

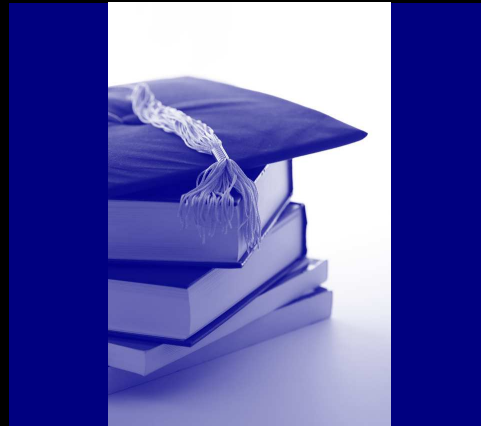
**A PROJECT OF THE  
DISABILITIES LAW PROGRAM  
COMMUNITY LEGAL AID SOCIETY, INC.**



**Transition to Adulthood:**  
What you need to know as an individual with a disability.

# Middle School & High School Rights

for Delaware Transition-Age Youth and their Families



**MADE POSSIBLE WITH SUPPORT  
FROM THE DELAWARE  
DEVELOPMENTAL DISABILITIES  
COUNCIL**



# Introduction

The transition from childhood to adulthood can be both exciting and challenging. There are many things to keep in mind as you (or your child) approach adulthood. While it is never too late to plan for the future, we recommend that you start thinking about and preparing for the transition to adulthood early in the teenage years.

This guide provides information to help you learn to advocate for yourself. It provides an overview of common issues and questions that you will likely face about your education. Because special education is often costly for schools to develop and implement, you will likely have to advocate for yourself or your child throughout your/your child's education to receive the appropriate services and placement. If you / your child has not received appropriate accommodations, has not received proper placement, or the school has not complied with the 504 plan or IEP, you may want to contact the Disabilities Law Program at Community Legal Aid Society, Inc. for further information.

This guide does not cover every topic related to middle and high school rights that you might encounter, but is here to offer you some insight into some common issues. Each individual's situation is unique and this guide is not intended to constitute legal advice on your specific circumstances.

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An introduction to the major laws  
that protect students with disabilities

**Section 504 of the Rehabilitation Act (Section 504)**

Section 504 of the 1973 Rehabilitation Act<sup>1</sup> provides for accommodations for students who have disabilities and need extra assistance at school.<sup>2</sup> As long as the student has some type of significant diagnosed disability (either from a health care provider, therapist or psychologist), that student is eligible for consideration of accommodations under Section 504. A student who qualifies for Section 504 protections will generally get a document called a Section 504 Plan which outlines the areas of need and the necessary accommodations, and also tracks the student's progress. Students protected by Section 504 are entitled to a Free Appropriate Public Education "FAPE." FAPE means that a student who is eligible for Section 504 must be provided regular or special education and related aids and services that are designed to meet the individual educational needs of the student with a disability as adequately as the needs of a student without a disability are met.<sup>3</sup> In other words, schools must meet the needs of students with disabilities as well as they meet the needs of students without disabilities. Schools also must educate students with disabilities with their peers without disabilities as much as is appropriate to the needs of the student with a disability, as well as evaluation and procedural safeguard rules. You can read more about Section 504's FAPE requirements at: <http://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html#note2>.

Some examples of 504 plan accommodations include allowing for extra time on tests, special seating, time

<sup>1</sup>29 U.S.C. § 794; 34 C.F.R. Part 104.

<sup>2</sup>Section 504 applies to recipients of federal funds which includes public schools and many private schools (e.g., they participate in the national school lunch program and school breakfast program)

<sup>3</sup>34 C.F.R. §104.33.

out, mentoring, "peanut-free" zones, accommodations for missed time due to frequent doctor visits/illness, assistive technology, and incentive structures for students with disabilities. These types of accommodations are available to students with disabilities who need additional assistance to succeed in school. Typically, students who have Section 504 plans need minimal accommodations in mainstream or regular education classes.

For example, many students with 504 plans are children with ADHD or emotional/behavioral issues who need assistance in refocusing, test taking, behavior modification, or prompting. Others have a medical disability like diabetes, asthma, bowel disorders, or arthritis, which requires physical accommodations such as rest breaks, flexibility with absences due to doctor visits/illness, changes to physical education, frequent bathroom breaks, assistance with /monitoring of medication, development of a healthcare plan and more.

**The Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act "ADA"<sup>4</sup> makes it illegal for state and local governments, including school districts, from discriminating against people on the basis of disability. The ADA also applies to non-religious private schools because they are "public accommodations."<sup>5</sup> Public accommodations are businesses, places and organizations that are used by the public.

For the purposes of the ADA, "nondiscrimination" means that it is illegal to exclude, segregate, or provide students with disabilities unequal treatment. In order to treat students with disabilities like other students without disabilities, the ADA requires that

<sup>4</sup>42 U.S.C. § 12131 et seq.

<sup>5</sup>42 U.S.C. § 12181 et seq.

schools consider reasonable accommodations. The ADA also imposes some specific accessibility and architectural (the physical parts of a building) standards on covered school buildings. Individuals with significant disabilities are protected by the ADA. The requirements of the ADA are very similar to those of Section 504 and often both laws apply to protect the same student<sup>6</sup>.

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

Under the Individuals with Disabilities Education Act<sup>7</sup>, more commonly called "IDEA", students with specific disabilities receive special rights and services based on their individual needs. Each student identified under IDEA is entitled to a free appropriate public education ("FAPE").

Delaware law defines FAPE: a student with a disability's education must be individualized to meet the unique needs of the student, provide significant learning to the student, and confer a meaningful benefit to the student that is gauged to the student's potential<sup>8</sup>.

In order to qualify under IDEA for special education services, a student must be classified as having one or more of the following:

- Autism
- Developmental Delay
- Deaf Blind
- Emotional Disturbance
- Hearing Impairment

<sup>6</sup>Section 504 only applies to schools that receive federal funding, so it applies to public schools and many private schools – including religious private schools (e.g., private schools that participate in the national free lunch and/or breakfast programs).

