOL TOLD ME I NEED A CUSTODY ORDER TO ENROLL MY STUDENT, NOW WHAT?

If you are not the biological parent of the student, a school may ask you for a custody order from Family Court. You do not need a custody order if the student lives with you for one of the reasons listed below.

- Their parent is deceased or seriously ill.
- Their parent is in jail or prison.
- Their parent has left the child with you and does not support or visit the child.
- Their parent has abused or neglected the child.
- Their parent has a physical or mental condition that makes it impossible to take care of the child.
- Their parent is homeless, or staying in a shelter.
- Their parent is actively deployed in the military.

If any of these reasons apply, you should complete a School Enrollment Affidavit. You can get one of these affidavits from the school district office or **find the affidavit in Appendix B on page 76.**

Once you complete this document and give it to the school, the school should immediately enroll the student. If they do not immediately enroll the student, you should contact an attorney. If you cannot afford an attorney, you should apply for services at South Carolina Legal Services (1.888.346.5592).

After you give the School Enrollment Affidavit to the school, they cannot charge you tuition.

You if you give the district false information you can be fined, charged fees, and face criminal charges.



## WHAT IF I CAN'T AFFORD THE ENROLLMENT FEES FOR MY STUDENT?

You should talk to someone in administration during enrollment. If you receive SNAP benefits, your student's enrollment fees for your student should be waived. Your school may try to get you to agree to a payment plan. If you cannot afford the fees and cannot afford the payment plan, you should tell the school. Do not agree to something that you cannot afford.

If your student is eligible for reduced school lunch, then they should be eligible for a reduction in their school fees.

The school cannot refuse to enroll your student because you cannot pay the enrollment fee. If you are unable to afford school supplies, you should talk to your student's teacher and school officials.

## CAN THE SCHOOL REPORT OUR IMMIGRATION STATUS TO ICE?

**No. Federal law is very clear on this issue.**

Schools cannot:

- Refuse to enroll a student based on legal status or alleged legal status.
- Treat students different for residency determination purposes based on their status.
- Inquire about a student's immigration status. This includes requiring documentation of a student's legal status at any time.
- Make inquiries from a student or their parents that may expose their legal status.

## DOES THE SCHOOL HAVE TO PROVIDE ME INFORMATION IN THE LANGUAGE I SPEAK?

Yes. This includes flyers and written information. The school must provide an interpreter or translator for school meetings. You should tell the school what ways you prefer to receive information. For example, if you cannot read you may request that information be given to you orally through an interpreter.

## I AM MOVING INTO A NEW SCHOOL DISTRICT, WHAT DO I NEED TO DO?

**If you are moving into a new school district, you need to make sure that they have all your records.**

To do this you can ask the old district for your records. These records will either be sent directly to the new school district, or you will be given a copy. If the documents are sent to the new school district, contact the new district to make sure they got a copy. If you are given a copy, make sure you give it to the new district. You can give the copy to the admissions office. **If your student has an IEP or a 504 plan, get a copy of the IEP/504 plan to the Special Education Coordinator at the new school.**



# SCHOOL DISCIPLINE



## WHAT ARE MY STUDENT'S RIGHTS IF THEY HAVE BEEN SUSPENDED?

**There are two types of suspensions: in-school and out-of-school.** A suspension should not exceed 10 days for one offense or more than 30 days in one school year.

If your student is suspended, you should receive a notice in writing that explains why. The notice should give you a time and a place where you can meet with an administrator to discuss your student's suspension. This meeting must take place within 3 days of the suspension.

You can appeal a suspension to the school board; however, by the time your appeal is heard the suspension will likely have ended. This means that the only benefit to appealing the suspension is to correct false or misleading information in the student's record.

Please know that your student can be questioned by an administrator without you present. Your student can tell the administrator that they want to wait for their parent to be present for questioning. However, this may result in additional consequences.

Be sure that your student understands their rights. If there is a School Resource Officer in the room while your student is being questioned, your student has the right not to speak to police without an attorney. However, your student must assert that right themselves. **School Resource Officers/police can question minors without a parent present in South Carolina.**



**WHAT SHOULD I DO IF THE SCHOOL IS ASKING ME TO PICK MY STUDENT UP FROM SCHOOL EARLY BECAUSE THEY ARE MISBEHAVING, BUT THE SCHOOL IS NOT OFFICIALLY SUSPENDING THEM?**

This is a problem. If you are getting calls from your student's teacher or administrator asking you to pick up your student early because they are misbehaving or having a meltdown, you need to ask the school if they are suspending your student.

If the school says that they are not suspending your student, then you may refuse to pick your student up. It may seem like the school is doing you or your student a favor by not suspending them, but this may not be true. Documentation of a suspension can be helpful to you and your student because it can show a pattern of behavior. If your student has a disability, frequent misbehavior or melting down in class can be a sign that the student's IEP needs to be changed. If your student does not have an IEP or 504 plan, these issues could be proof that your student needs to be evaluated for services.

**Documentation is key to getting your student the services that they need to be successful in school.** Requiring a formal suspension with paperwork gives you proof of what is happening during the school day. It also shows the number of days that your student has been removed from the classroom.



## WHAT ARE MY STUDENT'S RIGHTS IF THEY ARE BEING RECOMMENDED FOR EXPULSION?

If your student is recommended for expulsion, you should receive written notice of the reason why (typically the code section of the student handbook they violated), and the date, time, and location of your expulsion hearing.

You have a right to a hearing within 15 days, unless you request a continuance. While this isn't the same thing as a court hearing, you do have important rights. You have the right to see all the evidence that the hearing officer sees in making their decision. You have the right to question witnesses. You also have the right to an attorney. (If you cannot afford an attorney, you should contact South Carolina Legal Services at 1-888-346-5592 and apply for services.) Bringing an attorney to expulsion hearings greatly increases your student's chances of remaining in school.

You have the right to have a decision made in writing by the hearing officer within 10 days of the hearing. You also have the right to appeal an expulsion decision to the school board. The timeline to appeal varies by district and is usually just a few days. If the school board upholds the expulsion, you can appeal that decision to circuit court.

Your student has the right to continue to work on course work while they are suspended and waiting for a hearing or a decision. It is important that your student continues to work on their course work, so they don't fall behind.



## HOW DO I PREPARE FOR AN EXPULSION HEARING IF I AM UNABLE TO GET A LAWYER?

First, you should request a copy of the case file for expulsion from the hearing officer. This will have all the information that the school plans to use in the expulsion hearing. You can expect to see documents like: the office referral, witness statements, grades, and a log of all discipline infractions that your student has had in the last year. Sometimes there are even written reports about your student from their teachers. If any witness statements are written by other students the school will redact or black out the names of the other students before they provide them to you.

Depending on the reason for the expulsion, it may help you to **prepare some things in advance**. For example, if your student was caught with marijuana, you should consider enrolling them in a drug treatment program. Most communities have a no cost drug treatment plan. You can call your local mental health department to see if your community has one. Seeking treatment for drug use, may persuade the school district to allow your child to return to school. If your student is struggling with their behavior due to a traumatic event, you can enroll your child in counseling. Traumatic events are things like a death in the family, divorce, or other life event that is beyond their control. Counseling shows the hearing officer that you are addressing the cause of the behavior and hopefully it will not happen again.

**Expulsion hearings are not formal court room hearings, but rather administrative hearings that often take place in a conference room like setting.** If your student has been charged with a crime, you should talk with a criminal lawyer before the expulsion hearing. It's important to keep in mind that the recording of the expulsion hearing can become evidence against your student in their criminal case. Please consult with your student's criminal attorney before allowing them to speak at an expulsion hearing.

You and your child should **dress like you are going to a job interview** when going to an expulsion hearing. Be sure to turn off your cell phones. Arrive early. Your child should speak to the hearing officer in a respectful manner and be prepared to discuss the incident that led to the recommendation for expulsion. If your student did the thing that they are accused of, a heartfelt apology can go a long way at getting back into school. It is also important that your student tell the hearing officer how much school means to them, and why they want to return to school.

You can also get character statements from places where your student goes to church, works, or volunteers at. These statements tell the hearing officer what an amazing person the student is. These types of letters can help the hearing officer see your student as a whole person and not just the one bad thing that they did.

## WHAT HAPPENS IN AN EXPULSION HEARING?

**The hearing officer or panel will explain the rules of the hearing.** Then the administrator will present the school's case. The hearing officer may ask questions of the school administrator. Then you will be given the opportunity to ask the school any questions that you have.

Then the hearing officer or panel will give you and your student the opportunity to speak and present your case. Your student should tell the hearing officer or panel a little about themselves. It is important that they hear about what you want to be when you grow up and what you like about school. This is where you can present the character statements to the hearing officer. You should also show them proof of any counseling or steps you have taken to ensure that this type of behavior will not happen in the future.

Your student should tell the hearing officer why school is important to them and ask to be returned to school.

**Most of the time the hearing officer will not make a decision on the spot.** The hearing officer has 10 days under the law to issue a written decision. The hearing officer can decide either to:

1. return your student to school, usually on probation,
2. send your student to alternative school, or
3. uphold the expulsion.

If your student is expelled, it is typically for the remainder of the school year unless they brought a firearm to school. If your child brings a gun to school, they will be expelled for 365 days, which can mean multiple school years.



## MY STUDENT HAS BEEN EXPELLED, WHAT NOW? OR CAN I ENROLL MY STUDENT IN ANOTHER SCHOOL AFTER BEING EXPELLED?

**You can appeal an expulsion decision to the school board.** The timeline to appeal varies by district, and usually happens very quickly. Some districts only give you a few days to appeal. You should do your best to hire an attorney for an appeal to the school board.

The school board can uphold the expulsion, or they can overturn the decision and decide to place the student in alternative school or back in their normal school. If the school board upholds the expulsion, you can appeal that decision to circuit court. However, by the time your case is heard by circuit court it is likely that the expulsion will be over.

If your student has been expelled, you must petition to be readmitted the following year. This is a straightforward process where your student writes a letter to the school board and asks to be allowed to return to school. It is helpful if the student expresses remorse for the infraction and tells the board that they have learned their lesson.

During the period that your student is expelled you will not be able to enroll them in a neighboring school district. Your only option for continuing education is with a private school. Some private schools have a virtual program that can be affordable for parents. Some programs will take monthly installment payments. While this situation is not ideal for most students, continuing to work on schoolwork increases the likelihood that your student will stay in school.



## WHAT CAN A STUDENT BE EXPELLED FOR?

**A student can be expelled for any violation of school rules.** You should review the code of conduct with your student each year. The code of conduct can usually be found on the school's website.

Codes of conduct have different levels of offenses. For example, Level 1 offenses are less serious infractions like disobeying teachers or not following directions. Students can be expelled for Level 1 offenses if they happen regularly or frequent enough. Students can also be expelled for Level 2 and Level 3 offenses. These are typically more serious infractions like fighting, bringing a weapon to school, or having drugs at school.

A student can be recommended for expulsion for conduct that happens on school grounds. School grounds includes the school bus or bus stop. **A student can also be expelled for conduct that happens outside of school.** This can be like a fight that happens off campus, or something a student does online or on their phone. If your student is charged with a crime outside of school, your student can be recommended for expulsion if the district determines that the presence of your student is detrimental to the best interests of the school.

