



**Renaissance Academy Charter School  
Special Education Procedural Manual**

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## SECTION 1 INITIAL EVALUATION

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### How is a referral initiated?

- A student can be referred for initial evaluation following a pre-referral intervention from a school-based Multi-Disciplinary Team (MDT).
- Parent Initiated Request orally to **any** school professional or administrator: School must provide the Permission to Evaluate-Evaluation Request Form to the parents within **10 calendar days**.
- Parent Initiated Request in writing: the school must then make the Permission to Evaluate-Consent Form '*readily available*.' Guidance from the Pennsylvania Department of Education: Bureau of Special Education indicates within reasonable timelines (10 school days).
- ★ **Important Note:** A copy of the *Procedural Safeguards Letter & Procedural Safeguards Notice (PSN)* must accompany the Permission to Evaluate-Consent Form. The procedural safeguards notice is a description of parent rights and responsibilities.
- Upon receipt of *Permission to Evaluate-Consent* Form from the parent with their consent, the district must date stamp the *Permission to Evaluate-Consent Form*. A copy of the evaluation must be presented to the parents no later than **60 calendar days after the district receives written parental consent for evaluation**. **Note:** the following days are not included in the definition of calendar days- the day after the last day of the spring school term for staff up to and including the day before the first day of the subsequent fall school term for staff will not be counted.

Please find PaTTan Initial Evaluation flowcharts [here](#).

### Initial Evaluation Overview

#### When evaluating students, the evaluation team should include the following:

1. The student's regular education teacher;
2. If the student does not have a regular education teacher, a regular classroom teacher is qualified to teach a student of his or her age;
3. For a student less than school age, an individual qualified by the state education agency to teach a student of his or her age;
4. At least one person qualified to conduct individual diagnostic examinations of student, such as a speech-language pathologist, school psychologist or remedial reading teacher.

In addition to personnel who are required to participate in all district evaluations (e.g. , school psychologists, special education instructors), consideration for additional specialists that are needed to determine the student's need for related services should also be planned at this time. Related services are developmental, corrective, or supportive services that are needed by some

students in order to benefit from their education program. Related services may include the following: occupational therapy, physical therapy, speech & language support, psychological services, vision or hearing support, social work services, orientation and mobility, and others. The LEA representative who is responsible for designing the evaluation must be familiar with the unique knowledge that specific related service providers bring to the evaluation process. Many students involved in special education evaluations have educationally related needs involving motor skills, sensory performance, communication/language performance, assistive technology, cognitive performance, and behavioral functioning. Such issues will require the inclusion of specific related service providers during the assessment process so that specific student strengths and needs can be appropriately addressed during the identification/evaluation process.

Fundamentally, the evaluation functions to assist the evaluation team in answering two questions that are necessary to determine if a student qualifies for special education services and supports. For special education, both answers must be 'YES'.

1. Does the student have a disability as defined under IDEA?
2. Does the student need specially designed instruction and related services?

Question one is answered in terms of the definitions for each category of disability according to IDEA regulations. The second question is answered in terms of the student's educational needs. Special education is specially designed instruction to meet the needs of a student with a disability. It is only when a student with a disability needs specially designed instruction that she or he becomes a candidate for receiving special education services and programs. The fact that a student has a disability does not automatically determine that the student is eligible for special education. These students may qualify for services and accommodations under Chapter 15, Section 504 of the Rehabilitation Act of 1973 or under the Americans with Disabilities Act (ADA), or continue to receive universal Multi Tiered Systems of Supports (MTSS).

The evaluation for special education services must be comprehensive. The LEA 'shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent; shall not use any single measure or assessment as the sole criterion for determining whether a student is a student with a disability or determining an appropriate educational program for the student; and shall use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors [§ 614(b)(2)(A-C)].' As in the past, evaluation tools and materials used to assess a student need to be selected so as not to be discriminatory on a racial or cultural basis, are used for purposes for which the assessments or measures are valid and reliable, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producers of such assessments. New language in IDEA further states that the assessments 'are provided and administered in the language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide or administer [§ 614(b)(3)(A)(ii)].' Consequently, native language may not be the form that yields the most accurate information.

It is the responsibility of the evaluation team to utilize sufficient procedures not only to make decisions regarding eligibility, but also to make substantive recommendations regarding the student's program. A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent, guardian, or surrogate no later than sixty (60) calendar days after a Permission to Evaluate has been signed.

**The evaluation report needs to address the following topics:**

- Reason(s) for referral
- Sources of Evaluation Data: results including physical, social, or cultural background information relevant to the student's disability and need for special education; parent input; current classroom based assessments and observations; local and/or state assessments; observations by teachers and/or related service providers; aptitude and achievement levels; involvement in and progress in the general education curriculum; relevant functional and developmental evaluation (ecological evaluation); vocational technical education and assessment results; interest, preferences, aptitudes (for secondary transition); and functional behavior assessment results
- If Assessment is not conducted under standard conditions, describe the extent to which it varied from standard conditions
- Determining factors; Summary of findings/interpretation of assessment results;
- The criteria used if evaluation determines the disability of Specific Learning Disability
- Conclusions – Determination of eligibility and educational needs.

**1. Initial Steps to Evaluate:**

- Issue the **Permission to Evaluate – Consent Form. Parental consent must be obtained** for an initial evaluation. If permission is not given or the parent does not respond, an LEA may request a due process hearing to obtain the permission to evaluate.
- Complete the assessments procedures including the meeting (**60 calendar days to complete** the evaluation process) and provide the ER to the parent.
  - Obtain input from all team members (e.g., teachers, parents, nurse)
  - Conduct observations
  - Gather all data necessary to answer the reason(s) for the referral

**Evaluation of Students Who Are Culturally and Linguistically Diverse**

- IDEA indicates that each local educational agency shall ensure that tests and other evaluation materials used to assess a student are selected and administered so as not to be discriminatory on a racial or cultural basis. Additionally it mandates that the 'assessments and other evaluation materials must be provided and administered in the language and

form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is not feasible to so provide and administer' [§614(b)(3)(a)(i-iii)]. Native language may not be the form that yields the most accurate information. Materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills.

- These provisions reflect a concern that students who have linguistic, cultural, or racial differences from the majority may be erroneously identified as eligible for special education due to features of their language or culture that are mistaken for indicators of the presence of a disability. Students with limited English proficiency are candidates for special education services only when it is determined that their disability is unrelated to the student's limited language proficiency in English. The disability must be present in the student's native language. Speaking a language other than English is not a language disability. For many of these students, academic problems are related to the student's lack of academic language proficiency, not to cognitive deficits or learning disabilities. If English language development programs have not been provided (e.g., bilingual education, English as a second language), students may experience communication or achievement problems. These problems are typically related to inappropriate instruction, not to a disability. While these students may pose difficulties for the regular education program, it is inappropriate to designate them as disabled in order to obtain extra services.
- Under Title VI of the Civil Rights Act of 1964, in order to properly evaluate a student who may be limited English proficient (LEP), the public agency must first determine the student's proficiency in English and the student's native language. Under Title VI, an accurate assessment of the student's language proficiency must include objective assessment of reading, writing, speaking, and understanding. Information about the student's language proficiency must be considered in determining how to conduct the evaluation of the student to prevent misclassification. The public agency has a responsibility to ensure that students with limited English proficiency are not evaluated based on criteria that essentially measure English language skills.

If a staff member believes a student is in need of an evaluation in a language other than English, it is essential that the Special Education Office is contacted immediately.