<sup>7</sup>20 U.S.C. § 1400 et. seq.

<sup>8</sup>14 Del. C. § 3101(5).

- Learning disability
- Intellectual Disability (mild, moderate, or severe)
- Orthopedic Disability
- Other Health Impaired
- Traumatic Brain Injury
- Visual Impairment Including Blindness
- Preschool Speech Delay

Every school has an obligation to identify and serve students with disabilities. However, it is not unusual for a parent/guardian to request that his or her child be evaluated for special education services when the school has not independently initiated an evaluation. If you request an evaluation for special education, the school has 45 school days/ 90 calendar days to begin the evaluation process after the school receives your written consent to evaluate. However, if the student has been suspended/expelled/placed in alternative placement, a parent can request that the evaluation be expedited. A sample evaluation request letter can be found at the end of this guide.

The IDEA requires school agencies to provide each student with an Individual Education Program ("IEP"). The IEP is a document developed and implemented by a team composed of parents, teachers, and specialists who will work together to provide services to the student. Initial diagnostic tests and evaluations will be completed by specialists. The IEP team will then use these assessments to create the IEP, which lists the services needed by a student with special needs.

The IEP will spell out the specific goals of the student and the type and duration of related services such as therapists, aids, or assistive technology. The plan will also spell out the student's current level of performance and accommodations for the state

testing. The plan further determines the student's placement, which can range from mainstream regular education classes to a self-contained classroom or a private placement. A student's education has to be provided in the least restrictive environment ("LRE"), meaning students with disabilities should be educated with their peers without disabilities as much as possible.

Once the parent/guardian, or student (if over 18), agree to the IEP document the team can begin to implement it. At any time after the IEP begins, you always have the right to request an IEP meeting or a reevaluation if you feel that parts of the IEP are not appropriate.

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### More on IEPs

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#### **Contents of an IEP (Individual Education Program)**

In Delaware, IEPs include:

- Amount of hours in special education
- Type of placement (from regular education to private placement or home/hospital based services)
- Related services (occupational therapy, speech/language therapy, physical therapy, social skills, counseling services, etc.) (if needed)
- Assistive technology, including specific learning devices and services (if needed)
- Behavior intervention plans and supports, Functional Behavior Assessments (if needed)
- Language needs for students who have limited English proficiency
- For students who is blind or visually impaired: instruction in Braille and the use of Braille unless



it has been determined that it is not appropriate for the student

- Communication needs, including for those who are deaf or hard of hearing (if needed)
- Need for accessible instructional materials
- Transition planning (for students 14+ or 8th grade +)
- Unique educational needs and characteristics of the student
- Special education and related services that will be provided, including any accommodations or modifications
- Present level of educational performance ("PLEP") – how the student is currently doing in targeted areas, as well as an annual goal for those targeted areas, and four benchmarks that the student should be able to reach (between the current performance level and the annual goal for a year later)
- Special transportation needs (if any)
- For students with certain disability classifications, whether the parent/guardian/student (if over 18) chooses a 12-month program which does not exceed 217 school days (eligible classifications: Severe Mental Disability; Trainable Mental Disability; Orthopedic Impairment; Traumatic Brain Injury; Deaf-Blind) or 241 school days (eligible classification: Autism).
- Whether the student requires extended school year services (after the regular school year ends).
- Testing accommodations

You can view Delaware's IEP forms online at the Department of Education's website: [http://www.doe.k12.de.us/infosuites/students\\_family/specialed/IEP\\_Forms.shtml](http://www.doe.k12.de.us/infosuites/students_family/specialed/IEP_Forms.shtml). This website includes an annotated Transition IEP, which is a helpful guide to the different parts of the IEP (the annotations

More on IEPs cont.

include a description of all the different areas on the IEP form).

### **The Transition IEP**

Transition IEPs are IEPs that include transition services. Transition services are defined by federal regulation as "a coordinated set of activities for a [student] with a disability... to facilitate movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation."<sup>9</sup> In Delaware, IEPs must include transition services, beginning with the IEP that is in effect when you turn 14 or start 8th grade (whichever is first).<sup>10</sup> IEP teams can decide to start transition services even earlier if appropriate for a particular student's individual needs. If the IEP team decides to start transition services earlier than age 14/8th grade, the IEP for that student must meet the requirements of the transition regulations, which are described below.<sup>11</sup>

Transition services must be updated in the IEP at least annually. The transition services in the IEP must include:

- Appropriate, measurable postsecondary (after high school) goals.
- These goals must be based on age appropriate

<sup>9</sup>34 C.F.R. §300.43.

<sup>10</sup>14 Del. Admin. C. § 925.20.2; this Delaware regulation requires transition planning to occur earlier than what is required under the federal regulation that addresses transition services, 34. C.F.R. § 300.320(b).

<sup>11</sup>Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education, Questions and Answers On Individualized Education Programs (IEPs), Evaluations, and Reevaluations, Revised September 2011, pg. 27; available online at: <http://idea.ed.gov/explore/view/p/,root,dynamic,QaCorner,3>.

transition assessments related to training, education, employment, and (where appropriate) independent living skills.

- Transition services and activities, including classes, needed to help you reach your transition goals.
- Your strengths, interests, and postsecondary preferences (what you want to do after high school, like go to college to study biology, or, find a job working with children).
- If you plan to graduate with a diploma or a certificate.

Transition planning must be individualized and take into account the student's strengths, preferences, and interests. Transition services can include instruction, including special education or a related service(s)<sup>12</sup>, community experiences, development of employment and other adult living objectives, and (if appropriate) acquisition of daily living skills and a functional vocational evaluation. For example, community access skills may be necessary for a particular student to receive FAPE, based on their independent living skills and needs; if necessary these skills must be addressed with the student's transition services in the student's IEP.<sup>13</sup>

### ***More on transition goals***

As explained above, the IDEA requires a student's IEP to include measurable postsecondary goals in the areas of training, education, and employment, and, **where appropriate**, independent living skills. It is important to know that, independent living skills are the only area in which postsecondary goals are not required but are left up to the student's IEP Team "to determine whether IEP goals related to the

<sup>12</sup>34 C.F.R. §300.43.