**If your student is charged with a crime, whether it occurred outside of school or inside of school, you may need both a criminal lawyer and an education lawyer who can help protect their educational rights.**



## WHAT IS ALTERNATIVE SCHOOL?

Alternative school is operated by a school district. **Alternative school is where the district places students based on past disciplinary infractions.** Each alternative school operates a little differently. Most have smaller class sizes and a more restrictive environment than regular school. Some alternative schools require uniforms. Some alternative schools have more of a web-based learning.

Not all districts have an alternative school. Alternative schools can keep kids in school, rather than having them expelled. But some alternative schools can be a challenge to adjust to and may not provide the education that your student needs to keep up with their peers in regular school.

Many districts do not provide free transportation to alternative school. If your student ends up in an alternative school, and you do not have transportation you need to address that with the school before the transfer takes place.

This is the link for a complete list of Alternative schools in South Carolina:

<https://ed.sc.gov/districts-schools/student-intervention-services/alternative-schools/>



# BULLYING, HARASSMENT, AND DISCRIMINATION IN SCHOOLS



## WHAT IS THE DIFFERENCE BETWEEN BULLYING, HARASSMENT, AND DISCRIMINATION?

**Bullying is when your child is being hurt by the words or actions of their peers, whose purpose is to cause harm to your child.** These incidents are frequent and go beyond normal “teasing” that most children experience while in school. Bullying can be hard for a child to stop on their own. It can lead to a child feeling bad about themselves. It can cause other issues such as school avoidance, depression, and even suicidal thoughts.

**Harassment is similar to bullying** because it involves hurtful and unwanted words and actions. **The hurtful conduct becomes harassment when it involves the student's race, color, religion, sex, age, disability, or national origin.** Students have protections against harassment under federal law. Schools must address this behavior under federal law.

**Discrimination occurs when** a teacher or school official treats a person different or less favorably or unfairly based on a protected class like the student's race, color, religion, sex, age, disability, or national origin.

If the school fails to address harassment or discrimination issues, you can file a complaint with the Office of Civil Rights. You can file a complaint electronically or by mail. Head here to learn more:

<https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>



## WHAT DO I DO IF MY STUDENT IS BEING BULLIED?

**South Carolina has a state law called the Safe School Climate Act that is supposed to help protect students against bullying, harassment, and intimidation.** Under this law, each school district is required to have a policy to prevent bullying. The district must also have a policy for how to complain if your child is being bullied. You should start by consulting your district policy because each school district is different.

Generally, you should start by meeting with your student's teacher. You should get details from your student about when, where, what, and who is bullying your child. If after meeting with your student's teacher, you do not believe that your concerns are being addressed you should schedule a meeting with the school's administration. It is a good idea to put your request for a meeting and concerns in writing to the school. This meeting can be a principal or assistant principal. It might also be a good idea to involve your child's guidance counselor.

After the meeting, it is a good idea to send a letter or email confirming what was discussed with the school. Your letter should also include what you and the school officials agreed to as a solution.

If this does not fix the problem, you may wish to contact the school superintendent in writing and request a meeting. You may also want to notify school board members if you feel the school environment is unsafe for your child.

The school has an obligation to keep students safe. Parents can sue school districts when the school is notified of the issue, and they neglect or refuse to take action.



## WHAT CAN I DO IF I THINK THE SCHOOL IS DISCRIMINATING AGAINST MY STUDENT?

**Schools, including teachers, principals, and school staff, may not discriminate against your child.** Federal laws prohibit discrimination based on race, gender, disability, religion, national origin, and language status. Schools must make sure their environments are safe and supportive. If someone at your child's school is discriminating against your child, set up a meeting with the principal. During this meeting, explain what is going on in a calm and neutral tone. Do not assume the intent of the person discriminating. Just inform the principal of what happened. The principal should then take that information and speak to the person discriminating. The principal may bring in district personnel to help resolve the issue.

If the principal is unable to resolve the issue, set up a meeting with the district's civil rights coordinator or student services coordinator. The person you speak to may handle a specific type of discrimination. This is the person you should meet if the principal is the person discriminating. Again, inform this person of the situation in a calm manner. School districts should have policies in place to deal with issues of discrimination.

If the school district fails to resolve the issue, you may file a federal complaint. You can file a complaint with the U.S. Department of Education Office of Civil Rights. Anyone can file a complaint within 180 days of the last act of discrimination.

You can file the complaint online or fill out the "Discrimination Complaint Form" and return it by mail, fax, or email. Click here to learn more:

<https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>



## WHAT ARE A STUDENT'S GENDER IDENTITY RIGHTS AT SCHOOL?

**Title IX prohibits discrimination on the basis of sex.** The U.S. Department of Education has issued guidance stating that Title IX protects students from discrimination based on sexual orientation and gender identity.

State law also protects students from bullying, harassment, and intimidation while at school. The constitution protects a student's ability to freely express themselves. The law requires that students have access to equal opportunities. This means that schools must treat all students similarly. Parents can work with their child's school to make sure that their child's gender identity is supported while at school.

The most important way to support a child's gender identity at school is to establish ongoing communication with the school. Parents can create open lines of communication with the child's teachers, the guidance counselor, and principal. Parents should meet with their child's teachers to discuss their child's needs. Parents should also discuss expectations for how to work with their child. Parents should set expectations for a school climate that allows their child to freely express their gender identity. By doing this, the school can create positive learning spaces for their child. Parents can share their expectations for their child's privacy. Parents can also share the child's preferred name, gender pronouns, and bathroom choice.



## WHAT ARE A STUDENT'S PRIVACY, GENDER PRONOUNS, AND BATHROOM RIGHTS?

### Privacy

Federal laws protect student privacy. School staff cannot share certain protected private information, including a student's gender identity status, birth name (when a child goes by a different name), gender assigned at birth, or medical history without permission from a parent. The student's information should at most times remain private. School staff may only share information related to a real school concern. Parents have the right to decide who learns about their child's private information. School staff should not share information just because a student decides to share their gender identity with others.

### Gender Pronouns

Parents should share the student's preferred name and preferred pronouns with their teachers and appropriate school staff. Most school districts have policies that allow students to go by preferred names, so parents and students are advised to write the student's preferred name on all school forms.

### Bathroom Choice

School districts cannot create bathroom policies that require students to use the bathroom of their gender assigned at birth. Parents should work with school districts to determine what bathroom choice works best for the child. This can include allowing the child to use the bathroom associated with their gender identity. It could also mean arranging a bathroom preference where the child uses a single-person bathroom. The student's preferences and comfort are most important in these decisions. The school district cannot discriminate against the child for their bathroom choice.



## WHAT IS TRUANCY?

In South Carolina, the law requires children ages 6 to 17 to attend school. Both children and their parents are responsible for making sure children attend school daily and arrive on time.

**The truancy law has two different types of absences: lawful absences and unlawful absences.** Lawful absences occur when children miss school with a legal excuse. This includes when a child misses school

- while sick,
- due to sickness or death in the immediate family,
- because of a religious holiday, and
- with the principal's permission.

The child can bring an excuse note to the school explaining the reason for the child's lawful absence.

**On the other hand, an unlawful absence occurs when a child misses school:**

- without their parent's knowledge or
- with their parent's knowledge and without a lawful purpose.

A child with too many unlawful absences is truant. **There are three levels of truancy.**

1. A school-aged child is truant when they have more than 3 straight unlawful absences or 5 total unlawful absences during the school year.
2. A truant child ages 12 to 17 missing 2 or more additional days of school is considered habitually truant.
3. If a habitually truant child continues to miss school and is under a court order to attend school, the child is considered chronically truant.

## MORE ON SCHOOL ATTENDANCE AND TRUANCY

**Schools also have a responsibility to make sure that children attend school.** For this reason, school staff must report absences and encourage children to attend school. Once a child misses enough days to be considered truant, school staff are obligated to meet with the parents to figure out why the child is missing school. Both the school staff and the parent will work together as a team to create a written intervention plan with strategies to encourage attendance. Parents can bring in team members from outside of the school to help create the intervention plan.

**If a child does not attend school in violation of the intervention plan, the child then may be placed under a Family Court order to attend school.** The Family Court will set a date for a hearing to determine whether the child is truant. Parents can be held responsible by the court for truancy -- not just the student. Before the court date, a parent may hire a lawyer, or the public defender's office may assign a lawyer. The parent could also decide to represent themselves. The lawyer will meet with the family to discuss reasons why the child is absent. At the hearing, the lawyer will explain those reasons to a judge. If the parent or lawyer can show that the child had lawful absences, the judge may dismiss the case. The judge will put the family under a School Attendance Order if the child is found to be habitually truant. The order will require the child to attend school at the risk of future criminal charges.

**A child who violates the School Attendance Order by continuing to miss school is considered chronic truant.** The child and their parent could face criminal charges because they violated the order. At this point, the parent and child should find a lawyer to represent each of them separately. Criminal truancy charges may result in incarceration for both the parent and the child.

Parents should always document each of a child's absences. Some districts may excuse more types of lawful absences than mentioned earlier. So, parents should learn the school district policy to find out what counts as a lawful absence. For example, one district may excuse a child's absence for a dentist appointment. A parent would then need to turn in an excuse note from the dentist to excuse the absence. Thus, the parent should turn in the proper excuse notes for lawful absences to the child's school.

## WHAT IF MY CHILD HAS A BARRIER TO ATTENDING SCHOOL REGULARLY?

**Some children may have chronic illnesses that keep them from attending school.**

If this is the case you can apply for homebound instruction. You will need to ask your school for an application for homebound instruction. Your child's doctor will complete the application. Once the completed application has been returned to the school, a team will meet to determine if homebased instruction is appropriate, and if so a plan will be put into place.

Sometimes students may miss school if they are frequently in trouble. If a child misses a lot of school because of behavior struggles, You should request an evaluation for special education services. You will need to put your request for a special education evaluation in writing. If the school refuses to evaluate your child for special education services, the school should put their reasoning in writing. You can consult with a lawyer if you don't agree with the school's decision. You can also consult the Special Education portion of this guide to learn more. Parents should request that the school provide all services to help their child stay in school.

**Sometimes a school principal may send a child home for a day or for several days without a suspension.** These "informal" suspensions may count against the child as an unlawful absence. In these situations, you should ask the principal to suspend the student in writing. This way the you can avoid those unlawful absences counting against your child.

A person convicted of truancy may have their record cleared through a process known as expungement. The Circuit Solicitor's Office where the person was convicted handles expungement requests.



## HOW DO I REQUEST AN INTERPRETER IF I AM DEAF OR HARD OF HEARING?

Schools must provide language assistance, such as an interpreter, anytime a parent makes a request. Schools must provide an interpreter at graduation ceremonies, parent-teacher conferences, and other school events. If a school fails to provide interpreter services, the school is violating the law. Parents can meet with school leaders to make an ongoing request for interpreter services at any parent-friendly events the school hosts. Then, the school is familiar with the parent's needs and can make sure to provide an interpreter.

## HOW DO I REQUEST AN INTERPRETER IF ENGLISH IS MY SECOND LANGUAGE?

Schools must provide language assistance, such as an interpreter, anytime a parent makes a request. Parents can make a request to the school regardless of whether their child is proficient in English. Parents can meet with anyone working with their child to request language assistance. The school may not rely on the children, other students, or untrained school staff to interpret for parents. The school must provide a trained interpreter to assist the parent. Interpreters may be present at any school event. Interpreters should be present at any meetings between the parent and school staff.