*\*The official review of the results of an initial evaluation is conducted either by convening a meeting to discuss the findings, or by sharing the results without conducting a meeting.*

**Determination/Findings- Not Eligible for Special Education Services:**

- If the student is not eligible, the LEA should issue a **Notice of Recommended Educational Placement (NOREP)**

**Determination/Findings- Eligible for Special Education Services:**

- The IEP team will convene a meeting at least 10 school days after (unless parent signs a waiver), but within 30 calendar days of the ER date, and develop an IEP

## SECTION 2 RE-EVALUATION

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### Reevaluation Timelines

- Reevaluations are required **once every 3 years**, unless the parent and the public agency agree that a reevaluation is unnecessary. In this instance, the 'Agreement to Waive' form should be utilized. Students with an intellectual disability must be reevaluated every **2 years**. Reevaluation for students with an intellectual disability may not be waived.
- The reevaluation must be completed and presented to the parents within **60 calendar days** (not including summer days) **of parental consent and by the anniversary date of the previous Evaluation/Reevaluation Report.**
- Student's IEP must be reviewed and revised (meaning the development of a new IEP, and an annual IEP meeting is held) within **30 calendar days** of the completion of the reevaluation report.

### Tips of Reevaluation Process:

- LEA & Parent agree to waive reevaluation process: Signed Agreement to Waive Reevaluation form is included in student's educational record. **NO WAIVERS MAY BE ISSUED WITHOUT PERMISSION FROM THE SUPERVISOR OF SPECIAL ED.**

### **Parent orally requests reevaluation:**

- Send parent Permission to Reevaluation – Reevaluation Request form within **10 calendar days** (not including summer days) of oral request;
- If LEA agrees to conduct reevaluation, send parent Permission to Reevaluate Consent Form **within reasonable time of receipt** of Permission to Reevaluate – Reevaluation Request Form. Best practice identifies reasonable time as **10 school days**;
- If LEA does not agree to conduct reevaluation, send parent Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN) **within reasonable time of receipt** of Permission to Reevaluate – Reevaluation Request Form. Best practice identifies reasonable time as **10 school days**.

### **Parent requests reevaluation in writing:**

- If LEA agrees to conduct reevaluation, send parent Permission to Reevaluate – Consent form within reasonable time of receipt of parental request; If LEA does not agree to conduct reevaluation, send parent Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN) **within reasonable time of receipt of parental request**. Best practice identifies reasonable time as **10 school days**.

- **LEA proposes reevaluation process and team determines no additional data are needed:**

Complete and send a copy of the reevaluation report to parent; and a newly revised IEP must be developed within **30 calendar days after completion** of the reevaluation report. Copies are included in the student's educational record.

- **LEA proposes reevaluation process and team determines additional data are needed:** Issue Permission to Reevaluate-Consent Form, included in the student's educational record and:

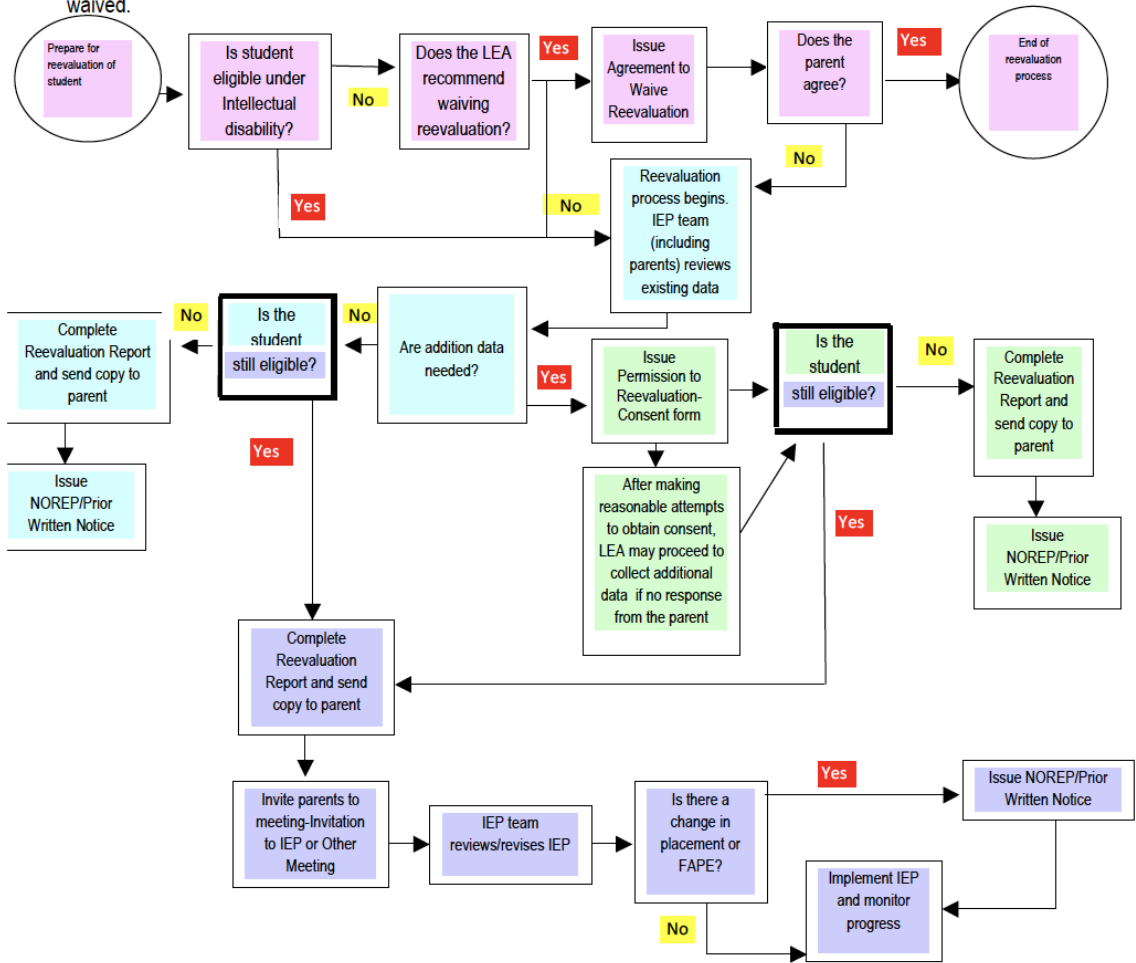
- Reevaluation must be completed within the **2 or 3 year timeline**
- The completed reevaluation report is conducted within **60 calendar days**
- The reevaluation report is provided to the parent at least **10 school days** prior to the IEP meeting
- A new annual IEP is developed within **30 calendar days** after completion of the reevaluation report
- Copies are included in the student's educational record.



# Reevaluation Flow Chart

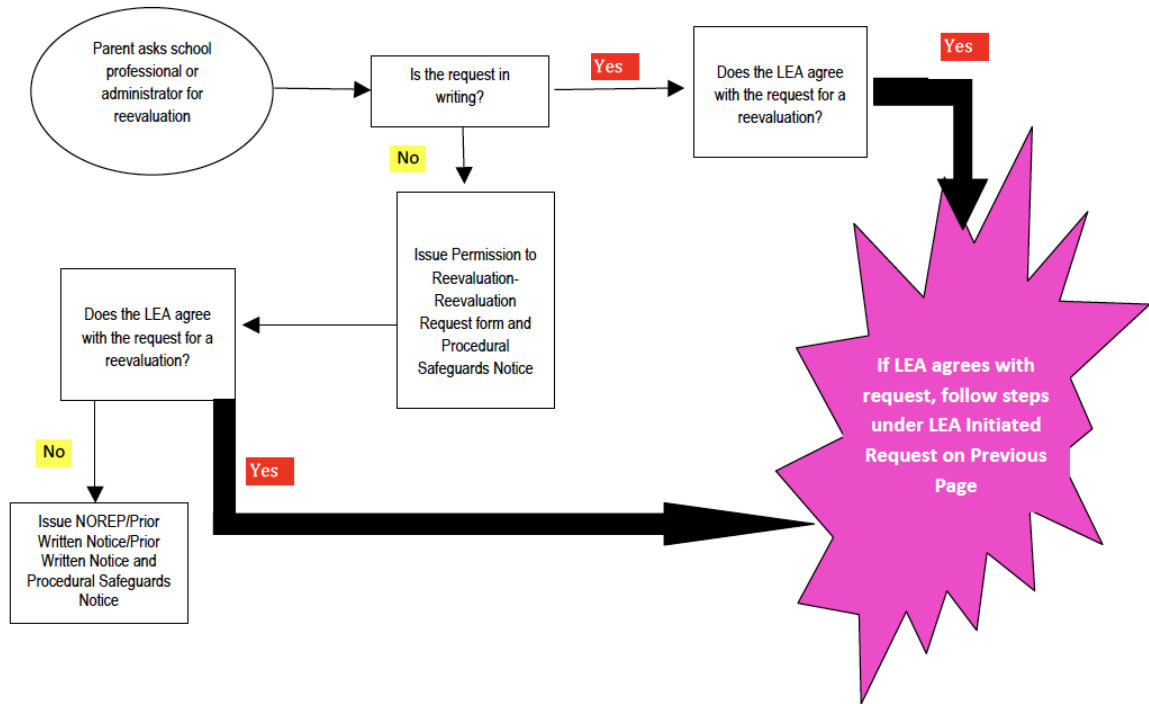
## Reevaluation Request Initiated by School District: [The Special Education Reevaluation Process](#)