<sup>13</sup>OSERS, Questions and Answers On Individualized Education Programs (IEPs), Evaluations, and Reevaluations, pg. 26.

More on IEPs cont.

development of independent living skills are appropriate and necessary for the child to receive FAPE.”<sup>14</sup> Training and education goals **may** overlap, depending on the needs of the student and the student's plans after high school. The IEP team can combine the training and education goals if the IEP team determines that separate education and training post high school goals are not needed.<sup>15</sup> The U.S. Department of Education gives the example that if a student wants to pursue a teacher certification program after high school that program will contain both training and education and thus the student may not need separate goals in the IEP.<sup>16</sup> However, every IEP **must** include a separate postsecondary goal in the area of employment; this may not be combined with training and education.

Many IEP teams rush through the transition part of an IEP but it is actually very important. The whole point of an IEP is to prepare you for further education, employment, and independent living! The transition portion of an IEP goes into detail about what your interests and goals are for further education, employment and independent living, and the steps you and your school need to take to help you meet your goals. Your transition plan should help to frame the rest of your IEP. You will likely need to advocate for yourself, to make sure your transition plan is thorough and appropriate... and that the rest of your IEP is designed with your transition goals in mind.

### ***Summary of Performance***

You should also be aware that when a student either graduates with a regular diploma or ages out of

<sup>14</sup>U.S. Department of Education, Questions and Answers on Secondary Transition (Revised 2011), pg. 5, available at <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C10%2C>.

<sup>15</sup>Questions and Answers on Secondary Transition, pgs. 5-6.

<sup>16</sup>Questions and Answers on Secondary Transition, pgs. 5-6.

special education, the school must provide the student with a summary of the student's academic achievement and functional performance.<sup>17</sup> This is also called the Summary of Performance or SOP. The SOP must include recommendations on how to assist the student in meeting the student's post-high school goals. The SOP requirement does not apply to a student who graduates with a GED or alternate diploma.<sup>18</sup>

### **IEP meetings**

#### ***Initial IEP meeting, after a student is found eligible for special education services***

Once the school determines that a student needs special education, it must hold an initial IEP meeting within 30 days of that determination. This meeting is to develop a student's IEP document.

#### ***Subsequent IEP meetings***

After the initial IEP meeting, IEP meetings must be held at least annually to make changes to and update the IEP. However, the parent / guardian / student (if over 18) or school may convene an IEP meeting at any time. If your IEP plan is not working out, such as if you need new or different services, you can address this by requesting an IEP meeting. It is best (although not required) to make your request for an IEP meeting in writing, and to list the topics you want to address at the meeting, such as requesting a behavior evaluation and plan, assistive technology, or an aide. This helps the school to be prepared to address your concerns at the meeting and serves as documentation of your request should you need to file a complaint against the school later. There is a sample IEP meeting request letter at the end of this guide.

<sup>17</sup>34 C.F.R. § 300.305(e)(3); 14 Del. Admin. C. § 925.5.5.2.

<sup>18</sup>Questions and Answers on Secondary Transition, pg. 7.

More on IEPs cont.

### **People who attend an IEP meeting**

The IEP meeting is attended by the IEP team. The IEP team consists of the parents/guardian, at least one regular education teacher, at least one special education teacher or one special education provider (i.e. a speech therapist or occupational therapist), a representative from the school (i.e. the principal or assistant principal), an individual who is qualified to interpret diagnostic evaluations (i.e. the educational diagnostician or school psychologist), and, if appropriate, the student. As students get older it becomes more appropriate for them to participate. When a student is in the teenage years they should generally be part of the IEP team meetings (in fact, in some schools, they lead the IEP meetings – see the discussion of student led IEPs, below). If the IEP team is discussing postsecondary (after high school) goals and/or transition services, then the student MUST be invited to the meeting.<sup>19</sup>

Parents/guardians/student may also invite any expert or individuals with special knowledge of the student that the parents/guardian/student would like to invite. This may include a doctor or therapist, relative, or caseworker. Typically it is helpful to invite caseworkers from other service providers, such as Delaware Developmental Disabilities Services (DDDS) or the Division of Prevention and Behavioral Health (DPBHS), as often the services you receive outside of school impact how you do at school. If you have a mental or behavioral health disorder, it can be very helpful to invite your therapist/counselor, to help the IEP team understand how your disability affects you and how to best accommodate it. If you have a professional, such as a doctor, therapist, or caseworker that you want to attend your IEP meeting, but they are unable to attend in person, you can request that the school arrange for them to participate by telephone.

<sup>19</sup>14 Del. Admin. C. § 925.21.2.

Another option you have is to obtain a letter or other written documentation from your doctor, therapist, etc., if she cannot participate in your IEP meeting, but has recommendations for the IEP team.

If you are a high school student, you should know that there is a Division of Vocational Rehabilitation counselor in every high school; you can request that this person be invited to your IEP meeting to help with transition planning. Your school district may also have a transition coordinator, or other transition staff, who you can request to be invited to your meeting.<sup>20</sup>

All IEP team members must attend your child's IEP meeting. An IEP team member can only miss a meeting if he or she requests excusal in writing and if the parent/guardian consents. If a parent/guardian cannot attend in person, such as due to work obligations, they can attend by telephone.

### **Amendments to the IEP**

As discussed above, the IEP can be amended (changed) at an IEP meeting. IEPs can also be amended without an IEP meeting. However, any changes/revisions to an IEP without a formal meeting must be agreed to in writing by the parent (s) or student (if over 18).

You should always request a copy of the amended IEP, since one will not necessarily be provided to you after it is amended.