## SHOULD MY CHILD'S COMMUNICATION DEVICE BE TAKEN AWAY AS A PUNISHMENT FOR MISBEHAVING IN SCHOOL?

Maybe. If your child uses a communication device to communicate due to a disability, that device needs to be listed on their IEP as an accommodation. If the communication device is an accommodation, then it cannot be taken away by the school as punishment. If this occurs, you need to call a special review of the IEP team. Failing to give a student all the required accommodations can be a denial of a Free and Appropriate Public Education (FAPE).

If your child does not have a disability and has their cell phone or tablet taken away by the teacher, then it depends on the policies of your child's school district. School districts may decide whether to take away a cell phone or device if it is "misused." Many school districts have adopted policies about cell phone use during school. These policies can prohibit or limit the use of phones during school hours. School officials can then take away phones when students are using it during a prohibited time.

These policies do not allow the school district to take away phones for unrelated behaviors or when a student is using a phone during an approved time. School districts must respect students' privacy. So, unless a student violates the policy, their cell phone is part of this privacy right.



# SPECIAL EDUCATION



## WHAT DO I DO IF I THINK MY CHILD HAS A DISABILITY?

If you think your child has a disability, you should first talk with their doctor. They will be able to talk through the issues you are seeing and decide if your child has a specific diagnosis. Depending on the issues your child is experiencing, the doctor might refer you to a specialist for more testing.

If your child has a therapist or counselor, you should also speak with them about any disabilities they might be observing in your child.

Even if your child does not have a medical diagnosis, you can talk to your child's school if you believe they have a disability. The school has an obligation to identify children with disabilities. Parents can start the evaluation process by writing the a letter to the school. **Please see the form letter in Appendix B on page 75.**

Once the school gets your letter, they have 60 days to finish the evaluation. The school should conduct a vision and hearing screening on your child. A school psychologist will test your child. They will observe your child in class. They will speak to you and review any medical documents you have. The school psychologist will write a long report about your child. This report will have all the data the school will use to decide if your child has a disability which qualifies them for special services. Once the evaluation is complete the IEP team has 15 days to hold a meeting and discuss the results with you.



## WHAT IS A DISABILITY?

**There are 2 federal laws that define “disability.”** The first law is the Americans with Disabilities Act (ADA). The ADA defines disability as a physical or mental impairment. That impairment must substantially limit a major life activity. Major life activities are everything from breathing, to walking, to learning.

The second federal law is the Individuals with Disabilities Education Act (IDEA). The IDEA is the primary special education law. Under the IDEA, a student must fit into a category of disability. The categories are:

- intellectual disability
- deaf or hard of hearing
- speech or language impairment
- visual impairment (including blindness)
- emotional disability
- orthopedic impairment
- autism
- traumatic brain injury
- other health impairment
- specific learning disability
- deaf-blindness

For children ages 3 – 9, developmental delays also count as a disability.

Some of these categories can be confusing and vague. For example, emotional disability includes things like schizophrenia. “Other Health Impairment” can include ADHD.

Finding your child’s diagnosis on this list isn’t enough. Your child must need special education services because of their impairment to qualify for an IEP. Your child must require special instruction outside the regular classroom. The emphasis is on how the disability impacts learning. Students will not qualify for special services and an IEP under IDEA if they only need a related service or accommodation. Related services are things like speech therapy or physical therapy. Accommodations are things like extra breaks or extended time on tests.

A common example of a child with a disability who might not qualify for an IEP is a child with autism who is “high functioning.” “Autism” is clearly a disability under the IDEA. The question is whether the student’s autism impacts their learning to the extent that they need specialized instruction. You should ensure that the IEP team has done appropriate assessments with qualified providers that are skilled in evaluating the specific type of disability that your child has.

## WHEN SHOULD AN EVALUATION BE DONE ON MY CHILD?

**Your student should be evaluated if you suspect that your student has a disability.** You want to look for signs that your student is struggling. Do not just look at your student's overall grades. Look at test scores. Other signs include: a new frustration with school, or frequent discipline issues. Talk to your student's teacher if you are seeing a problem.

The school can request to evaluate your student if they suspect they have a disability. The school has a duty to look for students who are struggling. They must identify students and evaluate them. This duty is more commonly called "child find."

**If your student has an IEP they should be re-evaluated every 3 years. This is generally called a triennial evaluation.**

- You can request a reevaluation if you suspect that there are additional areas of concern.
- You can request a reevaluation if your student's conditions have changed.
- Parents must always give written consent to have their student evaluated.
- The school has 60 days to complete the evaluation after parental consent is given



## WHAT IS AN EVALUATION (ALSO KNOWN AS A "PSYCHO-EDUCATIONAL EVALUATION")

**An evaluation is the multi-step process schools use it to determine if a student has a disability and if they need special education.** For current special education students, an evaluation can sometimes be useful to help understand a student's progress, or their current abilities.

**Either a parent or a school can request that a student be evaluated.** Schools have a duty to look for and identify students with a disability. Many times, however, students with disabilities go unidentified by the school. In those cases, parents can request an evaluation. You should always request an evaluation in writing. **Please see the form letter in Appendix B on page 75.**

Evaluations include a series of tests and data gathering, typically performed by the school psychologist. Both parents and teachers may have to complete documents for the evaluation. The school psychologist will likely observe your student in class. The school psychologist will also talk to you about your concerns and observations.

It is important that the evaluation is thorough. In most cases, only one test will not give the IEP team all the information they need.

**The school should evaluate your student in all areas of a suspected disability.** This can be related to their learning of material, or their behavior. If your child has a documented disability at the time of your request, an evaluator with expertise in your child's disability should be included in the testing/evaluations. It should also be done in your child's native language (ASL, English, Spanish). Student's physical disabilities and other developmental factors should also be part of the evaluation.

The IEP team will review the evaluation after it is complete. It will be used to determine if your student qualifies for special education services. The data collected during the evaluation will determine what services your student needs. It will also help the IEP team develop the IEP.

## WHAT IS A 504 PLAN AND WHY DOES MY CHILD NEED ONE?

**A 504 plan is a school's individualized approach to a child with a disability who, because of their disability, is not able to receive the same access to school as their peers.** A 504 plan is about preventing discrimination against a student with a disability. A 504 plan makes sure a student with a disability has equal access to learning. If there are barriers to a disabled child receiving the same education as their nondisabled peers, the 504 plan is meant to remove those barriers.

A few examples might be helpful here:

- A student who uses a wheelchair may need a 504 plan for several reasons. They need to physically access the school building with a ramp. They may need use of an accessible bathroom stall. Or they might require a special desk in their classroom.
- A student who has asthma may need a 504 plan to carry an inhaler at school. A student with a nut or food allergy may need to carry an EpiPen.

Let's do a more complex (but common) example:

- A student with an ADHD diagnosis who has lots of disciplinary referrals and suspensions needs a 504 plan, so they can remain in school, and not in the principal's office or at home on OSS. In this case, the school may also need to put in place a Behavioral Intervention Plan. (For more on Behavioral Intervention Plans, see page 54.)



## WHAT IS AN IEP?

**An IEP, or “Individualized Education Plan,” is a special contract between a school and a family.** An IEP describes how the school plans to provide FAPE to a student with a disability.

This special contract is complex, full of jargon, and is governed by specific federal regulations. These regulations detail how the initial evaluation occurs. They specify the members of the IEP team. They detail what information must be in the text of the IEP contract. (That’s why lawyers wrote this guide and not school personnel.)

Despite being a contract, the IEP should be clear and easy to understand by anyone who reads it.

**The IEP can be broken into three basic parts:** where the student was, where they are now, and where they should be in the future (both one year from now, and after the student graduates).

**A key component of an IEP -- and an IEP Team Meeting – is reviewing and understanding data about your child’s learning.** The school should always be collecting data about the student. This data can come from a psychological evaluation. The regular and special education teachers should be collecting regular data about your child. The data collected about your child’s learning must be explained in the IEP. The data collected should be appropriate for children with the same disability as your child. Remember that standardized tests and grades are only part of the data that the IEP team should use. The data serves as the basis for setting your child’s IEP Goals. (See page 38 for more about IEP goals)

**The IEP must specify how the school is going to accomplish the IEP goals.** Who is going to be helping the student with the goal? Is it the special education teacher, or is someone else? Where? In the special education classroom? Or is this something that can be done in the regular classroom? And for how long each week? All of this should be spelled out in the IEP.

## WHAT'S THE DIFFERENCE BETWEEN A 504 PLAN AND AN IEP?

There are **two main differences** between a 504 plan and IEP: **(1) Who qualifies** and **(2) What you get**.

We covered "Who qualifies" earlier on Page 10. We will focus on "What you get" in this section.

**A 504 plan is about access.** The goal is to prevent discrimination based on a student's disability. An IEP is about providing students with disabilities a "Free Appropriate Public Education" (FAPE).

"FAPE" means that the school must give the student an education which allows them to make reasonable progress, in light of their disability. The student should strive to meet challenging objectives in school.

Under a 504 plan, a student receives "reasonable accommodations" and similar opportunities to what their peers receive in school. The student will get "related services." Some related services include occupational therapy, speech therapy, and counseling. Accommodations and services in a 504 plan tend to be more physical in nature.

Under an IEP, a student receives anything they need to get "FAPE." This can be special education services (like direct instruction from a qualified teacher). Students with an IEP also receive "related services". IEPs tend to be more about curriculum and learning.

It is true that an IEP offers a student much more than a 504 plan. However, it's important not to treat an IEP as the "holy grail" of special education. A 504 plan is not a concession prize. They are two distinct programs -- each for a different kind of student. The impact of the student's disability determines which plan your student needs. The question parents must ask is: "Does my child need specialized instruction because of their disability?" Keep in mind that "specialized instruction" doesn't just mean sitting in the special education classroom and improving on math, reading, and writing. It includes instruction about managing emotions and behavior, improving social skills, or even learning about their disability. If the answer is "yes," an IEP might be more appropriate. If the answer is "no," a 504 plan might be more appropriate.

## WHO SHOULD BE IN AN IEP MEETING?



The law is particular about who attends an IEP meeting. You need, at least:

- The parent/ guardian of the student
- The student, when appropriate
- A regular education teacher
- A special education teacher
- A representative/administrator for the school district
- Other professionals with expertise on the child (like a physical therapist, nurse, or therapist)

You need someone in the meeting who can help the parent understand complicated jargon, test results, and data. Typically, the school psychologist will attend.

Parents should understand their right to bring experts of their own. The child's therapist, for instance, can be a useful team member. The child's pediatrician can be an asset as a team member. You can have them participate by phone or have them prepare their own report for the team ahead of time.

**Special note:** If a parent does not have an attorney at the meeting, the school cannot have an attorney either. But parents have the right to bring an attorney along to the meeting with them. That almost always results in the school asking their attorney to attend, too. Attorneys can be helpful at resolving disagreements. Attorneys can also help make sure that the law is followed.

## HOW CAN I BE SUCCESSFUL IN AN IEP MEETING?

**Easy answer: get a good advocate or qualified attorney to attend with you.**

It is important to understand that you are an equal member of the IEP team. Your voice, opinion, and experience matter. You are as much an expert on your child as any other professional in the room.