**The Special Education Reevaluation:** This flowchart shows the basic steps to be followed and the decisions to be made by Local Educational Agencies (LEAs) to meet the requirements for reevaluation. Reevaluation is required every 3 years unless it is waived by both LEA and parent(s). In Pennsylvania, a reevaluation for students with intellectual disability is required every 2 years and cannot be waived.



## Reevaluation Request Initiated by Parent:

**The Special Education Reevaluation:** This flowchart shows the basic steps to be followed and the decisions to be made by Local Educational Agencies (LEAs) to meet the requirements for reevaluation. Reevaluation is required every 3 years unless it is waived by both LEA and parent(s). In Pennsylvania, a reevaluation for students with intellectual disability is required every 2 years and cannot be waived.



## Re-evaluation Overview

IDEA Reevaluations state 'reevaluation for students with disabilities must occur once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.' §300.303(b)(2). However, under the PARC Consent Decree, **students with an intellectual disability must be reevaluated every 2 years in Pennsylvania**, and neither the IEP Team nor the parents can waive the reevaluation for students with intellectual disabilities. There are no exceptions.

One purpose of a reevaluation is to decide if the student continues to have a disability and needs special education and related services. The reevaluation should also help the IEP Team decide whether the student is making reasonable progress towards IEP goals and, if reasonable, progress is not being made, what changes are needed.

The reevaluation process begins with a review of existing data about the student (i.e., PSSA scores, report cards, progress monitoring reports, and other relevant data) by the student's IEP Team. The Team must decide if any additional information is needed to determine:

- 1) if the student **continues** to have a disability and what are the student's **educational needs**;
- 2) the **present levels of academic achievement** and related developmental and functional needs;
- 3) whether the student **continues to need special education** and related services; and
- 4) whether any **additions or changes** to the special education and related services are needed to allow the student to meet the **measurable annual goals** in the IEP and **to participate**, as appropriate, in the **general education curriculum**.

There might be a condition that warrants a reevaluation be completed more frequently than every three or two years. This occurs when an IEP Team believes additional information is required to determine educational or related services needs of a student, or to try and determine why a student is not making academic or functional progress. Furthermore, a reevaluation is also required if:

- A student's educational placement and/or services is being proposed to change to a more restrictive placement;
- A student is thought to no longer be in need of special education supports and services;
- A parent requests a reevaluation;
- A member of the student's educational team requests a reevaluation.

If the student's eligibility is not in question, but a parent requests a reevaluation to determine educational needs of the student, the LEA must respond to the parent's request to conduct a reevaluation by: (1) conducting a review of data; (2) conducting a full reevaluation; or (3) declining to conduct the reevaluation. If the LEA declines to conduct the reevaluation, the LEA must issue a NOREP/PWN to the parent. The LEA must provide notice to the parent if the LEA refuses to initiate or change the identification, evaluation, or education placement of the student or the provision of FAPE to the student.

A reevaluation must be conducted prior to implementing a change in level of support and/or change in service on a student's IEP (i.e., a change from full time learning support to itinerant learning support). One of the purposes of the reevaluation is to determine the educational needs of the student, including whether any additions or modifications to the specially designed instruction and related services are needed to enable the student to meet his/her IEP goals and/or to participate in the general education curriculum. Because the evaluation/reevaluation report outlines the unique needs of the student, the IEP Team develops an IEP based on the needs described in the evaluation/reevaluation. For example, if a student is in a full-time special education placement, that placement decision was based upon the needs described in the evaluation/reevaluation report. When the student's placement is changed from full time to itinerant, there should be a basis for the change in educational placement. It is unlikely that the student's IEP developed for the full-time level of support could be implemented in the itinerant setting because the educational program in the itinerant setting is likely to be substantially and

materially different from the educational program in the full-time setting. Therefore, the IEP Team will need new information available through the reevaluation process to support the change in type of support.

### **Reevaluation Process:**

For all students (including those with intellectual disabilities), the reevaluation begins with a review of existing data by the IEP Team, including the parent. If a student has a disability category of autism, emotional disturbance, intellectual disabilities, multiple disabilities, other health impairment, specific learning disability, or traumatic brain injury, the school psychologist **must** be involved in the process. This review does not require permission from the parent nor is a meeting required. ('The group may conduct its review without a meeting.'§300.305 (b)). However, the parent must be included in the review.

The data review is documented in the section titled **Summarize Information Reviewed** of the reevaluation report. Next, the IEP Team determines whether there is a need for additional data. If the IEP Team determines that no additional data are needed:

- The appropriate box on the reevaluation report is checked and the reason(s) written on the reevaluation report. Findings (based upon existing data) are summarized and conclusions regarding eligibility are made.
- A copy of the reevaluation report is given to the parent and the reevaluation report becomes part of the student's educational record. Please note, if additional data are not needed, the Permission to Reevaluate-Consent Form is not needed and, therefore, is not part of the student's educational record.
- The student's IEP must be reviewed and revised within **30 calendar days** of the completion of the reevaluation report. Reevaluation is not required for another **2 years for students with intellectual disabilities** and for **3 years for all other students with disabilities**.

### **If the IEP Team determines that additional data are needed:**

- The appropriate box on the reevaluation report is checked
- The Permission to Reevaluate-Consent Form is provided to the parent. The LEA must indicate the reason for the reevaluation and the specific types of assessment tools, tests, and procedures that will be used. The **Permission to Reevaluate-Consent Form** is part of the student's educational record.
- The reevaluation still must be completed and presented to the parents within **60 calendar days** (not including summer days) **of parental consent** and **by the anniversary date of the previous Evaluation/Reevaluation Report**.
- After the additional data are collected and analyzed, the findings and interpretation of the additional data are written into the reevaluation report and conclusions regarding eligibility are made.
- A copy of the reevaluation report must be given to the parent **at least 10 school days prior** to the meeting of the IEP team. The reevaluation report becomes part of the student's educational record.
- The student's IEP must be reviewed and revised within **30 calendar days of the completion** of the reevaluation report.

- Reevaluation is not required for another **2 years for students an intellectual disability** and for **3 years for all other students with disabilities**

### **Waiving a Reevaluation**

- If the Local Educational Agency (LEA recommends that the reevaluation is not necessary, the form titled Agreement to Waive Reevaluation must be provided to the parent. The LEA must indicate on the form the reasons it has made this determination. The parent has the option to agree to waive reevaluation or proceed with the reevaluation. A waiver of reevaluation requires written parental consent. **Important reminder: waiving a reevaluation is not an option for a student who has a diagnosis of intellectual disability.**

#### **If the parent agrees to waive reevaluation,**

- No reevaluation report is written.
- No Permission to Reevaluate-Consent Form is issued.
- The signed Agreement to Waive Reevaluation is included in the student's educational record. A reevaluation is not required for 3 years from the date of the parent signature on the Agreement to Waive Reevaluation.
- There is no requirement to revise the Individualized Education Program (IEP) as part of this process unless the IEP is due for its annual review.