### **Reevaluations**

Although you will be scheduled to have an IEP

<sup>20</sup>You can find a directory of transition staff in the different school districts at:  
[http://www.doe.k12.de.us/infosuites/students\\_family/specialed/transition/default.shtml](http://www.doe.k12.de.us/infosuites/students_family/specialed/transition/default.shtml).

meeting every year, you are entitled to a reevaluation of tests, services, or diagnoses **every three years**. However, at any time you can request a **reevaluation** if you believe you are not adequately placed, do not have appropriate services, or need additional accommodations. Your request for a reevaluation can include a request for a specific type of specialized evaluation, such as a speech/ language evaluation, neuropsychological evaluation, or assistive technology evaluation. If the school recently did an evaluation but you disagree with it, you can request an independent evaluation, meaning one done by someone who is not employed by the school (a sample independent evaluation request is provided at the end of this guide). Independent evaluations are discussed further, below. You should always put your request for reevaluations or independent evaluations in writing.

To ensure that you have appropriate IEP goals and services, you should request a yearly meeting to go through your progress. At that meeting you will be able to assess if your goals or services need to change or if a reevaluation is warranted. You are also entitled to meet with the IEP team at any time; it is helpful to make the request in writing.

### **Student Led IEPs**

Student led IEPs, sometimes called student directed IEPs, are a current trend in special education. The idea behind student led IEPs is that high school students should take a more active role in their own IEP meetings. Students at schools that use a student led IEP approach get to be the leader at their IEP meeting, instead of school staff. Students who participate in student led IEPs learn to advocate for themselves. They also may be more invested in their education because they have a key role in directing it, instead of it being something that they are just told they have to do. Student led IEPs help students to take more control over their future. You



should talk to staff at your school, such as your principal or teacher, about whether a student led IEP could be arranged at your school. If your school is not already doing them, you should tell your school you want student led IEPs to be a part of your school!

The Delaware Department of Education has a 10 step guide to Student Directed IEPs, available at: [http://www.doe.k12.de.us/infosuites/students\\_family/specialed/transition/10stepguide.shtml](http://www.doe.k12.de.us/infosuites/students_family/specialed/transition/10stepguide.shtml). They also have a brief explanation of IEPs for students: [http://www.doe.k12.de.us/infosuites/students\\_family/specialed/transition/studentdrivenIEP.shtml](http://www.doe.k12.de.us/infosuites/students_family/specialed/transition/studentdrivenIEP.shtml).

### **Transfer of rights at age 18**

Generally, when a student turns 18, the student's rights under the federal and state special education laws transfer from the student's parents/guardian to the student. At least one year before a student with an IEP turns 18 the law requires that a student be informed of this transfer of rights.

While many students are ready and able to take on the responsibility of advocating for their own education, some students prefer or benefit from continued assistance from their parent or guardian. This may simply be a matter of a student wanting to continue to have a parent involved in IEP meetings. Under the law, a student can continue to invite a parent to IEP meetings. A student can even request that the school send copies of IEP documents to a parent (the school would require the student to sign a release). Another alternative would be for students to appoint a parent through a power of attorney as a representative for educational purposes, or similar grant of authority, so that the parent can continue to act on the student's behalf.

More on IEPs cont.

If a student is over the age of 18 and has a guardian of the person<sup>21</sup>, the student's guardian would continue to control the student's IEP rights, instead of the student. For students who do not have a guardian after the age of 18, there is a federal regulation<sup>22</sup> that requires states to have a procedure to allow parents to continue to exercise a student's special education rights without having to be appointed guardian, if the student lacks the ability to provide informed consent regarding their education. The comments to this regulation support allowing a student to voluntarily grant this authority to a parent or other trusted adult. Unfortunately, at the time of the writing of this guide, Delaware has not yet made such a procedure official. However, students who are able to understand and sign a Power of Attorney may appoint their parents or guardians to act on their behalf for educational purposes.

Before you turned 18, if you did not have a parent available to make your school decisions, you may have had an educational surrogate parent.<sup>23</sup> If you had an educational surrogate parents prior to the age of 18, you will remain eligible for the services of an educational surrogate parent appointed by the Department of Education, through the age of 21. Unless you are declared incompetent by a court, you have the right to have access to an educational surrogate parent, the right to refuse to have an educational surrogate parent, the right to pick your educational surrogate parent, and the right to terminate the appointment your educational

<sup>21</sup>In Delaware there are two types of guardianships for individuals over the age of 18: 1) a guardian of the person (this type of guardian controls decisions about the person's care, education, residence, etc.); and 2) a guardian of the property (this type of guardian handles a person's finances and property). A person can have a guardian of one or both of those two types of guardianship. Guardianships are ordered through the Court of Chancery; they cannot be set up informally, outside of court.

<sup>22</sup>34 C.F.R. § 300.520.

<sup>23</sup>A surrogate parent is someone appointed by the Department of Education to take the role of your parent for the purposes of your education. This may happen if you are placed into Division of Family Services custody, such as in foster care.

surrogate parent.<sup>24</sup>

### **Transfer students**

If a student transfers to a new school, the school must review the IEP from the former school. In Delaware, the new school must adopt, modify, or draft a new IEP and any behavior plans within 60 days of when the student started school in the new school.<sup>25</sup> The new school must also provide comparable services to the previous placement until the new school assembles an IEP team to adopt or revise your child's IEP to fit the new school's services.

### **Homeless students**

Students that are homeless have certain protections through a law called the McKinney-Vento Homeless Assistance Act.<sup>26</sup> Homeless students can enroll in school immediately even if they cannot give the school records that they normally require (proof of residency, medical records, records from last school, etc.). Homeless children must have services that are like that provided to non-homeless children, including special education services. Students can either continue enrollment at the school that they were attending prior to becoming homeless, or enroll in any public school that students living in the same attendance area are eligible to attend. This decision is made by the school districts; the decision must be made in the best interest of the student. Whenever possible, continued attendance at the school the student was attending prior to becoming homeless is considered to be in the student's best interest (unless against the wishes of the parent/guardian/student (if 18+)). You can learn more about the protections for students with disabilities who are

<sup>24</sup>14 Del. Admin. C. § 926.19.5.