An IEP meeting is a fluid conversation. An IEP meeting is not a presentation by the school. You should actively participate. You should ask questions. You should demand examples. You should stop things when they don't make sense. You should voice your agreement when you agree. You should voice your dissent when you don't. When you have a significant disagreement, make sure the school writes it into their official notes or minutes from the meeting and the Prior Written Notice (PWN).

**Preparation is key for success.** Ask for materials ahead of the meeting, so you can review it beforehand. Remember that these materials are drafts and can change during the IEP meeting. You can make a list of questions to ask before the meeting. You can request a draft IEP and the psychologist's evaluation in advance. Consult with professionals, like your pediatrician, and plan for them to attend, as necessary.

Another important thing to keep in mind is that the law does not entitle your child to the "best" education. Now, that might not seem fair. You, of course, want the best for your child. But that's the law. Your child is not entitled to the "most" or the "costliest." Your child is entitled to an appropriate education. Your child gets what they need to make reasonable progress, in light of their disability; that's all.

If you believe the goals presented at an IEP meeting do not reflect "reasonable progress" and are not "appropriate," make sure to discuss that with the IEP team at the meeting. If you are still not convinced, you may need to seek an outside expert to weigh in (see Page 41 for more about this).

## WHAT IS AN IEP GOAL?

The IEP goals are the meat of the IEP. They explain what the school is going to do to make sure your child receives FAPE.



**IEP goals have to be “SMART”:** Specific, Measurable, Attainable, Results-oriented, and Time-bound.

- The goal has to be **Specific**. It needs to address a particular deficiency the student has as a result of their disability. “Johnny’s math grade will improve,” is not specific. “Johnny will improve his ability to add and subtract single-digit numbers...” is.
- The goal has to be **Measurable** in that the student’s skill and progress has to be objectively scored. Think charts and graphs; not feelings and observations.
- The goal has to be **Attainable**. This means the goal accurately reflects the kind of progress the student can and should make.
- The goal has to be **Results-oriented**. It must specify how the student and school will accomplish the goal.
- Finally, the goal has to be **Time-bound**. This means that the goal should be completed within a certain amount of time (typically 1 year).

If you can’t understand what the goal is saying. You need to tell the IEP team; odds are someone else doesn’t understand it either. Ask the team to reword the goal so that a new person can read and understand it without explanation.

## IEP GOALS, IN-DEPTH

The "Goals" section of the IEP is in the middle because it's the meat of your student's educational program. The team uses information about where your student is now and looks ahead to where the student should be. Typically, one year from now.

One of the purposes of an IEP is to enable your student to make progress, which is appropriate for them, in light of their disability.

The "Goals" section of the IEP explains what progress will look like. This is the section that teachers will use to develop their lesson plans. It's the section on which teachers will keep data. It's the section you can easily monitor to see if your student is progressing. So, the goals are very important.

Earlier we learned that a good IEP goal is a "SMART" IEP goal. Let's take a more in-depth look at what it means to be "SMART" with a few examples.

### Breaking Down "SMART" IEP Goals

**We first begin with "S" for "Specific."** A "specific" goal needs to address a particular problem your student has as a result of their disability. This problem should have been identified by the IEP team in the previous section of the IEP, which looks at your student's present levels.

**Let's start drafting a goal for our friend Clark to help explain.**

**Bad example: "Clark's math grade will improve..."** This is not a specific goal. Math is a large subject made of small building blocks. In math—each concept builds upon prior concepts. If you can multiply and divide, you can add and subtract. If you can add and subtract, you can count. There should be data in your student's IEP that identifies exactly what building blocks your student has mastered. It should also identify which blocks they need help mastering as a result of their disability. In Clark's case, he can count to 100, but can't add or subtract simple numbers.

**"Clark will improve his ability to add and subtract single-digit numbers..." is an example of a specific goal** that identifies the building block Clark needs help mastering.

## IEP GOALS, IN-DEPTH

**Next up is “M” for “measurable.”** A SMART goal must be “measurable.” This means the student’s skill and progress toward completing the goal can be objectively scored. Think charts and graphs with raw data; not feelings and general observations.

One common way to measure IEP goals is to use the standard worksheets, quizzes and tests from the grade-level that teaches the concept in your student’s goal as a part of its normal curriculum. It’s called “Curriculum Based Measurement.”

### EXAMPLE

In Clark’s school, they teach the addition and subtraction of single-digit numbers to all of their first-graders in general education. Clark’s IEP team believes that is an appropriate way to measure his progress. With that information, Clark’s goal now reads: “Clark will improve his ability to add and subtract single-digit numbers, as measured by a first-grade math fluency Curriculum Based Measurement....”

In addition to how, the goal should specify what it is being measured. There should be a baseline measurement for where your student is right now. In Clark’s case, on a first-grade math worksheet with single-digit addition and subtraction problems, he currently only gets 4 out of 15 problems correct.

**With that information, Clark’s goal now reads:** “Clark will improve his ability to add and subtract single-digit numbers, as measured by a first-grade math fluency Curriculum Based Measurement, from a baseline of 4 out of 15 problems correct....”

**The following letter in SMART is “A” for “Attainable.”** A SMART IEP goal must be attainable. It must accurately reflect the kind of progress your student can and should make with the appropriate services and interventions. The “A” does NOT stand for “aspirational” – it’s “attainable.”

In Clark’s case, he has responded well to one-on-one and small group instruction. So the team believes he can fully master this math concept in one year. With that information, Clark’s goal now reads: “Clark will improve his ability to add and subtract single-digit numbers, as measured by a first-grade math fluency Curriculum Based Measurement, from a baseline of 4 out of 15 problems correct, to 12 out of 15 problems correct....”

## IEP GOALS, IN-DEPTH

**Next is “R” for “Results-oriented.** A SMART IEP goal must be results-oriented. It should specify how your student and school will go about accomplishing the goal. Will it be one-on-one instruction, also known as “direct instruction”? Small group instruction? Will it be done by a special education teacher? Or someone else, like a physical therapist or a counselor? The goal should specify these things.

**For Clark, the team agrees he is going to receive both one-on-one and small group instruction. With that information, Clark’s goal now reads:** “Given direct and small group instruction, Clark will improve his ability to add and subtract single-digit numbers, as measured by a first-grade math fluency Curriculum Based Measurement, from a baseline of 4 out of 15 problems correct, to 12 out of 15 problems correct.” **The IEP should specify who and where the services will be provided.**



**Finally, the goal must be time-bound.** This means that the goal should be completed within a certain amount of time. For most IEP goals, 1 year is the standard and appropriate time. Typically, the time limit is not included the text of the goal. Most IEPs list the time limit just above or below the goal.

One last note about SMART goals: if, after reading the entire goal by itself, you can't understand what the goal is saying, how it's being measured, and how it's being implemented by the school, without ANY explanation, it is not a good goal. Ask the IEP team to reword the goal. **A goal should be easy to read. Anyone (like a substitute teacher) should be able to read a goal and understand it without any explanation.**

## WHAT IS LRE AND WHY IS IT IMPORTANT?

**LRE stands for “Least Restrictive Environment.”** It’s a cornerstone of the IDEA. Students with disabilities should be with their peers in the regular education classroom as much as possible. The IDEA does not want a student excluded just because they have a disability. There must be a strong reason for a student to be in a special classroom.

In an IEP meeting, one of the factors that the team must consider is whether the IEP places the child in the least restrictive environment possible. The IEP must explain if and why a student is being placed outside a general education classroom.

Schools calculate LRE using percentages. The least restrictive environment is 100%. This means that the student spends 100% of their time in their regular education classroom. Each minute you pull the student out of their regular education classroom, the percentage drops. A more restrictive environment would be when a student spends most of the day in a special education classroom. This student may leave the special education classroom for classes like art, music, or P.E. This student may also have lunch with nondisabled peers. One of the most restrictive environments would be home-bound services. In this setting the student receives 0% of their education in the regular education classroom.

## WHAT IS A RELATED SERVICE?

**A related service is a service a student needs in order to benefit from education. It is included in your student's IEP or 504 plan.** Related services help make it easier for students to participate in class. Some common examples of related services are: transportation, speech therapy, psychological services (or counseling), physical therapy, occupational therapy, nurse services, medical services, and one-on-one tutoring.

If a student only needs a related service, they may not qualify for an IEP. A student can receive a related service under a 504 plan. For example, if a student in a wheelchair only needs special transportation, then don't qualify for an IEP. The student can get the related service of transportation with a 504 plan.

## WHAT IS AN ACCOMMODATION?

**An accommodation is a tweak or change given to a special education student that helps them access regular education.** Accommodations can be a change in the environment. It can be a change in curriculum format. An accommodation can even be equipment that allows your student to access the curriculum. An accommodation can change how a student learns material. It helps kids learn the same material as their peers. It can be done under a 504 Plan or an IEP.

Let's look at an example. Clark, a student with ADHD, comprehends everything in their regular math class. However, when it comes to test-taking, their ADHD causes them to have trouble focusing. They struggle to complete the test in the normal amount of time. A common accommodation for a student like Clark is to give them extra time to take tests. They may also be allowed to take the test in a separate classroom where there are fewer distractions. They don't need any specialized instruction. They do not need modified curriculum. The student just needs an accommodation so they can complete the test like their peers.

**Accommodations cover a broad range of things. The IEP team should be creative in thinking about what the student needs.**

### Some common examples include:

- Use of a stress ball or fidget-spinner,
- Specific seating in the classroom,
- Use of a calculator,
- Use of a personal water bottle,
- Frequent movement breaks,
- Extended time on test and quizzes.
- Captions,
- ASL Interpreter

## IF MY CHILD HAS MORE THAN ONE DIAGNOSIS, DOES IT MATTER WHICH IS LISTED FIRST AS THE DISABILITY CATEGORY?

**The IEP team can choose to list more than one disability category in the IEP.** The IEP team can list as many disability categories as needed. Remember that the IEP should meet your child's unique needs and diagnosis. The child's needs determine the disability category.

There are several things you can do if you have concerns about the disability category. You should discuss it with the IEP team. You can request a new evaluation. You can provide documents that discuss your child's diagnosis. You should explain how that diagnosis is the one that primarily impacts your child's learning. The IEP team should always make decisions based on your child's unique needs, not a disability category.

The IEP team's decisions should not be based only on your child's disability categories. You should make sure that the IEP team lists each of your child's diagnosis as disability categories. This is important if your child needs services for each disability. Ensuring team members with expertise about your child's specific disabilities will ensure the primary disability is determined correctly.

## WHAT IS A MODIFICATION?

**A modification is a change in what the student will learn.** It is also a change in what teachers expect the student to do. It could be a change in the curriculum that students learn. It could also mean taking a different test on material that is less complex or with fewer questions than other students. Some students might take an "alternate assessment." This is a version of state tests that may have shorter questions or cover less material than the standard exams. In a class like PE, a student may have a modification based on an area of disability. For example, a student with a mobility disability may run a partial mile instead of the standard mile. Modifications allow students to learn in a way that meets their individual disabilities and unique needs. Examples of Modifications:

- Outlining instead of writing an essay
- Pass/no pass grading options
- Modified workload
- Modified length of assignments/tests

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## WHAT IS FAPE?