### **WAIVERS SHOULD BE ISSUED ONLY AFTER CONSULTING WITH THE SUPERVISOR OF SPECIAL EDUCATION**

#### **Student Transfers from Out-of-State**

If a student with an IEP transfers from out-of-state into Pennsylvania, the school district must issue a PTE. This evaluation would be considered an initial evaluation. The evaluation is conducted to determine eligibility for special education programs and services in Pennsylvania. During this process, the LEA must implement the existing IEP to the best of their ability until the evaluation is completed.

If by chance the parent refuses to provide consent for the initial evaluation, the LEA may go to due process to override the parent's refusal to consent to the initial evaluation. If the LEA does not decide to go to due process, the LEA would not be in violation of FAPE. The LEA has a Child Find responsibility and would meet this responsibility by issuing the Permission to Evaluate. Since the purpose of the evaluation is to determine eligibility in Pennsylvania and the parent refuses consent, the LEA met its child find responsibility. Because the initial evaluation to determine eligibility in Pennsylvania cannot be conducted, the student is not considered eligible for special education programs and services.

#### **Students Unilaterally Enrolled in Private School by Parents**

The LEA must conduct a reevaluation of a student with a disability who is unilaterally enrolled in a private school by his or her parents in the same manner it conducts a reevaluation for a student with a disability enrolled in the school district. At a minimum, however, the LEA must complete a reevaluation – or otherwise reach an agreement with the student’s parent that a reevaluation is unnecessary via a written parental agreement to waive the reevaluation – at least every three years. For children with intellectual disabilities, a reevaluation must be completed every two years and no agreement to waive the reevaluation can be made.

For a student with a disability who attended a private school and then enrolls in the school district, the school district must determine if a reevaluation needs to be conducted. If the student transfers to the public school and the reevaluation was not completed in a timely manner, the LEA must complete a reevaluation. Additionally, the LEA must complete a reevaluation if it determines it needs more information about the student’s educational or functional needs or to determine related service’s needs. A school district would also need to complete a reevaluation if a parent or school personnel request a reevaluation. If the LEA declines to conduct a parent requested reevaluation, the LEA must issue a NOREP/PWN to the parent.

## SECTION 3 INDIVIDUALIZED EDUCATIONAL PLAN (IEP)

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### IEP Overview

An IEP or '**Individualized Education Program**' is a written plan that describes the unique needs of a student who is eligible for special education and explains the specific services that the school will give the student.

The IEP lists the special education, related services, and other supports the student needs to make meaningful progress in school. The IEP should explain when the services will begin, and how frequently and for how long they will be given (for example, two half-hour sessions of physical therapy every week). The IEP must also state where the services will be provided (for example, in a regular or special education classroom or a special school), and tell you what special training and equipment will be given to the school staff (teachers and aides) who work with the student. The IEP also tells how much of the school day the student will spend with classmates who do not have disabilities.

The IEP is written by a team of people, including the parents. School districts must give the student all of the special education, related services, and other supports listed in the IEP. The IEP is the '**contract**' between the parent and student and the school for the services a student needs to make progress. If the school does not follow the IEP, a parent can file a complaint with Pennsylvania's Bureau of Special Education (BSE).

### IEP Development:

**The IEP is written by a team of people. The IEP Team *must* include:**

- The student's parents;
- At least one special education teacher or special education provider (for example, the student's learning support teacher or speech therapist);
- At least one regular education teacher (if the student is, or may be, in any regular education classes);
- An LEA (a school official qualified to provide or supervise specially designed instruction, who knows about the school's resources, and who is familiar with the general education curriculum (usually this is the building principal, assistant principal, special education director or designee such as guidance counselor or school psychologist);
- Someone who can interpret the student's evaluations (this does not have to be a separate person, so the student's case manager could fill this role – if it is a separate person, it is usually the school psychologist);
- The student, when appropriate. The student must be invited to the meeting if postsecondary goals and transition needs are discussed at the meeting (**this is required if the student will be 14 during the course of an IEP.**) If transition needs are not going to be discussed, then it is up to the parent to decide whether the student should attend the meeting.

While the people listed above ***must*** attend IEP meetings (unless they are excused by the parent), ***other people can*** come to the meetings. The IEP Team can include anyone the parent or the school believes has knowledge or expertise about the student. This means that a parent can invite an advocate (either a lawyer or a non-lawyer. If a parent elects to bring an attorney to an IEP meeting, the District may choose to reconvene the meeting at a time where the District's attorney is available to attend the IEP meeting). In addition, the school or the parent can ask an occupational therapist (OT), physical therapist (PT), or speech therapist who is working with the student to attend the IEP meeting.

### **IEP Members Excused from IEP Meeting:**

A parent can agree ***in writing*** to excuse one (or more) of the IEP Team members listed above. If the IEP Team member's area of expertise will not be discussed at the meeting, then the parent and school may sign an agreement that the Team member can miss the meeting. If the Team member's area of expertise is going to be discussed at the IEP meeting, before that Team member can miss the meeting: (1) a parent must agree in writing and (2) the Team member must give the parent and IEP team written input about the student before the IEP meeting.

### **Parent Attendance at an IEP Meeting:**

*The law places great emphasis on parents' participation in the IEP Team meeting. The school must take steps to get one or both of the student's parents to attend the IEP meeting. That means the school must notify both parents of the meeting early enough so that they can attend, and schedule the meeting at a time and place that is convenient. The notice of the meeting must tell the parent the time, date, location, and purpose of the meeting. The Invitation to Participate in the Individualized Education Program (IEP) Team Meeting or Other Meeting form also informs the parent that one can bring other people to the meeting who have knowledge or expertise regarding the student.*

There are times when an interpreter is needed for parents with deafness or parents whose native language is not English. The parents should let the school principal and the Special Education Office know as soon as possible that an interpreter is needed for the IEP Team meeting. If the parents cannot attend the meeting in person, the school must offer the family other ways of participating in the meeting, including conference calls. **If the family does not participate in person or by phone, the school can hold the meeting without the parent – but it must keep a detailed record of its efforts to get the parent to attend. These efforts should include three attempts at contacting the parents/sending invitations to the meeting.**

### **IEP Team Meeting:**



School Districts are permitted to give parents a draft IEP at the meeting (or before the meeting); however, the IEP is a working document and **must include the parents' input**. When the IEP is finished, it should reflect the information discussed and decided by the IEP Team at the meeting. During the meeting, the IEP team must *consider* the student's strengths, the parents' concerns for enhancing the education of their child, the results of the most recent evaluation, and the student's academic, developmental, and functional needs in determining what services and placement are appropriate for the student.

*[TIP: Notes should be taken at the IEP team meetings and retained by the case manager for future reference.]*

It is important to ask everyone who attended the team meeting to sign the IEP signature page. **By signing the IEP signature page, it only shows who attended the meeting. It does not mean that one agrees with the IEP.** If someone participated via telephone or other electronic means, the signature section of the IEP should indicate how the team member participated, or if an option, electronic signature prompts should be sent to participants.

#### **Audio Recording of IEP Meetings:**

Audio recording of IEP meetings is permissible but there is **no express right to record**. However, the LEA cannot have blanket prohibition denying audio recording. This is inappropriate under Law. Contrary to what many parents claim, neither the IDEA nor any other law provides a parent with an absolute right to record meetings. The 'Parent Participation' provision, of the IDEA, found within 34 CFR 300.322(e), provides that '[t]he public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.' Section 504 and the ADA also require that individuals with disabilities be afforded reasonable accommodations for their disabilities.