<sup>25</sup>14 Del. Admin. C. § 925.23.4.1.

<sup>26</sup>42 U.S.C. § 11431 et seq.

More on IEPs cont.

homeless by reading the U.S. Department of Education's Q&A guide on this topic, available at: <https://www2.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.pdf>.

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## Transition and 504 Plans

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Unfortunately, unlike under IDEA, there is no explicit requirement in the law that Section 504 Plans include transition planning. 504 Plans are simply designed to ensure that students with disabilities have comparable education to students without disabilities. Of course if a school is providing transition services to students without disabilities, it must make those services accessible to students with disabilities as well. Such access could be addressed in a 504 Plan.

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## Bullying and Students with Disabilities

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In Delaware each school district and charter school has to prohibit bullying, as well as take a number of steps to prevent and respond to bullying.<sup>27</sup> This law requires school districts to have procedures to respond to reports of bullying. These procedures also serve as a mechanism for parents and students to report disability based harassment to schools. If a student is experiencing bullying, the student (or parent/guardian) should obtain the school's bullying policy and utilize the appropriate mechanism to report the bullying **in writing**.<sup>28</sup> Steps schools take in response to bullying should not harm the victim. The school should also work to stop future harassment and prevent retaliation.

Schools have a duty to protect students with

<sup>27</sup>14 Del. C. § 4112D.

<sup>28</sup>You want to make these reports in writing so that you have proof that you made the report, should you need it later.

disabilities from harassment by staff and by other students. School districts may violate civil rights statutes, including Title II of the ADA and Section 504 of the Rehabilitation Act, when peer harassment based on disability<sup>29</sup> is serious and the school does not address it well enough (or ignores it or otherwise allows it to happen).<sup>30</sup> Schools are responsible for addressing harassment incidents if the school knows about the incident or reasonably should know – this is one reason why it is important to report bullying in writing, so that you can show that the school knew about the bullying.

If the harassment rises to the level of negatively affecting your ability to benefit your schooling, the harassment may constitute a denial of a FAPE; the least restrictive environment requirement may also be violated, as a hostile environment may prevent the child from being educated with his or her peers without disabilities to the fullest extent possible. To address the bullying and harassment, it may be necessary to amend your IEP or 504 plan to better protect you.

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## Discipline and Students with Disabilities

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A school cannot punish a student with a disability more harshly than it would punish a student without a disability under the same circumstances. Students with disabilities who have an IEP, Section 504 Plan,

<sup>29</sup>Under these laws, you cannot discriminate against a “protected class”, which means a group that - under the law - cannot be discriminated against. Other protected classes include race, color, national origin, sex, disability, and age. Other laws may have additional protected classes.

<sup>30</sup>U.S. Department of Education, Office of Civil Rights, Dear Colleague letter dated October 26, 2010. See also U.S. Department of Education, Office of Civil Rights, Dear Colleague letter dated July 25, 2000 (in addition to potential violation of ADA Title II and/or Section 504 if the harassment creates a hostile environment, the harassment may violation state and local child abuse, criminal, and civil rights laws).

Bullying Cont.

Discipline

Discipline cont.	<p>and in limited circumstances, even those without an IEP or 504 Plan, are entitled to certain protections before and after their school can suspend them for more than 10 days<sup>31</sup>, expel them, transfer them to an alternative school, or place them on homebound for disciplinary reasons. To learn more, download the "Discipline of Students with Disabilities" Guide from <a href="http://transition.declasi.org/middle-school-and-high-school-educational-rights/">http://transition.declasi.org/middle-school-and-high-school-educational-rights/</a>.</p>
Options if you disagree	<p style="text-align: center;">Options if you disagree with the IEP/ 504 Plan or believe discrimination is occurring</p> <hr/> <p>If you disagree with the suggested 504 plan or the IEP, you have many options including due process, administrative complaints, mediation and resolution meetings. However, your rights regarding your education are different under Section 504 and the IDEA.</p> <p><b><u>Section 504</u></b></p> <ul style="list-style-type: none"> <li>• You always have the option to assemble a meeting and discuss your areas of concern before taking a more adversarial step.</li> <li>• Under Section 504, if you disagree with the proposed accommodations, you have the right to file a grievance with the local school district. A grievance could be in the form of a letter, which</li> </ul> <p><sup>31</sup>The 10 days can mean:</p> <ul style="list-style-type: none"> <li>• 10 consecutive days; or</li> <li>• a series of more than 10 days in a school year that constitute a pattern (substantially similar behavior and additional factors, such as the length of each removal, the total amount of time removed, and the proximity of removals to one another); or</li> <li>• A series of in-school removals totaling more than 10 days (and that deprive the student from meeting IEP goals, prevent the student from progressing in school, or prevent the student from receiving the services/modifications in his IEP); or</li> <li>• A series of removals from transportation services that result in the student missing school for more than 10 days.</li> </ul> <p>14. Del. Admin. C. § 926.36.0.</p>

spells out your complaints with the 504 Plan.

- You can request an impartial Section 504 due process hearing.
- You can also file a complaint with the Office of Civil Rights of the United States Department of Education (OCR) within six months from the date you knew or should have known about the problem for which you are filing a complaint. In your complaint you will need to specify the type of discrimination the student suffered based on the student's 504 Plan. You can learn more in the next section.

**Using Office of Civil Rights (OCR) Complaints – Students Eligible under Section 504, the ADA, or IDEA**

The Office of Civil Rights of the U.S. Department of Education (OCR) can be used to file complaints against schools / districts, as well as the Delaware Department of Education, when they violate Section 504's and the ADA's protections for individuals with disabilities, including discrimination. OCR enforces Section 504 and Title II of the ADA, as well as other laws safeguarding protected classes. OCR does not have jurisdiction over IDEA but students with IEPs can still file complaints with OCR for violations of Section 504 and the ADA. This is because students who are covered by IDEA (meaning students with IEPs) also meet Section 504 and ADA eligibility requirement of qualified persons with disabilities, and so are protected by those laws as well.