**A student with a disability is entitled to a free, appropriate public education or FAPE.**

This means that the school needs to meet your student's unique needs. The school will develop an IEP that explains how they are going to do that. Your student must get an education which allows them to make reasonable progress, in light of their disability, and allows the student to strive to meet challenging objectives. The school must prepare your student for further education, like college or trade school. The school must also prepare your student for employment, and independent living.

## WHAT IS A PWN?

**PWN or Prior Written Notice is a procedural safeguard under the IDEA.** It is a written notice from the school that must be given to parents/guardians any time there are changes made to their student's IEP. If services are added to an IEP, a PWN must explain those changes. If your student's placement is changed, you must get a PWN. If the IEP team denies services that you have requested, you must get a PWN from the school. The PWN should describe what the school plans to do or refuses to do. A PWN should explain the reason behind the change in services or refusal to provide services. It should describe what options the IEP team considered and why they were rejected. It should explain what tests, data, or information that the school used to make the decision.

The timing of the PWN is important. You must receive the PWN prior to changes taking affect in your student's IEP, but after the IEP meeting.

Your PWN should remind you of your legal rights. It should give you information on how you can learn more about your rights. Your PWN should include contact information to places that can help you learn more about your education rights.

## WHAT IS FERPA?

**The Family Educational Rights and Privacy Act (FERPA) is a federal law. It protects the privacy of student education records.** This law applies to any school receiving federal funding from the US Department of Education. Under this law you have the right to inspect and review your student's school records.

You have the right to request that a school correct records that are inaccurate or misleading. If the school rejects this request, you have the right to a formal hearing. If the school refuses to make the change after the formal hearing, you have the ability to place a statement in the student record explaining what information you dispute.

This law requires that schools have written permission from the parent to release any information from the student's school record. There are some limited exceptions. Schools can release educational record without consent to the following:

- School officials with legitimate educational interest
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.



## WHAT IF I DON'T AGREE WITH WHAT'S IN THE IEP?

**You need to make your disagreement known to the IEP team.** You should ask the IEP team to document your disagreement. Your disagreement should be noted in both the Parent Input section of the IEP and in the Prior Written Notice (PWN). You can also write that you do not agree with the IEP in the signature block at the end of the IEP.

**You have several options after making your disagreement known to the IEP team.** First, you should consult with a lawyer. South Carolina Legal Services (1-(888) 346-5592) offers free attorneys to low-income parents. You can consult our list of education attorneys if you do not qualify for legal services.

**If you cannot get an attorney, you can request mediation.** The mediation process is free to everyone. Mediation is where you and school personnel sit down with an impartial third person called a mediator. You talk openly about the areas where you disagree. Hopefully you will be able to reach an agreement. You can learn more about mediation by following this link: <https://ed.sc.gov/districts-schools/special-education-services/parent-resources/dispute-resolution-information/mediation/>

**You can also file a state department complaint with the South Carolina Department of Education.** The State Department of Education will review your complaint. They will send a copy of it to the district. The district will respond to the complaint. Then the State Department of Education will issue a decision letter. There is no hearing. There is a one-year statute of limitations filing deadline. This means that you must file the complaint within one year of your concern. You can find the state department complaint form and instructions on how to file here: <https://ed.sc.gov/districts-schools/special-education-services/parent-resources/dispute-resolution-information/state-complaint/scde-complaint-form/>

**You can also file a due process complaint.** We do not recommend that you do this without the assistance of an attorney. A due process complaint is a formal procedure that will have a hearing. You will be expected to prove your case in front of a hearing officer. You will need evidence of your claims and will have to prove your case. (A due process complaint has a 2-year statute of limitations.)

## WHAT HAPPENS IF THE SCHOOL DOESN'T DO WHAT THE IEP SAYS?

**You should address this concern first with the teacher who is not following the IEP.** Ideally this should be in writing, like an email. If you must have a verbal discussion with the teacher, send an email after to confirm your understanding of the conversation. If it is not in writing, it will be impossible to prove. You need to determine if this is a one-time problem or if there is a failure to follow the IEP frequently. If it happens more than once, you should call a special review IEP team meeting and address your concerns. Make sure that your concern is documented in the Prior Written Notice (PWN). You should make sure the school has documented how they are going to fix the problem. The school must ensure that your child is getting the accommodations, supports, and services listed in the IEP.

The school should not tell you that the service, accommodation, or support that they failed to provide is too expensive. They cannot say it is too difficult to provide. The team has already agreed that this is what your child needs.

Let's look at an example:

- A student receives speech and language services. The speech therapist quits in the middle of the year. The school cannot simply say that they cannot provide those services anymore. The school must figure out a way to still provide those services. If the student misses any of those services, the school is required to make them up.

If you have taken your concerns to the IEP team and are not satisfied with the result you should meet with an attorney. If you are unable to consult with an attorney, you can file for mediation.

**Please see this link to learn more about free mediation:**

**<https://ed.sc.gov/districts-schools/special-education-services/parent-resources/dispute-resolution-information/mediation/>**

You can also file a free state department complaint through the South Carolina Department of Education. Please see this link to learn more about free mediation:

**<https://ed.sc.gov/districts-schools/special-education-services/parent-resources/dispute-resolution-information/state-complaint/>**

## WHAT IS COMPENSATORY EDUCATION AND HOW DOES IT WORK?

**Compensatory Education is commonly called “comp ed.”** Districts can give comp ed to a student when the student misses out on services or specialized instruction. The idea behind comp ed is that additional services compensate a student for the time that they missed.

Some examples of situations that may cause a student to be given comp ed:

- being suspended or removed from class more than 10 times in a school year
- a speech language therapist quits, and the child miss services,
- there is a global pandemic, and your child does not receive specialized instruction
- or any other reason that the school may fail to provide your child with a Free and Appropriate

It is unlikely that the school district will offer you comp ed without you requesting it.

You should request comp ed in an IEP meeting after you are made aware that your student missed out on specialized instruction or services. There is no formula, or one-size-fits-all determination of what your student deserves for comp ed. The IEP team will consider a few factors:

- What your student missed
- How that impacted your student.
- What will take to make up the loss in learning that occurred.

The team will also consider how the comp ed services will be provided. By way of example, let's say your student missed out on 5 days of special education instruction in a classroom with 8 other students. The IEP team may decide that 5 hours of one-to-one instruction would make up for that loss.

**The thing to remember is that all children have different needs. The same type of comp ed will not work for everyone.** So, comp ed must be individualized, just like everything else in Special Education. The IEP team can get creative with the awards of comp ed. The IEP team can provide those services through an outside provider like a tutoring service, or social skills class. Remember is that your child's comp ed services should not be during the school day. The purpose of comp ed is to make up for a loss. You don't want to create an additional loss by providing those services during the school day.

## WHAT IS A FBA AND HOW DO I KNOW IF MY STUDENT NEEDS ONE?

**An FBA is a “Functional Behavioral Assessment.”** It's one of the tools the IEP team can use to understand how a student's disability impacts their behavior. If your student has challenging behaviors, they may benefit from an FBA.

**The goal of an FBA is to find out why a student is behaving a certain way.** The basic idea is that **behavior serves a purpose. Behavior can be communication.** What is your child communicating with their behavior? Whether students know it or not, they act in certain ways for a reason. If the IEP team can figure out what is causing a behavior, they can find ways to avoid those behaviors.

An FBA involves direct testing of the student. A school psychologist will observe your student in the environment where challenging behaviors occur. Parents/Guardians and teachers will provide input. You will likely have to complete a questionnaire about your student.

### The results of a good FBA will do two basic things:

- Identify and summarize challenging behaviors, and
- Pinpoint how, where, and why those behaviors occurred.

Let's look at an example. Clark is a student with ADHD. They begin getting in trouble at school. They have a handful of referrals over the last 3 months. They have some in-school and out-of-school suspensions (ISS and OSS). The IEP team has a quick meeting. The IEP team decides that the school psychologist should conduct an FBA. The school psychologist reviews the referrals, and notices they are happening only in the student's math class. The psychologist sits in on a few of the student's math classes. She observes the student getting frustrated when they do not understand the material being taught. That frustration results in the student bothering their peers. When redirected by the math teacher, the student lashes out at the teacher, using profane speech. This results in a referral.

The information learned by the school psychologist helps the IEP team understand Clark's behavior. Now, the IEP team can put a plan in place to prevent and correct this behavior. This plan is typically called a Behavioral Intervention Plan or a BIP.

**Special note: an FBA can be conducted under both an IEP and a 504 plan.**

## WHAT IS A BIP AND HOW DO I KNOW IF MY STUDENT NEEDS ONE?



**A BIP is a “Behavior Intervention Plan.”** It details how the school plans to address the student’s behavior problems, when those problems are the result of their disability.

To develop a BIP, the school will typically perform a Functional Behavioral Assessment (FBA) (see page 53).

### A BIP has 3 key parts.

- First, it lists the problem behaviors.
- Second, it describes why those behaviors are happening.
- Third, it describes the strategies or supports the school will implement to help avoid or manage the behavior.

A BIP must be individualized and specific to your student. A BIP should consider a student’s age, emotional intelligence, and the nature of their disability. The BIP will need to be adjusted as your student grows and changes. A BIP can be adjusted as needed. If implemented properly, a BIP should keep your student from receiving as many referrals.

If your child has a disability which impacts their behavior, a BIP is crucial to keeping your child in school. A good BIP ensures that the school doesn’t treat your student with a disability like “just another bad kid.”

## WHAT IS A CRISIS PLAN AND DOES MY STUDENT NEED ONE?

**A crisis plan goes into a student's behavior intervention plan or BIP. This is an action plan that may be needed if a student is at risk for hurting themselves or others.** It can detail how staff can respond. It can detail what staff can respond or intervene in crisis situations. It should detail how this event should be communicated with you.

Students who have behavioral issues or concerns may benefit from a crisis plan. Especially if your student has behaviors that can result in crisis or emergency situations. You should work with the IEP team to develop one for your student. This plan should be reviewed and updated as needed.



## WHAT IS AN MDR? AND WHAT SHOULD I DO IF MY SPECIAL EDUCATION STUDENT IS RECOMMENDED FOR EXPULSION?

**An MDR is a "Manifestation Determination Review" meeting.** A school must hold an MDR whenever a special education student:

1. is recommended for expulsion, or
2. receives more than 10 days of suspension in a school year. It is an important protection for students with disabilities.

**There are two questions for consideration by the team (504 or IEP) at the MDR.** If the IEP team answers "yes" to either question, the school cannot expel the student.

**Question 1:** Is the behavior which caused the referral caused by the child's disability or does the behavior have a direct and substantial relationship to your student's disability?

To answer this question, the team will look at the IEP or 504 plan, and the FBA/BIP (if one exists). The team will review the child's disability, and background. The IEP team will look to see if there is a connection between the disability and the referral. Sometimes the connection is easy. Other times, it isn't so easy.

Like a 504/IEP team meeting, it is important for parents to be prepared to advocate for the connection between their child's disability, and the behavior that resulted in a referral. It may be necessary to bring one of your child's health professionals or someone knowledgeable about their specific disability in the meeting, so they can provide their expert opinion. A school would be hard-pressed to go against the professional opinion of a doctor or licensed therapist.