Under all three laws, however, it is the District's right and responsibility to determine what accommodations are appropriate. However, while there are circumstances under the ADA, Section 504, and the IDEA where accommodations must be made to ensure full participation by parents in special education meetings, public schools and intermediate units may reserve audio and video recording of such meetings as an accommodation of last resort, to be used only where there are no other appropriate accommodations. Rarely is permitting recording of a meeting the only viable accommodation available. If a parent wishes to audio record any meeting, contact the Special Education Office for guidance. Written requests to record a meeting should be given at least 5 days prior to the meeting.

#### **IEP Components:**

An IEP can be of any length and can contain any amount of data-based information. However, the information in the IEP needs to be useful to parents and school staff in guiding the student's educational program so the student can make meaningful educational progress.

Overview of IEP:

**The following is a breakdown of the various sections of an Individualized Education Plan.**

**Special Considerations:** In the first section of the IEP, the IEP team must ask whether the student is blind or visually impaired, deaf or hearing impaired, if the student has needs in the areas of communication, if the student needs assistive technology (AT) devices and/or services, if the student has limited English proficiency, or if the student has behaviors that get in the way of his/her learning or that of others. The Team should keep these 'special considerations' in mind when it writes the student's IEP. PDE's annotated IEP explains these considerations in detail.

- **Blind or Visually Impaired-**The IEP must include a description of the instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media, that instruction in Braille or the use of Braille is not appropriate for the student.
- **Deaf or Hard of Hearing** – IEP team must complete a communication plan (Input statement from IEP)
- **Communication Needs-** Student needs must be addressed in the IEP
- **Assistive technology devices/services-** includes devices or special equipment that improve the student's functional or communication skills. Assistive technology services may include help in determining the need for a specific service (usually through the SETT process) and training for the student, school staff, and possibly the student's family on how to use the device.
- **Limited English Proficiency-** IEP team must address the student's language needs and how those needs relate to the IEP
- **Student exhibits behavior that impedes his/her learning or that of others-** IEP team must develop a positive behavior support plan (PBSP) based on a functional behavior assessment (FBA), that utilizes positive behavior techniques

**PRESENT EDUCATIONAL LEVELS:** The second section of the IEP contains information on the student's **present levels of academic achievement and functional performance** (including social and daily living skills). It is important for this section to be completed because knowing where the student is currently helps the Team decide where the student should be going – meaning what goals should be written for the student. Questions that this section of the IEP should answer include: What can we learn about the student's strengths and needs from the latest school district and other evaluations? What insight can the parents or the other Team members contribute from their experiences or training? This section should include the student's present levels related to current postsecondary transition goals (such as results of vocational evaluations, career surveys, etc.) Information from any Functional Behavioral Assessment (FBA) should also be part of this section. This section should include information on how the student's disability affects involvement and progress in the general education curriculum.

## **TRANSITION:**

The third section of the IEP lists the student's postsecondary goals (these are goals for life after high school) and the transition services that the school will give the student to help reach those goals. The point of 'transition planning' is to build a bridge between school programs and the opportunities of adult life, including higher education, employment, independent living and community participation, and to make sure the student is being prepared for life beyond high school. This section must be filled out for all students who are age 14 or older during the school year that the IEP will cover. The school and parent can agree to fill this section out earlier if that is appropriate for the student. Questions to ask include: What academic and other skills will the student need for adult living? Are the needed skills being taught? What does the IEP Team think should be the student's measurable postsecondary goals related to training, education, employment, and where appropriate, independent living skills? Are these goals based on age-appropriate transition assessments and the student's own preferences? (If not, why not?) What transition services (including courses of study) are needed to help the student achieve the transition goals?

## **PARTICIPATION IN ASSESSMENTS:**

In the fourth section of the IEP, the IEP Team decides whether the student can participate in state-wide (the Pennsylvania System of School Assessment or PSSA) and district-wide (local) achievement testing and whether the student needs testing accommodations. A list of allowable accommodations can be found [here](#).

## **PASA:**

If the Team decides that the student has such significant cognitive abilities that taking the PSSA would not be appropriate, the student will take the Pennsylvania Alternative System of Assessment or PASA test. The Team's decision to have a student take the PASA instead of the PSSA must be explained in the IEP. The criteria to consider when determining PASA eligibility can be found [here](#).

Please refer to the most updated information regarding PASA [here](#).

If you believe this could be an issue for a given student, you should discuss this prior to the IEP meeting. If it comes up during the IEP meeting, you need to defer that decision until you have reviewed it with your school's special education administrator. When it is decided that a student qualifies for PASA, you are required to include short-term objectives in IEP goals; it is therefore important to be prepared to write these objectives.

## **MEASURABLE ACADEMIC AND FUNCTIONAL GOALS:**

The fifth section of the IEP explains what the IEP Team, including the family, wants the student to learn this year. The IEP must list annual (year-long) functional and academic goals for the student. These goals must be 'measurable' and must be designed to meet the student's needs.

**TIP:** Writing Effective Measurable Annual Goals – Annual goals in Individualized Educational Programs (IEPs) must be functional and measurable. They must provide a clear focus for instruction and address individual student needs identified in the present levels of academic achievement and functional performance. **A well-written measurable annual goal contains four criteria: condition, student's name, clearly defined behavior, and performance criteria.**

**Condition** – The condition under which behavior is performed. It describes the situation in which the student will perform the behavior (e.g., accommodations, assistance provided prior to or during the assessment). Example: with consistent use of visual schedules.

**Student's Name – Example: Tyler**

**Clearly Defined Behavior** – A clear description of the behavior in measurable and observable terms. Example: Will independently transition from one activity to the next at school (i.e., end one activity and begin a new one).

**Performance criteria –**

- **Criterion level** – The level the student must demonstrate for mastery
- **Number** – How many times needed to demonstrate for mastery
- **Evaluation schedule** – How frequently the teacher plans to assess the student, including the method of evaluation. **Example:** Four out of five transitions on three consecutive weekly probes.

**Measurable annual goal example:**

- ★ With consistent use of visual schedules, Tom will independently transition from one activity to the next at school (i.e., end one activity and begin a new one) in four out of five transitions on three consecutive weekly probes.
- ★ Given controlled passages at the third grade level, Bobby will apply learned decoding and word analysis strategies to read 120 words correctly per minute with 94% accuracy as measured by weekly timed reading probes.
- ★ During group discussions in her academic classes, Jane will contribute appropriately (raise hand, ask and answer questions, contribute relevant ideas) with no more than two reminder cards for 80% of daily probes for two consecutive weeks by the end of the semester

**These are NOT measurable goals:**

- ★ Bobby will improve his reading this year.

★ Jane will not act out in class.

The student's goals should be designed in a way so the student's needs can be met allowing one to make progress and be involved in the **general education curriculum**. The 'general education curriculum' means the curriculum that your school follows for all students at a student's grade level. A good overview of goals can be accessed through the SAS (State Aligned System) system. More information on SAS can be found at <https://www.pdesas.org/> Students with disabilities should be taught what all other students at their grade level are taught unless there is a good, disability based reason why they should be taught at a different level. The school cannot refuse to include the student in the general curriculum solely because the general education curriculum would need to be modified for the student.

As previously mentioned, for students who take the PASA or another alternative assessment test, the law requires the IEP includes short term objectives in addition to annual goals. The short term objectives break down the yearly goals into small bites about what the student is expected to learn during the school year to achieve the annual goals. **Short term learning outcomes are also required for students who are gifted. Short term objectives are not required for other students, but the IEP team can choose to include them.** Please refer to school district policy and procedures on goal and objective writing.