OCR complaints can be used for a single student or for a group of students. OCR complaints must be filed within 180 calendar days of the alleged discrimination, except in certain circumstances. After OCR receives a complaint it performs a neutral investigation and can help the parties negotiate an agreement or issue "findings" (a decision on the

Options if you disagree cont.

complaint). If OCR finds that either the ADA or Section 504 was violated, the school, district, etc. can potentially lose their federal funding if they do not fix the problem. You can learn more, file an OCR complaint online, or download a PDF OCR complaint at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html> or call 1-800-421-3481.

### ***IDEA***

As a parent of a student classified under IDEA, you have a substantial number of options if you believe that a student needs changes in his or her IEP.

- First, it is always a good idea to try to request changes when you are at the IEP meeting. You should explain your reasons for wanting changes and listen to the IEP team's reasons if the other members' opinions differ from yours. You can request an IEP meeting at any time, even if the IEP is not scheduled for a review for several months.
- Alternatively, you can ask for a reevaluation if you believe the IEP team has failed to consider important information.
- You also have the right to request an independent educational evaluation, which the IEP team will be required to consider in planning for the student. You can either pay for the evaluation on your own, or you can request that the independent evaluation be covered at public expense. Be aware that the procedures to have the school district or charter school pay for an independent evaluation are very specific.

### ***Independent Evaluations***

- First, you will need to put your request in writing. You can find a sample request letter at the end of this guide.



- The school district will either give you a list of evaluators and the district's requirements and procedures or the district may file for a due process hearing if it does not agree that the student needs an independent evaluation.
- Bear in mind that an independent evaluation is only appropriate if an independent evaluator is likely to propose different recommendations, or a different classification and/or placement for the student. An independent evaluation that would duplicate an existing evaluation will not be helpful, and is unlikely to be paid for at public expense.

### ***Mediation***

If you find that you and the school have reached an impasse, you can write the school or Department of Education to request mediation. The school IEP team and the parents can attend mediation with a neutral third party at no cost to the parents (or student if 18+). It is often a successful, efficient way to resolve differences between the parties. It also is a less adversarial process. A mediation request form can be downloaded from the Department's website at: [http://www.doe.k12.de.us/infosuites/students\\_family/specialed/procsafe.shtml](http://www.doe.k12.de.us/infosuites/students_family/specialed/procsafe.shtml).

### ***State Administrative Complaints***

If you are not satisfied with the school's special education services and you have hit an impasse at meetings, you also have the option of filing an administrative complaint with the Delaware Department of Education. The Delaware Department of Education calls these complaints "State Complaints."

State complaints are appropriate for cases where

Options if you disagree cont.

Options if you disagree cont.

there is a clear denial of services or placement. Appropriate administrative complaints include, for example, when your child has not received therapy sessions listed in your child's IEP, or when the school will not consider an evaluation in developing an IEP plan.

State complaints are only available for issues that arise within one year of when you knew or should have known about the problem(s).

The complaint can be sent to the Director, Exceptional Children Resources, Delaware Department of Education, John G. Townsend Building, 401 Federal Street, Suite 2, Dover, Delaware 19901, and should include:

1. the name of the school or the agency you are filing the complaint against;
2. a statement that the agency has violated a requirement of IDEA or a Delaware special education regulation (and what the violation was);
3. the facts of your claim;
4. the time frame in which the incident(s) occurred;
5. a description of the attempts made to resolve the issue(s) before filing the state complaint;
6. a proposed resolution to your complaint (how you suggest the fix things, like providing an aide or compensatory education to make up for the violation);
7. your name, relationship to the student, address, phone number(s); and
8. your signature and the date you signed the complaint.

You can obtain a sample state complaint form online at: [www.doe.k12.de.us/infosuites/students\\_family/specialed/NEW/files/specialedcomplaintform.doc](http://www.doe.k12.de.us/infosuites/students_family/specialed/NEW/files/specialedcomplaintform.doc) and further information on state complaint procedures

at: [http://www.doe.k12.de.us/infosuites/students\\_family/specialed/files/admin\\_complaints\\_dp/admin%20complaint%20procedures.pdf](http://www.doe.k12.de.us/infosuites/students_family/specialed/files/admin_complaints_dp/admin%20complaint%20procedures.pdf).

Once you file a state complaint, the Department of Education will investigate within 60 days and issue a decision. During the investigation:

- A member of the DOE may interview you to hear your side of the situation
- The DOE will also interview the school district or charter school and review their records.
- You also have the option of going to mediation after you have filed your state complaint.

State complaints are investigatory actions; you will not go to a hearing in person to present your complaint. Therefore, any issues you have need to be thoroughly explained in your complaint. State complaints are a less contentious and faster way to resolve disputes, but they are most appropriate where no material factual disputes exist (meaning both sides agree on the important facts of the situation, they just may disagree about how the law applies to those facts).

### ***“Due Process”***

Before you file for a “due process” hearing (also called a special education hearing), you have the right and opportunity to consider alternatives such as calling an IEP meeting, mediation, or a resolution meeting. If you decide to file for a due process hearing, keep in mind that it may take a long time to resolve and your child will remain in his or her same placement through the duration of the due process proceedings under “stay put.” However, if you believe that a due process hearing is the most appropriate means to resolve disagreements with

Options if you disagree cont.

the school regarding your child's educational needs, the following are important steps.

1. The due process hearing is limited to issues raised in your complaint. The hearing panel has 45 days from the date they receive your complaint to schedule a hearing.
2. A due process complaint must include:
  - The name of the student, the student's address and the name of the student's school;
  - A description of the problem, including facts relating to the problem and when they occurred;
    - ⇒ Your complaint should be specific.
    - ⇒ Do not just write that you believe the school violated FAPE; say why you think the school has violated FAPE. Be explicit about what problems you see in the special education plan (for example, an inadequate number of therapy hours based on the recommendations of the therapist, or that no progress has been made on a student's IEP goals, or that the goals are the same every year.)
  - A proposed resolution of the problem to the extent you can provide one.