Remember that the question in front of the IEP team is not about whether your student knew that their conduct was wrong; the question is if the conduct relates to the disability.



## MORE ON MDRS

**Question 2:** Is the behavior the result of the school's failure to implement the IEP/504/BIP?

Schools are very resistant to agreeing that they messed up. It can get a little awkward or intense in the MDR when considering this question. However, there are two angles to approach this as a parent.

- **One**, look at the specific steps your child's BIP lays out. Use the meeting to ask the relevant parties if those steps were followed. Your child will be a crucial witness about this as well. If the school missed a step, then they failed to implement the BIP, resulting in a "yes" response to the question.
- **Two**, look at the behavior-related services the school is providing under the IEP or BIP. There might even be a behavior-related goal in the IEP. Ask the special ed teacher, and your student, if the school staff are dedicating enough time to accomplish the goal. Ask if the school is teaching them everything that is listed in the IEP or BIP. Sometimes, behavior-related services are overlooked by special education teachers. This results in a "yes" response to the question.

Again, if either question is answered yes, the school cannot expel or change your student's placement.

There is an important exception to this. **If your student brings a weapon to school, brings or uses illegal drugs to school, or seriously injures someone at school they can be removed for 45 days even if the conduct is a manifestation of their disability.**

If both questions are answered no, the student no longer has protections under federal law. They can be expelled or suspended like any other student. In South Carolina, schools have broad discretion to expel students. That's why the MDR is crucial to keeping your student in school. **It is strongly recommended to hire an attorney for this meeting. If you cannot afford an attorney, please see our section on free attorneys. It is best to stop an expulsion hearing before it happens.**

Special note: If the MDR results in "no's," and your student is expelled from school, they are still entitled to receive services under their IEP. The IEP team always determines where and how your student will be served. The expulsion hearing officer does not determine placement.

## WHAT IS ESY?

**ESY stands for “Extended School Year.”** This is a service that the school provides if an IEP team determines that a child needs more support services to receive a free and appropriate public Education (FAPE). ESY services are special education and related services continued outside of the regular school year. ESY costs nothing for the parents. Schools provide ESY based on the child's individual and unique needs. Once the team decides to offer ESY, the team writes those services into the child's IEP.

The IEP team typically determines if reasons exist for giving a child ESY. These reasons can include:

- The child will greatly regress without continued services,
- The child will not be able to regain losses without continued services,
- The child has regressed before during breaks (like during summer, winter, or fall breaks),
- Or the child has started a skill that would be lost with a break in instruction and support.

ESY is not about “catching up.” Instead, the focus of ESY is to help the child practice learned or emerging skills during an extended break. Please note that COVID-19 closures are not breaks considered in ESY decisions. But, if a child is developing a skill, the team might consider offering ESY.

## WHAT IS THE DIFFERENCE BETWEEN ESY AND SUMMER SCHOOL?

ESY helps a student practice learned or emerging skills with support during extended breaks. A student's IEP may require ESY for a student just developing a new skill. The IEP might also require ESY if the student will regress without continued services.

Summer school allows a student to catch up on subjects that they did not successfully complete during the regular school year. A child may attend summer school to retake a class. Students without IEPs can attend summer school. A student may also attend summer school for special programs like reading or math camps.

## MY CHILD HAS A MEDICAL DIAGNOSIS OF AUTISM, DOES THAT AUTOMATICALLY MEAN THAT THEY ARE ENTITLED TO AN IEP?

**No, a medical diagnosis of autism does not automatically mean your child gets an IEP.** In addition to a diagnosis of a disability, your child must need special education services to qualify for an IEP.

**To find out if your child qualifies for an IEP, they must be evaluated.** A team will meet to decide if an evaluation is appropriate. If so, the school psychologist will test your child and collect data. The school psychologist should also observe your child in the classroom. All this data will be collected into a report. The team will look at your child's performance in the general curriculum. It will look at any interventions your child's teacher has used to help them access the lessons.

**You are an important member of the team.** You can share anything that can help with the team's decision. After the report is finished, the team will meet to decide if your child should get services through an IEP.

Remember that special education and related services could be lessons adapted to your child's needs. Your child may require special transportation. Your child may have other needs to access the general curriculum. The general curriculum is the grade-level standard for your child's age or grade. These are all things that can be addressed in an IEP.

If your child has a diagnosis of autism and does not qualify for special education services, they still qualify for a 504 Plan. Please see our section on 504 Plans to learn more.



## IS MY CHILD ENTITLED TO TRANSPORTATION?

**Transportation is an IEP team decision.** Your student is not automatically entitled to transportation services. Your student's unique needs must show that transportation services will help your student access learning and other school activities. Transportation services can include travel to and from school. It can include travel around school buildings. It can also include equipment such as adapted buses and ramps. The IEP team must decide if your student needs transportation. The IEP team will decide what transportation services looks like for your student. **Remember that you are an important part of the IEP team.**

Transportation also affects your student's after high school goals. For example, your student may need travel training in high school to help them understand how to move around their environment. The IEP team should consider both transportation and travel training as part of your student's specific needs.

The IEP team will decide what transportation services your student needs and how the school will provide those services. You should share any information about transportation needs that can help the team understand what your student needs to be successful at school. You can also share in the planning for how the school will provide transportation services.



## WHAT IS TRANSITION PLANNING?

**Transition planning deals with developing career and education goals for students after high school.** The law requires a student with an Individualized Education Program (IEP) to have transition goals in the IEP at age 13. Students should be invited to their IEP meetings at age 13 to plan these goals. The transition goals should consider the student's needs, interests, preferences, and strengths.

The school must assess the student before they turn 13 to provide information useful to planning the goals. The transition assessment should answer these questions:

- What does the student want to do after school?
- Where and how does the student want to live?
- How does the student want to be involved in the community?

Once the team has answered the questions, they can set measurable transition goals in the student's IEP. The student will take courses, develop life skills, or work with agencies to prepare to meet these goals.

## HOW DO YOU MAKE SURE THAT SOMEONE DOING YOUR CHILD'S EVALUATION IS KNOWLEDGEABLE ABOUT YOUR CHILD'S SPECIFIC DISABILITY?

**The person completing your child's evaluation should have training on your child's specific disability.** This is especially important if your child has a low-incidence disability and might not be something the psychologist or other team members have expertise in. This is important to ensure someone on the evaluation team **IS** an expert.

Your input during evaluation planning is important. You can inform the team based on your knowledge about your child's specific disability. The person leading the evaluation planning meeting should ask what you know and observe when spending time with your child. **You are an important expert on your child in this meeting.**

Be willing to share openly and honestly. Then the entire team can make decisions that best fit your child's needs. Your knowledge about your child's specific needs can help the team decide what data to collect. It can also inform the team what to look for during the evaluation.

## WHAT DO GOOD TRANSITION GOALS LOOK LIKE?

**Transition goals are related to what the student is going to accomplish after high school.** Transition goals must address a student's training and education. These goals need to address employment of the student after high school. These goals should also address independent living (if appropriate). Transition goals are hard to measure. Creating annual goals for each transition goal is the best way to make transition goals measurable. These goals are to prepare the student for life after high school. Good transition goals should give the student the tools they need to be successful after high school.

### **Example of a Measurable Goal:**

- o Upon graduation from high school, Clark will enroll in a teacher training program. Upon completion of his course of study in college, Clark will obtain employment as a teacher.

**The transition goal should discuss the student's course of study.** The "course of study" is the type of classes the student will take in middle school and high school. The course of study should match the student's after high school goals. In 8th grade, the student will create an individualized graduation plan (IGP) with their guidance counselor. This can also help with developing transition goals. However, it is not a replacement for an IEP.

Some students will need connections to outside agencies, like Vocation Rehabilitation. IEP teams should coordinate with those agencies. The IEP team will review the student's current performance to decide if there is a need. The team will then determine the skills, supports, and services the student will need to support a smooth transition. If the student needs outside services, the team should help connect them.

**All transition goals and plans should be written with the student in mind.** This means that transition planning should be meaningful and connected to the student. The goal should be reasonable. **The goals must ready the student for independent living, employment, and future education.**

The IEP team must review the transition plan every year.

## DOES MY STUDENT NEED TO HAVE INPUT ON THEIR TRANSITION GOAL?

**Beginning at age 13, South Carolina policy requires all students with an IEP to attend their IEP meetings.** Attending the meetings gives the students the ability to provide input on their transition goals. The purpose of a transition goal is to help plan how the student will transition out of high school. A transition goal should help the student into the next step in their life.

Some students will have a transition goal focused on preparing for college. Other students will have a goal focused on attending trade school. Other students will have goals focused on entering the work force. Some students may only have independent living skills as part of their transition plan – things like budgeting monthly bills, or navigating public transportation.

Transition goals are based on the student's strengths, needs, interests, and preferences. That is why student input is an important part of creating successful transition goals. Student input also gives the student buy-in to make progress towards their goals. When a student feels more ownership in the process, they are more likely to put forth more effort.

**It important that transition goals are reasonable.** For example: gameshow host, professional athlete, or famous singer may not be the most reasonable career goal. A student can dream, of course; but the IEP transition process is meant to be more practical about a student's career options.

Students may choose not to attend their IEP meetings. If so, the IEP team must make sure that the student's preferences and interests are used in developing their transition goals.



## WHAT DETERMINES IF MY CHILD GETS A DIPLOMA OR A CREDENTIAL?

**The IEP team determines whether a credential or diploma is more appropriate.**

Remember that **you are a very important part of the IEP team. This means that your input matters.**

Schools should not have blanket rules about which students are on the diploma track or the credential track. You should not wait until high school to discuss graduation options. The IEP team should start conversations about whether your child is on the diploma or credential track in middle school. These conversations should start no later than your student's 13th birthday.

The diploma or credential decision is part of your student's transition planning in their IEP. The IEP team must first consider a regular high school diploma. The team will consider your student's pace and performance in general classes. If your student makes progress in general classes, they should get a high school diploma. Scores below grade level and low-test scores do not automatically mean that your student should get a credential.

For the credential, the IEP team must note that a high school diploma is not appropriate. The team will consider whether your child is able to complete the academic coursework and pre-employment preparation for the credential. The IEP team will review data such as your child's past IEPs, end-of-grade tests, teacher observations, and achievement tests. The credential is most appropriate for students who will enter the job force after leaving high school but will not be able to complete the course work for a diploma before age 21. The credential is not for students with a disability who can obtain a high school diploma with supports and services and plan to enter the work force after graduation. **Just because your student plans to get a job after high school rather than going to college does not mean that they need a credential rather than a diploma.**

As members of your student's IEP team, you and your student should discuss your student's needs, interests, strengths, and preferences with the rest of the team. This will ensure that your student gets the most out of their high school experience. It will also ensure that they will be prepared for the next stage of their life.

## WHAT IS THE DIFFERENCE BETWEEN A DIPLOMA, HIGH SCHOOL CREDENTIAL, AND CERTIFICATE?

### Diploma

- Allows students to seek different opportunities after high school
- Accepted by colleges
- Accepted by training programs
- Recognized by military
- Allows student to apply for federal student aid for college.
- Offers Seals of Distinction for Honors and College-Ready students.