**TIP: Writing Effective Short-Term Objectives** – Short-term objectives are required for students who take the PASA or another alternative assessment. The Short-term objectives break down the annual IEP goals into small bites, regarding what the student is expected to learn over the annual IEP period to achieve the annual IEP goals. Objectives must contain the following criteria: condition, student's name, clearly defined behavior, and performance criteria.

**Short-term objective example:** Given visual and physical prompts when asked to copy simple lines and shapes, Emma will stay within one inch accuracy for four out of five trials, for three consecutive measurements, assessed one time weekly.

**WHEN PERIODIC REPORTS ON PROGRESS ON IEP GOALS WILL BE PROVIDED TO PARENTS:** This section of the IEP explains how the student's progress toward her IEP goals will be measured and when progress reports will be issued (for example, the IEP might say that the school will report the student's progress towards goals quarterly, or in trimesters)

**TIP: Identify how you will progress monitor an IEP goal, before implementing the goal.**

**SPECIFIC SPECIAL EDUCATION TO BE PROVIDED:**

**Program Modifications and Specially Designed Instruction:** The sixth section of the IEP lists the **modifications and supports** the student needs to receive an appropriate education. This is one of the most important parts of the IEP because it must indicate exactly what school personnel will do to help the individual student learn. The IEP Team should ask: What specialized instruction, methods and strategies will be used by the school this year to help the student advance toward reaching her IEP goals, be involved and make progress in general education curriculum, and participate in extracurricular and nonacademic activities? Are special gym classes (called 'adaptive physical education') needed? This section should state what specially designed instruction (SDI), supports, and services the school will provide to the student.

- ★ An Example of specially designed instruction: Student will be provided with reading instruction using evidence-based curriculum resources
- ★ It is not appropriate for this section to contain only things the student will do (such as, 'Johnny will go find the guidance counselor when he feels anxious').

In general, the schools have the right to pick the instructional approach and method that will be used to teach students. But, special education law requires that special education, related services, and supplementary aids and services (supports the student needs to be successful in a regular or special education classroom) included in the IEP be 'based on peer-reviewed research to the extent practicable.' This means that if there are strategies that research studies show are successful in helping students with similar learning needs learn successfully, those strategies must be included in the student's IEP – instead of approaches that do not have a proven track record of success. For more information on research-based practices and effective instruction, visit the Pennsylvania Training and Technical Assistance Network's website at <https://www.pattan.net/>

**Supplementary Aids and Services:** if a student is taught in a regular education classroom, the IEP Team should decide what services and supports the student will need to succeed in this setting. All aids and services needed for the student to succeed in the regular education class must be listed on the student's IEP and provided by the school. Questions to ask about supplementary aids and services include: Are changes to the regular education program needed to help the student succeed in regular education classes? For example, does the student need more time to take tests? Are extra supports needed for the student in the regular education classroom? Does the special education teacher need to help the classroom teacher modify or adapt the curriculum for the student?

**Related Services:** This section of the IEP also lists the **related services** the student will receive. Related services are support services that will help the student benefit from her special education program. Examples of related services a student can receive include transportation, therapies (speech, physical, occupational, or psychological therapy), interpreting services for students who are deaf, parent training and counseling, and school health services (such as school nurse services). The IEP must tell you **how often** these services will be provided and **how long** each session will last. (For instance, instead of just stating 'speech therapy,' an IEP should state: 'Johnny will receive two 30-minute sessions of individual speech therapy per week.')

These services are determined by the IEP Team. The related service provider should participate in the IEP Team meeting. Changes to related services should not be made without documented input by

service provider or representative or service provider. Case managers and LEAs should not make such changes unilaterally and when changes are made, such changes **must** be documented by NOREP.

**The following list of related services is taken directly from Chapter 14:**

- OT
- PT
- Vision
- Hearing
- Speech and Language
- Nursing
- Others (Social Work)

### **Supports for School Personnel:**

This section of the IEP tells what help the school will give to the staff who will be teaching the student. Staff may need support include: administrators, regular education teachers, special education teachers, related service providers, bus drivers, and paraprofessionals (such as aides). Questions the IEP Team should ask include: Does the staff require special training to work with the student? Is a special education teacher needed to help the regular education teacher modify the curriculum or to provide extra support to the student in the regular education classroom?

### **Extended School Year: [See ESY Section for Detailed information]**

A) Criteria for Eligibility

B) Timing

The last question that the IEP Team must answer in Section 6 of the IEP is whether the student needs extended school year (ESY) services. All students with a disability must be considered for ESY as part of their annual IEP meeting. ESY services are particularly appropriate for a student who regresses (loses skills) over the summer or a student who needs the extra time in the summer to learn skills that are crucial for the student to receive an appropriate education. **For school-aged students with severe disabilities such as autism, serious emotional disturbance, severe intellectual disabilities, degenerative impairments with mental involvement, and severe multiple disabilities, the IEP Team must meet by February 28 of each school year to review the student's need for ESY. The ESY eligibility question must be answered by March 31 for those students and the parents must be given a NOREP/PWN so that the IEP Team can plan for the student's summer program.** An IEP Team meeting must be scheduled by the beginning of February to discuss ESY eligibility. For other students, the school must decide whether the student is eligible and what program will be offered in a 'timely manner.'

**Educational Placement:** The final two sections of the IEP (sections 7 and 8) explain where the student will receive services. The IEP must tell you if the student will be included in regular education classes and activities and, if so, for how much of the school day. The IEP Team must begin by deciding if the student can make progress in a regular class with **supplementary aids**

**and services.** The Team must then decide what amount and type of special education support the student needs. The **'amount' of special education support** tells the team the total amount of time in a typical school day that the student receives special education supports from special education **professional staff**: The following terms are used to communicate the amount of special education support:

- 'Itinerant support' (special education support provided for 20% or less each day);
- 'Supplemental support' (special education supports provided for more than 20% of the day but less than 80% of the day);
- or 'Full-time' support (support provided for 80% or more of the day).

**The 'type' of support listed in the IEP tells the student's most important learning needs – to learn academic skills (learning support), to control behaviors (emotional support), to acquire basic living skills (life skills), etc.**

**TIP:** Remember that students with disabilities must be taught with students who do not have disabilities to the maximum extent appropriate (called the 'least restrictive environment' requirement). If the student cannot be in regular education classes for the whole school day, the IEP Team must consider what part of the student's program (including academic classes, non-academic classes, lunch, recess, and extracurricular activities) the student can attend with students who are not disabled. In some cases, an out of district placement is the least restrictive environment.

The 'location' of the program is also found in this section of the IEP. If the student will not be in the home school, the IEP must explain why the student's needs cannot be met in that school.

**Penn Data Reporting: Section 8, the final section of the IEP,** contains information that the state uses to track whether school districts are placing students with disabilities in programs with students who are not disabled, as opposed to separate special education programs. The IEP Team must figure out how much time a student with a disability is being educated in a regular education classroom.

### **Key Information about IEPs:**

An IEP must be in place for each student receiving special education services at the **beginning of each school year**. If a student has just been evaluated for the first time, an IEP Team meeting must be held within **30 calendar days** of the date listed on the Evaluation Report. The law requires the school to give the parent **10 calendar days** to review the Evaluation Report before this first IEP meeting, but parents can choose to waive (give up) this right in writing and to have the meeting sooner. This should be a rare occurrence rather than practice.

After the IEP meeting, the school must provide the parents a final copy of the IEP along with a **Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN)**. The NOREP/PWN form asks the parents to indicate (in writing) whether they approve the IEP. If the IEP Team has just written the student's first IEP, special education services cannot start until the parent approves the IEP in writing on the NOREP/PWN. For later IEPs, the new IEP can be



implemented once the parent returns a signed NOREP/PWN that has the 'I approve' box checked **or** if the parent does not return/sign the NOREP within 10 SCHOOL days.