You can find a copy of a due process hearing complaint form on the DOE's website, as well as due process procedures and due process hearing requirements at: [http://www.doe.k12.de.us/infosuites/students\\_family/specialed/procsafe.shtml](http://www.doe.k12.de.us/infosuites/students_family/specialed/procsafe.shtml).
3. You must send a copy to the other side (school district, charter school, etc.) at the same time you send it to the Delaware Department of

Education.

4. You have 2 years from the date you knew or should have known of the action/basis for the complaint (unless you have cause to show the school made misrepresentations about the student's progress).
5. After a parent/advocate/student (if 18+) files a due process complaint, the school district or charter school must file a response to the complaint and provide the parents/advocate/student with two copies within 10 days of receipt of the complaint.
6. Alternatively, the school district or charter school can also object to the complaint within 15 days of receipt of the parent's/student's complaint if it lacks sufficiency/specificity. When the complaint lacks specificity, the parent/student can no longer proceed with due process. Instead, an objection by the school that a complaint is insufficient has the effect of starting the 45 day period for a due process hearing again. A new 45 day period begins each time a party amends the complaint.
7. If you find you have more issues that you want to raise you must seek the school district or charter school's consents to amend the complaint. A new 45 day period begins each time a party amends the complaint.

### **Resolution meeting**

After you have filed your due process complaint, the school district must hold a resolution meeting with you and the IEP team within 15 days of receipt of the due process complaint to give parents and the school a chance to work through the complaint. A resolution meeting can only be waived in writing.

- Any agreement signed during a resolution meeting can be modified or cancelled within three business days.

Options if you disagree cont.

- Any agreement reached is enforceable by a court.
- The agreement and meeting are **not** confidential. Therefore, any information acquired at the meeting may be used as fact finding or as a way to gather evidence by either party if the school and the parents later go to a formal due process hearing.
- The school's attorney is allowed to attend the resolution meeting only if the parents are also represented by counsel.

### **Mediation**

You have the option of going to mediation before you initiate due process. But, the school district or charter school is also required to offer mediation during due process in addition to a resolution meeting. There is no requirement for you to attend mediation before proceeding straight to due process. However, any agreement reached at mediation is enforceable in court.

### **The Due Process hearing**

At a due process hearing, you have the right to present any evidence or testimony in support of your case. The school district or charter school has the burden of proof, which means the school has to prove their actions were more reasonable than not. The dispute will be decided by a three person panel composed of a Delaware attorney, an educator with knowledge of special education, and a lay person with knowledge of special education.

### **Federal Court**

If you are unsuccessful at Due Process, you have the right to appeal to Federal District Court or Delaware State Family Court within 90 days from date of

decision.

### **Legal representation**

You can go to a due process hearing without an attorney. If you choose to have legal representation, you may be able to collect attorneys' fees for any actions arising out of the due process complaint. Attorneys' fees are available if you are successful in your due process complaint for drafting the complaint, participation in mediation, resolution meetings, the due process hearing, or court proceedings. No attorneys' fees are available for attorney representation prior to filing for due process.

The school district or charter school is also entitled to seek attorneys' fees for due process complaints that are frivolous, unreasonable, or for an improper purpose in limited circumstances. **If you file a complaint in good faith and withdraw it if the complaint is no longer valid, you are not subject to this sanction.**

However, if you proceed to court (either federal or Family Court) you must be represented by an attorney if the student is under the age of 18. This may not be true if the student is over the age of 18 and represents himself "pro se."

You can find more information on your special education "procedural safeguard" rights, including due process, administrative complaints and mediation, on the Delaware Department of Education's website: [www.doe.k12.de.us/infosuites/students\\_family/specialed/procsafe.shtml](http://www.doe.k12.de.us/infosuites/students_family/specialed/procsafe.shtml). This website has sample due process and administrative complaint forms which you can use should you wish to pursue one of these two procedures.

Options if you disagree cont.

## Other Important Things to Know

### **Voting**

In Delaware, adult citizens have a right to vote in elections. This includes persons with disabilities, even those with guardians. Only a judge can remove the right of a person with a disability to vote based on a written order that clearly states that the person's mental disability prevents use of basic voting judgment. Register to vote as soon as you turn 18 (or before, if you will be 18 on the date of the next General Election) if you want to exercise this important right. You can learn more about voting for people with disabilities at [http://www.declasi.org/wp-content/uploads/2013/12/the\\_right\\_to\\_vote\\_in\\_delaware.pdf](http://www.declasi.org/wp-content/uploads/2013/12/the_right_to_vote_in_delaware.pdf).

You can register to vote:

- At any Department of Elections Office for your county;
- A mobile registration site;
- By calling an Elections Office and having a registration form mailed to you;
- At the Motor Vehicle Office or a Social Service Office; or
- At: <https://registertovote.elections.delaware.gov/voterreg/TermsAgreement>.

### **Selective Service**

You should know that if you are male, you must register for the Selective Service System within 30 days of your 18th birthday, even if you have a disability. Registration is required to apply for federal employment, some job training programs, and federal student loans.



## More Information

You can find more information on middle school and high school rights, special education, transition IEPs, and transition at:

- The **Delaware Department of Education**
  - **Main website:** <http://www.doe.k12.de.us/>
  - **Special education procedural safeguards:** [http://www.doe.k12.de.us/infosuites/students\\_family/specialed/procsafe.shtml](http://www.doe.k12.de.us/infosuites/students_family/specialed/procsafe.shtml)
  - **Transition information** ([http://www.doe.k12.de.us/infosuites/students\\_family/specialed/transition/default.shtml](http://www.doe.k12.de.us/infosuites/students_family/specialed/transition/default.shtml)), **including:**
    - DDOE's **Annotated Transition IEP**, which is a helpful guide to the different parts of the IEP (the annotations include a description of all the different areas on the IEP form);
    - **Transition guide** from the DDOE; and
    - Draft **transition timeline** from the DDOE.
- You can find a **transition IEP checklist** at:
  - [http://www.doe.k12.de.us/infosuites/students\\_family/specialed/transition/default.shtml](http://www.doe.k12.de.us/infosuites/students_family/specialed/transition/default.shtml) (Delaware Department of Education)
  - And another at: <http://www.wrightslaw.com/info/trans.plan.graham.htm> (Wrightslaw)
- **Early Start to Supported Employment** is a program that transitions students from high school

to supported employment after completing high school. It is a cooperative program between the Department of Education, Division of Vocational Rehabilitation, Division of Developmental Disabilities Services, and local school districts. You can find out more information on this program from your school, DVR, or DDDS worker, or the Delaware Department of Education's transition page, linked below.