### Certificate

- Known as a "district attendance certificate."
- Student attended school regularly but did not meet graduation requirements.
- Not recognized by colleges or military

### S.C. High School Credential

- Alternative option to a diploma for students with disabilities
- Demonstrates ability to transition into the work community.
- Recognized in South Carolina by some employers
- Recognized in South Carolina by some training programs.
- Offered to students with a disability based on the IEP team's decision.
- Offered to students with a disability who are not able successful on a diploma pathway.
- Builds work readiness skills
- Requires students to complete work hours.
- Not recognized by colleges,
- Not recognized by military

## SHOULD I TELL MY CHILD ABOUT THEIR DISABILITY?

**Professionals in child psychology and child development suggest that telling your child about their disability will have a positive effect.** You should start with an age-appropriate conversation with your child about their disability. Give your child tips on what to say when asked about their disability. Give your child space to ask questions about their disability.

**It is helpful to have your child attend at least part of each IEP meeting.** A student can tell the team what is working well for them and what they are struggling with. It is important that a student understands and knows what accommodations and services they have in their IEP. This helps you to know if the school is following the IEP. Your child can also remind the teacher if they are not getting their accommodations or services. This helps to build self-advocacy skills.

IEP meetings can be overwhelming for students, so you need to figure out what works best for your child. Some students are present for only the beginning of the meeting. This allows for the student to provide feedback about what is working and is not working. Then the student can return at the end to cover the accommodations and services that are in place. Older students may want to stay for the whole meeting.

**Students being involved in the IEP meetings will help build self-confidence, self-advocacy, and self-determination skills.** These are skills that your child will need in adulthood. It will also make your students feel like they have a say in their education. This leads to better engagement in school and better educational outcomes.

**You can learn more about empowering your child with a disability by visiting Able SC: <https://www.able-sc.org>**



## SHOULD MY CHILD ATTEND THEIR IEP MEETING?

**Yes. Your child is the only person who can provide the best feedback of how well their IEP is working.** Your child can also share their struggles and strengths during the school day. Your child's input will give the IEP team the best idea of how to develop the IEP. This includes creating goals, adding accommodations, and ensuring that your child's unique needs are met.

**Depending on your child's age, your child can attend the entire meeting or part of the meeting.** If your child is in elementary school, it may be helpful for them to attend the beginning of the meeting. Then, your child can share their strengths and weaknesses as well as likes and dislikes. Your child should come back to the meeting so that the team can review any accommodations that they receive. All students should know what their accommodations are. Students should know how to ask for their accommodations if they are not receiving them. Finally, you will want to make sure that your child tells you if they are not receiving their accommodations. This also applies to related services like speech and occupational therapy.

**South Carolina policy requires older, middle school students to attend their meetings beginning at age 13.** If possible, speak with your child about their comfort in attending their IEP meetings. You and your child can discuss and decide if they should attend. Once you both decide that your child will attend the meeting, the school must make sure that your child can attend. This means that your child will be pulled from class to attend meetings scheduled during school hours. This also means the school should make sure that the meeting does not interrupt any important activities, like tests or presentations.



## MY CHILD WITH A DISABILITY IS TURNING 18, DO I NEED A GUARDIANSHIP?

**Not necessarily.** In South Carolina there is a law called the Adult Students with Disabilities Educational Rights Consent Act. This law allows a parent or caregiver to continue making education decisions for a student at age 18, so long as a student cannot make decisions on their own.

### RESOURCES

Follow this link for a detailed packet on how this free process works: <https://ed.sc.gov/districts-schools/special-education-services/oversight-and-assistance-o-a/indicator-13-module/summary-of-the-adult-students-with-disabilities-educational-rights>

**Guardianship is a complicated legal process that is not right for everyone.** It should not be the first option that you try. Guardianship should be a last resort. Guardianship requires the filing of a summons and petition in probate court. There are filing fees, attorney fees, and examiner reports. The court makes a finding that your young adult is incapacitated. The court then appoints a Guardian. Your young adult then loses many of the rights that adults have. It can affect their ability to have a job, live independently, or even get married.

Once a Guardianship is in place, they are difficult to end. Most Guardianships do not end until the incapacitated person dies.

**Today, the court and laws favor something called "supportive decision-making."** Supportive decision-making is something that most of us do without thinking much about it. We make choices and decisions using other people's help. Sometimes choices are simple, like what to wear to a job interview. Sometimes choices are complex, like if a medical procedure is right for you.

A good supportive decision-making plan can allow a person with a disability to make their own choices. It can help a person learn and develop skills to make good decisions. It will give them more independence. It will make your young person feel more in control of their life. Follow this link to learn more about supportive decision making to see if it is right for your young adult with a disability: <https://scsupporteddecisionmaking.org>

## HOW SHOULD A STUDENT/PARENT ADDRESS ACCOMMODATIONS NOT BEING FOLLOWED?

**If the student has a 504 Plan, schedule a meeting with the 504 Plan coordinator for the school.** You could also schedule a meeting with your child's teacher. You should request a meeting in writing listing your specific concerns and why you think a meeting is needed. In the meeting, discuss the accommodations that the student receives. Also, discuss whether the accommodations are working. If not, ask for a meeting with the full 504 Plan team to change them. A student or parent can call a meeting to discuss the 504 Plan at any time.

If the student has an IEP, a failure to follow accommodations is against the law. First, schedule a meeting with the student's special education teacher. You should request a meeting in writing listing your specific concerns and why you think a meeting is needed. During the meeting, discuss how the accommodations are not being followed. A parent can also call an IEP meeting at any time to discuss or change accommodations.

**You need to document any time an accommodation is not being followed.** Anytime you meet with your student's teacher or other school official, you should send a follow-up email. In the email you should recap what was discussed in the meeting and thank them for their time.

If you are in an IEP meeting, you should carefully review the meeting notes before the end of the meeting. You need to make sure that all concerns you addressed are documented. You will also want to compare these minutes to the Prior Written Notice (PWN) when you receive it. Make sure everything is documented in writing.

**Document everything and keep detailed records.** This makes it easier for you to clear up any future issues. We recommend getting a binder. You should keep all your records together and in order.



## IF MY CHILD HAS MILD HEARING LOSS DO THEY STILL NEED SERVICES?

**A child with a mild hearing loss may receive services under a 504 Plan or Individualized Education Plan (IEP).** The child must first be eligible for services under either plan.

Reviewing your child's data is an important step to determine if services are appropriate. For children with hearing aids, having at least a 504 Plan can remove barriers to lessons. 504 Plans also shape how your child's teachers can best support your child. Also, a child who needs a classroom amplification system could receive that service either with a 504 Plan or IEP. Your child's audiologist can send a letter to the school if your child needs a classroom system.

Both plans account for your child's individual needs. If your child is thriving without services, you may opt not to enroll your child in any plans for service. This is a big decision. Before you decide, review your child's grades, and test scores and speak with your child about any struggles they are having at school. You can work with your child's teacher to accommodate your child's needs. Starting with the teacher could also give you an idea of how the mild hearing loss affects your child at school. The teacher can then recommend whether additional services are appropriate.

## HOW DOES MY CHILD WHO IS DEAF OR HARD OF HEARING INTERACT WITH NON-DISABLED PEERS?

All children have a desire to form friendships with their peers. These friendships can boost children's self-esteem and confidence. A child who is deaf or hard of hearing may have difficulty forming relationships. There are communication differences between hearing students and deaf or hard of hearing students. Research shows that children in inclusive classrooms can form bonds with their peers. These peer bonds can improve your child's confidence and social awareness.

**Work with your child's classroom teacher, interpreter, and deaf or hard of hearing teacher to create a plan for building your child's social interaction skills.** Your child should be able to interact with peers as often as they desire. The IEP team should make sure your child has every opportunity to form peer relationships. This might mean, even if your child is academically advanced in some areas, they have opportunities to interact with other deaf or hard of hearing children who use the same communication modality. Having peers with whom they can communicate is critical.

## IF MY CHILD HAS A LANGUAGE DELAY, WHAT IS THE LEAST RESTRICTIVE ENVIRONMENT FOR MY CHILD TO BE IN?

**All least restrictive environment decisions should be based on your child's specific needs and circumstances.** The IEP team should consider the child's type of language delay, The goals and services to be provided to the student.

For example, a child with a speech delay may thrive in a classroom with their nondisabled peers. Another child with a similar speech delay may thrive in a smaller class setting. The IEP team should make decisions about least restrictive environment for your child. The team should be willing to reconsider decisions and change the environment if it is not working.

The team must consider the decision every year. Remember that this not a "one size fits all" approach. The IEP team should also consider what is the most language rich environment for your child. You should work as part of your child's team to make sure that your child's needs are met.



## WHAT IS THE DIFFERENCE BETWEEN AN INTERPRETER AND A LANGUAGE FACILITATOR?

An interpreter and language facilitator have different roles in helping students who are deaf or hard of hearing understand what is going on in the classroom.

### Interpreter

- Interprets language exactly as it is spoken.
  - This includes things said by other students
- Interprets what is communicated to the student
- Interprets what the student is communicating with others
- Can serve as member of a student's IEP team to share successful methods of communication.
- Should not discuss the student's progress or behavior.
- Should not be part of the evaluation team unless specifically trained to do so.
- Should be qualified and trained specifically for educational interpreting – EIPA score of 3.5 at minimum

### Language Facilitator

- Is typically for students who are delayed in language and cannot yet access other accommodation like Interpreter or AAC devices.
- Goal is to make sure the language used by the teacher is accessible in both content and modality.
- Assists students as they communicate with teachers, school staff, and other students.
- Makes sure school staff follow the student's communication preferences.
- Makes sure that the classroom is set up for the student to see and hear the lesson.
- Looks at lessons before class to prepare to help the student access the lesson
- Makes sure the student understood the lesson.
- Can tutor the student.
- Can introduce and explain new vocabulary to help the student build classroom language skills.
- Serves as a member of the student's IEP team.
- Job is to monitor the student's progress towards IEP goals.
- Can participate in meetings to update the team on the student's progress.
- Goal is to gradually phase out services provided to the student

## CAN THE SCHOOL TELL ME THAT I HAVE TO MEDICATE MY STUDENT BEFORE THEY WILL AGREE TO HELP MY STUDENT WITH A DISABILITY ?

**NO! Schools cannot require that you medicate your student.** Your decision to medicate your student is between you and your doctor. The school cannot force you to medicate your student. The school cannot require medication as a condition for attending school. They cannot make medication mandatory to receive special education services.

Similarly, schools cannot require a student to use their hearing aids, cochlear implant, etc. before they will provide special education either.

## WHAT IS RTI AND WHY IS THE SCHOOL DOING IT?

**Response to intervention or RTI is a process that happens when a student is struggling with learning and has not been identified as having a learning disability yet.** If your student has a documented disability, then RTI should not be used. The school will intervene by implementing a specific program or set of steps that addresses the academic needs of the student.

**The school should collect data during the RTI period.** You should ask to see the data collected and have the school explain it to you. If RTI is working, you should see some progress in 6-8 weeks. If after that time RTI has not helped your student, you should request a special education evaluation in writing. Your student might have a specific learning disability that qualifies them for an IEP. Please see our section on requesting a special education evaluation to learn more.