When the IEP is approved, the school must explain to its staff their responsibilities and the specific supports, modifications, and accommodations that they must give the student under the IEP. The IEP document itself must also be available for the staff to review. 'Staff' includes: the student's regular and special education teachers, her related services providers, and any other person who is responsible for following the IEP. Don't assume that all the people who are working with your student have access to the most recent copy of your student's IEP. The IEP case manager needs to check with all educators, therapists, and anyone else who may have a role to play, to make sure that they have a copy of the student's most recent IEP.

A student in any public school must be provided the services in her IEP (at the location listed on the IEP) no later than **10 school days** after the IEP is completed.

The IEP team **must** meet at least **once every year** to review and revise the IEP based on: the student's progress on her annual goals, the student's progress in the general education curriculum, any reevaluations that have been done, and parent or teacher concerns.

If the parent agrees, the IEP can also be amended (changed) between the yearly meetings without holding an IEP Team meeting. The IEP amendment must be in writing. The school must tell all of the IEP Team members about the change.

While the school must make sure the IEP Team meets every year, **parents or school staff have the right to ask for more frequent IEP Team meetings**. The law does not limit the number of IEP meetings the parents can request.

#### **Transfer Student with IEP Section 300.323.(e)(f)**

For students transferring from one school district to another within the state of Pennsylvania, the receiving LEA must provide services comparable to those described in the IEP from the sending school.

**The LEA can choose to either adopt the previous IEP or develop and implement a new IEP.** For students transferring between states, IDEA requires that the new LEA must also continue comparable services until it conducts an evaluation of the student.

If the LEA determines it to be necessary and develops a new IEP, it must be consistent with federal and state law. Both old and new school districts are required to take reasonable steps to ensure that the student's IEP, supporting documentation and other records are promptly transferred.

#### **Procedure for Transfer Students:**

- 1)The LEA designee reviews incoming transfer records to determine if IEP can be implemented within the school district or an outside placement.
- 2) If the IEP is current, follow procedures for Revising an IEP and convening a meeting.

3) If a student with an IEP transfers from out-of-state into Pennsylvania and the student requires an evaluation, the LEA should conduct an initial evaluation to determine eligibility for special education and services. The District must implement the existing IEP until the evaluation is completed. If a parent refuses to consent to an initial evaluation, refer to the Initial Evaluation section of this manual for guidance.

## **SECTION 4 FUNCTIONAL BEHAVIOR ASSESSMENT (FBA) AND POSITIVE BEHAVIOR SUPPORT PLAN (PBSP)**

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**The goal of a FBA is to develop a testable hypothesis.**

### **Overview of IDEA and PDE Chapter 14 and 711:**

In accordance with IDEA and PDE Chapter 14 and 711, positive rather than negative measures must form the basis of behavior support programs for students who have been determined to be eligible for special education supports and services. The district supports all eligible students being free from demeaning treatment, the use of aversive techniques, and the unreasonable use of restraints. Behavior support programs should include evidence-based or research-based practices and techniques to develop and maintain skills that will enhance an individual student's opportunity for learning and self-fulfillment. Behavior support programs and plans must be based on a functional assessment of behavior and utilize positive behavior techniques. When an intervention is needed to address problem behavior, the types of intervention chosen for a particular student must be the least intrusive necessary. The use of restraints is considered a measure of last resort, only to be used after other less restrictive measures, including de-escalation techniques [§14.133(a)].

Chapter 14 and 711 behavior support requirements in Pennsylvania require a functional behavior assessment (FBA) prior to developing a behavior plan. An FBA usually consists of a team-based assessment and inquiry process through which the team identifies target behaviors and determines the antecedent conditions and consequences in order to arrive at the hypothesized function(s) of the behavior. Then, the team would use this information to design an individualized positive behavior support plan for the child. Under the IDEA, an FBA is required when the behaviors in question result in disciplinary exclusion from school and are determined to be a manifestation of the child's disability. Under revised Chapter 14 and 711, however, an FBA is also required as a prerequisite to all individualized behavior support plans. Further, a positive behavior support plan must be developed by the IEP team for eligible children 'who require specific intervention to address behavior that interferes with learning.' The annotated IEP forms promulgated by PaTTAN reinforce the point that an FBA and a positive behavior support plan are required whenever the IEP team determines that the 'special consideration' of behavior impeding the learning of self, or others, applies to the student in question.

### **FBA: The Process**

Functional Behavior Assessment (FBA) is a process for gathering information to understand the function (purpose) of behavior in order to write an effective Positive Behavior Support Plan (PSBP). Functional Behavior Assessment is a valuable process to identify positive behavior practices and learning. The identification of the function or purpose of a behavior of concern, guides a team through the development of function-based strategies. Function-based behavior plans are an effective method of addressing behaviors, developing positive proactive behaviors and increasing academic achievement.

#### **In addition, according to regulatory requirements an FBA must be conducted when:**

1. When the IEP team checks (✓) 'yes' under 'Special Considerations for behavior that impedes the student's learning or the learning of others.
2. When a behavior violates a 'code of student conduct' and is determined by the IEP team to be a manifestation of the student's disability.
3. When a student is removed from his/her current placement as a result of weapon possession, and/or illegal drug possession/use, and/or serious bodily injury.
4. When the student is removed from his/her placement for more than 10 consecutive or 15 cumulative school days and the behavior is determined not to be related to his/her disability.
5. When the school contacts law enforcement.
6. Whenever the IEP team (1) determines that a student's behavior is interfering with his/her learning or the learning of others, and (2) requires additional information to provide appropriate educational programming.

The ultimate goal of an FBA is to develop a testable hypothesis. The hypothesis is an educated guess based on measurable and observational data, which leads a school team to identify the function of the behavior of concern. The information gathered through the FBA process identifies the situations or circumstances when the student engages or does not engage in a target behavior, and identifies the consequences that reinforce the student's engagement in that behavior. This identification process leads to the development of a testable hypothesis. A hypothesis derived from a completed FBA must provide (a) a precise definition of the target behavior, (b) the antecedent conditions under which the behavior does or does not occur, (c) the consequences that consistently maintain the behavior, and (d) the perceived function the behavior serves the student.

A completed FBA fills in the missing information of the hypothesis statement. When this occurs \_\_\_\_\_ (antecedent) , the student does (target behavior) \_\_\_\_\_ , in order to get or avoid (function) \_\_\_\_\_ .

There is no one way to complete an FBA; rather the goal of this process is to develop a testable hypothesis. Horner & Sugai (2007) define three levels of FBA as : Informal FBA, Indirect/Simple FBA, and Complex FBA (see below).

Informal	<ul style="list-style-type: none"> <li>● Archival Review</li> <li>● Problem-solving Meeting</li> </ul>
Indirect/Simple	<ul style="list-style-type: none"> <li>● Checklist</li> <li>● Functional Assessment Interview</li> <li>● Initial Line of Inquiry Brief Observation/Scatter Plot</li> </ul>
Complex	<ul style="list-style-type: none"> <li>● A-B-C Data</li> <li>● Structured, Direct Observation</li> </ul>

o An **Informal FBA** is conducted in school by staff who regularly interact with the student. It is conducted as part of school team problem-solving activities.

o An **Indirect/Simple FBA** is conducted by the school entity by individuals such as a school psychologist, special education teacher or guidance counselor in collaboration with the student team. This level of FBA typically involves interviews, checklists, and brief observation.

o The most intense level of FBA, known as a **Complex FBA**, is conducted by an IEP team or MDT team member of the school, district, or intermediate unit with the school-based student team. This level is the most time intensive, and involves interviews and extensive direct observations.

All three levels of FBA maintain the same goals:

Define the target behavior.

- Identify the events/antecedent triggers that reliably predict the occurrence or nonoccurrence of the target behavior.
- Identify the consequences that maintain the behavior.
- Identify setting events that increase the likelihood of the occurrence of the targeted behavior

### **Permission to Complete an FBA:**

The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a positive behavior support plan (PBSP).