- The Delaware **Division of Vocational Rehabilitation** (DVR or "Voc. Rehab") has transition services including school-to-work program(s)! You can learn more at <http://dvr.delawareworks.com/job-seekers/transition-services.php>.
- Delaware's Division of Health and Social Services has submitted a proposal to the Centers for Medicare & Medicaid Services (CMS) to provide a new employment services program for Medicaid Beneficiaries, called **Pathways to Employment**. Check <http://dhss.delaware.gov/dhss/dmma/> to find out more.
- **Parent Information Center:** <http://www.picofdel.org/> (provides information and support to parents of children with disabilities from birth to 26 to help them access appropriate education and related services for their children)
- **Governor's Advisory Council for Exceptional Citizens** (GACEC):
  - <http://gacec.delaware.gov/>
  - GACEC transition website: [Deldhub.com](http://Deldhub.com)
- Wrightslaw: <http://www.wrightslaw.com/> (special education advocacy website and seminars)

- **U.S. Department of Education:**
  - Office for Civil Rights: <http://www2.ed.gov/about/offices/list/ocr/index.html>
  - Office of Special Education and Rehabilitative Services (OSERS): <http://www2.ed.gov/about/offices/list/osers/index.html?src=oc>
  - OSERS Questions and Answers on Transition: <http://www2.ed.gov/policy/speced/guid/idea/transition-q-a.pdf>
  - Year of College and Career for Youth with Disabilities <http://www2.ed.gov/about/inits/ed/ycc/index.html>
  - FAQ on Section 504: <http://www2.ed.gov/about/offices/list/ocr/504faq.html>
  
- **State special education laws and regulations** can be found in: Title 14 of the Delaware Code, Chapter 31 (Exceptional Persons); and Title 14 of the Delaware Administrative Code, Part 900 (Special Populations).
  
- **Disabilities Law Program** of Community Legal Aid Society, Inc.: <http://www.declasi.org/disabilities-law-program/>
  
- There are many disability specific advocacy organizations that provide parents and students information about education needs specific to a particular disability.

More Information Cont.

SAMPLE—Evaluation for Special Education/504  
Eligibility Request Letter

Your name & address

Date

Principal or Director of Special Education  
Name & address

To Whom It May Concern:

I am requesting a special education evaluation for my child (or self if 18+), \_\_\_\_\_, pursuant to the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act. Please consider this letter my full consent, as my child's parent and/or guardian, to evaluate him/her in accordance with the IDEA and Section 504 of the Rehabilitation Act.

My child has the following diagnosis / diagnoses or symptoms

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

As a result of my child's problems, my child has experienced significant difficulties and I believe that s/he would benefit from a specialized supports in school. My specific concerns are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Check one:

I understand that the school has 45 school days or 90 calendar days to evaluate my child and hold an eligibility meeting.

Because my child is currently subject to discipline (suspension, expulsion, or alternative school), I would like this evaluation to be expedited pursuant to 34 CFR Section 300.534(d)(2)(i).

Please contact me at \_\_\_\_\_ if you have any questions or need additional information. Thank you.

Sincerely,

\_\_\_\_\_  
Your signature

## SAMPLE—IEP Meeting Request Letter

Your name & address

Date

Educational Diagnostician, Principal or Director of Special  
Education  
Name & address

To Whom It May Concern:

My child (or self if 18+), \_\_\_\_\_,  
has an I.E.P. pursuant to the Individuals with Disabilities  
Education Act. I am requesting that you convene an I.E.P.  
meeting to discuss some concerns that I have. Specifically, I  
would like the I.E.P. meeting to address the following topic(s):

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please contact me at \_\_\_\_\_ if you  
have any questions, need additional information, or to select a  
mutually agreeable date. Thank you.

Sincerely,

\_\_\_\_\_  
Your signature

SAMPLE: IEP Meeting Request Letter



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## Voluntary Grant of Authority

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For a sample Power of Attorney and/or Voluntary Grant of Authority, please see:

<http://transition.declasi.org/middle-school-and-high-school-educational-rights/>

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### NOTES

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Voluntary Grant of Authority

Notes

*This guide has provided general information to help you learn about middle & high school rights for individuals with disabilities in Delaware and is not intended to be legal advice. Remember that every person's situation will be different. For questions on your specific situation, you may apply for free legal assistance from Community Legal Aid Society, Inc. (CLASI).*

**You can learn more about transition, or provide us feedback, at [transition.declasi.org](http://transition.declasi.org)**

Visit us on the web at [www.declasi.org](http://www.declasi.org) or contact us at one of our three office locations:

### **CLASI Offices**

#### **New Castle County**

100 West 10th Street, Suite 801  
Wilmington, DE 19801  
302-575-0660  
302-575-0696 (TTY/TDD also)  
302-575-0666 - Elder Law Program  
302-575-0690 - Disabilities Program  
FAX: 302-575-0840

#### **Kent County**

840 Walker Road  
Dover, DE 19904  
302-674-8500 (TTY/TDD also)  
302-674-3684 - Elder Law Program  
302-674-8503 - Disabilities Program  
FAX: 302-674-8145

#### **Sussex County**

20151 Office Circle  
Georgetown, DE  
302-856-0038 (TTY/TDD also)  
302-856-4112 - Elder Law Program  
302-856-3742 - Disabilities Program  
FAX: 302-856-6133

This guide is current as of March 2014