## WHAT IS MTSS?

**MTSS stands for “multi-tiered system of supports.”** The system is designed to help and support students who are struggling. MTSS focuses on supporting the “whole child.” This means that support teams consider a student's social, emotional, and academic needs. For example, a student struggling with chronic absences may receive support for behavior struggles as well as attendance.

MTSS requires early identification and intervention. Early identification means students can overcome challenges and become successful in the long run. The MTSS tiers are important. Students receive more support as they reach different tiers. There are typically three or four tiers in MTSS. If a school uses a three-tier system, the MTSS tiers may look like the tiers below.

- **Tier 1: The whole class – all students in the regular classroom**
  - Teachers use instruction that meets the needs, strengths, and interests of all students.
  - Students who are struggling may be moved into Tier 2.
- **Tier 2: Small group interventions – smaller groups of students receive targeted support**
  - Students still attend regular classes.
  - Teachers work with students in smaller groups to address areas where students are struggling.
  - Students who are struggling may stay in Tier 2 or may be moved into Tier 3.
- **Tier 3: Individual support – one-on-one or smaller group instruction**
  - Students attend regular classes and receive support from resource teachers.
  - Students in Tier 3 may be eligible for special education services.

MTSS can help schools determine whether a student needs special education services. MTSS should not be used as a way to delay an evaluation or services for a child who has a documented disability.



## APPENDIX A: RESOURCES

### Non-Profit Attorneys

#### South Carolina Legal Services

Provides representation to qualified low-income clients with civil legal matters. South Carolina Legal Services serves every county in South Carolina. You must apply for services by calling 1.866.346.5592 Monday -Thursday 9am-6pm or apply online at [www.scllegal.org](http://www.scllegal.org)

**Education Rights Clinic** (Note: this is a law school affiliated program that runs in the Spring semester. They clinic generally begins taking cases in December and closes in May. Services are free, but generally only available to people who cannot otherwise afford an attorney. Income screening is done during intake)

University of South Carolina School of Law  
1525 Senate Street  
Columbia, SC 29209  
803-777-2278 (for intakes)

**Disability Rights SC Help Line:** 1.866.275.7273

### Other Valuable Resources

**Able SC** | [www.able-sc.org](http://www.able-sc.org)  
1.800.0681.6805 (Columbia)  
1.800.681.7715 (Greenville)

**Beginnings SC** | [www.beginningssc.org](http://www.beginningssc.org)  
1.803.216.1171

**Family Connections** | [www.familyconnections.org](http://www.familyconnections.org)  
1.800.578.8750

### Private Attorneys

#### Low Country

**Wendi Lawson See, Southeastern Law** |  
1.843.782.3333

**Kelly Young, Young & Young** |  
[www.adamyounglawfirm.com](http://www.adamyounglawfirm.com) | 1.843.619.7745

**Lauren Edwards, Condon Law** |  
[www.condonfamilylaw.com](http://www.condonfamilylaw.com) | 1.843.225.7288

**John Emerson, Emerson Law** |  
[www.johnemersonlaw.com](http://www.johnemersonlaw.com) | 1.843.929.0606

**Mary Willis, Ethridge Law Group** |  
[www.ethridgelawgroup.com](http://www.ethridgelawgroup.com) | 1.843.614.0007.

#### Midlands

**Bryn Sarvis, Sarvis Law, LLC** | 1.803.785.5525

**Joseph Dickey, Dickey Law Group** |  
[www.dickeylawsc.com](http://www.dickeylawsc.com) | 1.803.380.5575

#### Upstate

**Heather Vry Scalzo, Byford & Scalzo,** |  
[www.upstatesclaw.com](http://www.upstatesclaw.com) | 1.864.331.0111

**Elizabeth Hyatt, Hyatt Law** | <https://hyattlawsc.com> |  
1.803.286.4646

**Montrio Belton, Law Offices of Montrio Belton, LLC** |  
[www.montriobelton.com](http://www.montriobelton.com) | 1.803.324.4529

**Chelsea Rikard, Business Law Firm LLC** |  
[www.abizlaw.com](http://www.abizlaw.com) | 1.864.699.9801

**Andrew Potter, Potter Law LLC** |  
[www.potterlawsc.com](http://www.potterlawsc.com) | 1.864.214.6233

## APPENDIX B: FORM

### Forms

pg 70-72. **School Enrollment Affidavit** (referenced on page 8)

pg 73. **Letter for Evaluation Request** (referenced on pages 32 and 35)



[Patty Parent]  
[500 Main St.]  
[Any Town, SC] [29201]  
Phone: [803-555-5555]

January 7, 2022

[Name of Principal]  
[School Address]  
[City, State Zip Code]

**VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

Re: Evaluation Request for [insert child's name], DOB: [insert date of birth]

Dear [Mr./Ms.] [Name of Principal],

I am the parent/guardian of [insert student's name], whose date of birth is [add date] and who is a student in [grade number] grade. **I am writing to request a comprehensive psycho-educational evaluation for [insert student's name].**

I suspect that [student name] may have a disability in the areas listed below. I believe that that this disability adversely affects [student's name]'s educational performance to the degree that the student needs special education and related services:

1. [list all of child's suspected disabilities, needs, educational deficits]
2. [academic needs]
3. [behavior needs]

I hereby give my consent to all testing of [student name] needed to assess all areas of suspected disability, including but not limited to those identified above. Please provide a proposed evaluation plan to me immediately.

Your assistance with this request is appreciated. If you have any questions, please contact me at [phone number and/or email]. Thank you in advance for your anticipated cooperation in this matter. I believe that by working together, we can help [student name] experience success in school.

Sincerely,

[insert your name]

cc: [insert name of district special education director – send copy of this letter to this person]

cc: [insert name of Superintendent – send copy of this letter to this person]

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF \_\_\_\_\_ )

**SCHOOL AFFIDAVIT**  
Pursuant to Section 59-63-32(c)

PERSONALLY appeared before me, \_\_\_\_\_, who being duly sworn states:

1. I am an adult resident of \_\_\_\_\_ school district, residing at \_\_\_\_\_. The child, \_\_\_\_\_ (DOB \_\_\_\_\_), has resided with me since \_\_\_\_\_.
2. The child resides with me as a result of:
  - \_\_\_\_\_ a. the death, serious illness, or incarceration of a parent or legal guardian;
  - \_\_\_\_\_ b. the relinquishment by a parent or legal guardian of the complete control of the child as evidenced by the failure to provide substantial financial support and parental guidance;
  - \_\_\_\_\_ c. abuse or neglect by a parent or legal guardian;
  - \_\_\_\_\_ d. the physical or mental condition of a parent or legal guardian is such that he or she cannot provide adequate care and supervision of the child;
  - \_\_\_\_\_ e. parent's or legal guardian's homelessness, as that term is defined by Public Law 100-7 [the child or the child's parent or legal guardian does not have a fixed, regular and adequate nighttime residence or a nighttime residence that is a shelter or institution that provides temporary living accommodations]; or,
  - \_\_\_\_\_ f. parent's or legal guardian's military deployment or call to active duty more than seventy miles from his residence for a period greater than sixty days; provided, however, that if the child's parent or legal guardian returns from such military deployment or active duty prior to the end of the school year, the child may finish that school year in the school he attends without charge even if the child resides in another school district for the remainder of the school year due to his parent or legal guardian returning home.
3. The specific circumstances which led to this living arrangement are as follows:  
\_\_\_\_\_
4. The child's claim of residency in the district is not primarily related to attendance at a particular school within the district.
5. I agree to accept responsibility for educational decisions for the child including, but not limited to, receiving notices of discipline; attending conferences with school staff; and, granting permission for athletic activities, field trips, and other activities.

6. I UNDERSTAND THAT IF IT IS FOUND THAT I HAVE WILLFULLY AND KNOWINGLY PROVIDED FALSE INFORMATION IN THIS AFFIDAVIT TO ENROLL A CHILD IN A SCHOOL DISTRICT FOR WHICH THE CHILD IS NOT ELIGIBLE, I MAY BE FOUND GUILTY OF A MISDEMEANOR AND, UPON CONVICTION, MUST BE FINED AN AMOUNT NOT TO EXCEED TWO HUNDRED DOLLARS OR IMPRISONED FOR NOT MORE THAN THIRTY DAYS AND ALSO MUST BE REQUIRED TO PAY THE SCHOOL DISTRICT AN AMOUNT EQUAL TO THE COST TO THE DISTRICT OF EDUCATION THE CHILD DURING THE PERIOD OF ENROLLMENT.

\_\_\_\_\_  
Signature

SWORN TO before me this \_\_\_\_\_  
Day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

## **S.C. CODE OF LAWS, TITLE 59, CHAPTER 63, PUPILS GENERALLY**

**SECTION 59-63-32.** Requirements to enroll child in public school; affidavit; penalties for providing false information.

(A) The school district may require an adult seeking to enroll a child who resides with the adult pursuant to Section 59-63-31(1)(c) to accept responsibility for making educational decisions concerning the child. These educational decisions may include, but not be limited to, receiving notices of discipline pursuant to Sections 59-63-230 and 59-63-240, attending conferences with school staff, and granting permission for athletic activities, field trips, and other activities as required.

(B) The school district also must require an adult to complete and sign an affidavit:

(1) confirming the qualifications set out in Section 59-63-31(1)(c) establishing residency of the child in the school district;

(2) attesting that the child's claim of residency in the district is not primarily related to attendance at a particular school within the district; and

(3) accepting responsibility for educational decisions for the child.

**(C) Upon receipt of the affidavit provided for in subsection (B), the child must be admitted to an appropriate school pending the results of any further procedures for determining eligibility for attendance within the school district.**

(D) If it is found that information contained in the affidavit provided for in subsection (B) is false, the child must be removed from the school after notice of an opportunity to appeal the removal pursuant to the appropriate district grievance policy.

(E) If it is found that a person willfully and knowingly has provided false information in the affidavit provided for in subsection (B) to enroll a child in a school district for which the child is not eligible, the maker of the false affidavit is guilty of a misdemeanor and, upon conviction, must be fined an amount not to exceed two hundred dollars or imprisoned for not more than thirty days and also must be required to pay to the school district an amount equal to the cost to the district of educating the child during the period of enrollment. Repayment does not include funds paid by the State.

(F) The affidavit which is required by school districts under this section must include, in large print, the penalty for providing false information on the affidavit.

## ABOUT SOUTH CAROLINA APPLESEED LEGAL JUSTICE CENTER

**For over 40 years, the South Carolina Appleseed Legal Justice Center has advocated for justice, fairness, and equity at the intersection of the statehouse, courthouse, and South Carolina communities.** Our goal is to influence policymakers to ensure the law is fair, to educate the public and their advocates about the law, and to assist attorneys in bringing systemic litigation where the law is unfair. SC Appleseed has worked to end hunger in South Carolina since its inception and continues to work with key stakeholders to improve food policy and access statewide.

To learn more about SC Appleseed, visit [www.scjustice.org](http://www.scjustice.org).

SC Appleseed does not provide attorneys to represent individuals and cannot give legal advice to the public. We are an organization that focuses on policy work and trainings. **If you need legal representation and are low income, please call South Carolina Legal Services intake at 1.888.346.5592** to inquire about pro bono legal assistance for your legal matter.

**You may also wish to call the SC Bar Lawyer Referral Line at 1.803.799.7100 to hire an attorney.**

## SPECIAL CREDITS

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