**Consistent with 34 CFR §300.300 (a) and (c), parental consent is required for an FBA to be conducted as part of the initial evaluation or a reevaluation, or to be completed separate of an evaluation/re-evaluation.**

PaTTAN has developed an array of resources to assist MDT and IEP teams with this process. The following links are these resources:

### **Functional Behavior Assessment**

<https://www.pattan.net/Publications/Functional-Behavioral-Assessment>

School-wide Positive Behavior Supports (SWPBS) is a proactive approach to discipline in schools that promotes positive student behavior and increased student learning. Refer to the web address below for more information.

**\*\*An FBA is required for suspension of more than 10 consecutive days or more than 15 cumulative school days or when expulsion is being considered.**

### **Positive Behavior Support Plan**

A Positive Behavior Support Plan can be used as a proactive action plan to address behavior(s) that are impeding learning of the student or others. PBSPs are appropriate for all students. If developed for a student with an IEP, this becomes a part of IEP. The PBSP includes positive behavioral interventions, strategies and supports. Behavior Support Plans should focus on understanding 'why' the behavior occurred (i.e. 'the function' or 'communicative intent') then focus on teaching an alternative behavior that meets the student's need in a more acceptable way. This includes making instructional and environmental changes, providing reinforcement, reactive strategies, and effective communication.

Sample PBSP: <https://www.pattan.net/Publications/Annotated-Positive-Behavior-Support-Plan>

### **Members of Positive Behavior Support Team**

The members of the Positive Behavior Support Team will depend upon the specific needs of the student in question. In most cases the team may consist of the same members as required and outlined for members of an IEP team. In addition, other experts may be part of the team.

### **Positive Behavior Support Plan Phases [PBSP]:**

Developing a PBSP is a process. For the process to be successful, several steps must occur. These steps are as follows:

#### **Address the Problem Behavior**

- Teacher/staff member makes personal contact with parent/guardian to establish a working relationship, discuss concerns and brainstorm possible solutions
- School and classroom interventions are implemented and data collection on outcomes begins
- If classroom interventions are unsuccessful, teacher informs other professionals that this student exhibits behavior that is interfering with the learning of student and/or peers

### **Understanding the Problem Behavior/ Conducting the FBA**

- Team professionals (parents, teachers, counselor, administrator, psychologist, program specialist, language/speech specialist, nurse, etc.) consult to understand the cause of the misbehavior and brainstorm solutions
- Conduct the appropriate level FBA

### **Developing a Positive Behavior Support Plan (PBSP)**

- The Positive Behavior Support Plan Team (If the student has an IEP, this is an IEP team function) meets to formally discuss and strategize on:
  - **THE RESULTS OF THE FBA**
  - Contributing environmental factors
  - Functional factors (why the student is misbehaving)
  - A formal plan of action, the PBSP, is developed with behavior goals developed. Roles/responsibilities are assigned.
  - Many people can be designated on the PBSP.
  - A system of communication between the involved parties is formalized

### **Implementing the Behavior Support Plan**

- The environment and/or curriculum is changed to support the identified replacement behavior(s) AND general positive behaviors
- New appropriate behaviors are taught and reinforced
- Goal(s) acquisition is continuously monitored as specified
- The communication plan to progress monitor the interventions is followed

### **Monitoring/Evaluating the Plan**

- Team members monitor the success of the plan and document progress
- The team re-convenes to review progress, as appropriate If unsuccessful, team plans next steps (revise, redo, assess, etc.)

## **SECTION 5**

### **THE USE OF AND REPORTING OF PHYSICAL RESTRAINTS**

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#### **Overview of Physical Restraint:**

22 Pa. Code Chapter 14 and 711 provides guidance on physical restraints. The regulations state **that restraints are only to be considered as a measure of last resort**, only after other less restrictive measures have been used, and the use of **prone restraints is prohibited in PA educational settings**. Prone restraints are those in which a student is held face down on the floor.

#### **A Restraint defined in Chapter 14 and 711 indicates:**

A restraint is the application of physical force, with or without the use of any device, for the purpose of restraining the free movement of a student's body.

The term does not include briefly holding, without force, a student to calm or comfort him, guiding a student to an appropriate activity, or holding a student's hand to safely escort him/her from one area to another. The term does not include hand-over-hand assistance with feeding or task completion and techniques prescribed by a qualified medical professional for reasons of safety or for therapeutic or medical treatment, as agreed to by the student's parents and specified in the IEP.

Devices used for physical or occupational therapy, seatbelts in wheelchairs or on toilets used for balance and safety, safety harnesses in buses, and functional positioning devices are examples of mechanical restraints which are excluded from this definition.

Restraints to control acute or episodic aggressive or self-injurious behavior may be used only when the student is acting in a manner as to be a clear and present danger to himself/herself, to other students, or to employees, and only when less restrictive measures and techniques have proven to be or are less effective.

#### **The regulations specify that AVERSIVE TECHNIQUES ARE PROHIBITED. These are:**

- Corporal punishment
- Punishment for a manifestation of disability
- Locked rooms, boxes, or other structures or spaces from which the student cannot readily exit
- Noxious substance
- Deprivation of basic human rights, such as withholding meals, water or fresh air
- Suspension constituting a pattern
- Treatment of a demeaning nature
- Electric shock



### **Requirements When Restraint Used:**

The school must notify the parent of the use of restraint to control the behavior of a student. The Bureau of Special Education recommends this notification be within one school day of the restraint. Additionally, there needs to be an IEP team meeting within 10 school days of the inappropriate behavior causing the use of restraints.

Restraints that result in injury to the student must be reported to the parent(s) as per 22 PA Code § 10.25. Notification to parents/guardians:

(a) A school entity shall immediately notify, as soon as practicable, the parent or guardian of a victim or suspect directly involved in an incident listed in section 1303-A(b)(4.1) or (4.2) of the Safe Schools Act (24 P. S. § 13-1303-A(b)(4.1) and (4.2)). In making the notification, the school entity shall inform the parent or guardian as to whether the local police department having jurisdiction over property of the school entity has been, or may be, notified of the incident.

(b) A school entity shall document attempts made to reach the parent or guardian of a victim or suspect directly involved in an incident listed in Section 1303-A(b)(4.1) or (4.2) of the Safe Schools Act.

In addition, PDE recommends that any restraint that results in a serious injury to a student, staff person, or both be reported via email to the RISC coordinator at the BSE within 48 hours. The restraint data is reviewed on an ongoing basis at the BSE in addition to reviews conducted during compliance monitoring conducted by PDE.

The only reason for an IEP meeting to not take place following a restraint, is if the parent, after written notice, agrees in writing to waive the meeting. When an IEP meeting occurs, the team shall consider whether the student or eligible young child needs a functional behavioral assessment, reevaluation, a new or revised positive behavior support plan, or a change of placement to address the inappropriate behavior. The outcome of this meeting must be documented.

### **Restraint Contained in IEP**

The use of restraints may be included in a student's IEP ONLY if the following conditions apply:

- The restraint is utilized with specific component elements of positive behavior support.
- The restraint is used in conjunction with the teaching of socially acceptable alternative skills to replace problem behavior.
- Staff is authorized to use the procedure and have received the staff training required. There is a plan in place for eliminating the use of restraints through the application of positive behavior support.
- The use of restraints may not be included in the IEP for the convenience of staff, as a substitute for an educational program, or employed as punishment.

## Reporting of Restraints

Chapter 14 and 711 requires reporting of restraints in the Commonwealth. The reporting system developed by the Pennsylvania Department of Education is known as RISC (Restraint Information System of Collection). Anytime a restraint is used, it **must be reported** to PDE via RISC. It is also the responsibility of the **home school district or charter school** to report all incidents of restraints, even for those students attending an Approved Private School or out of district placement.

**LEAs shall collect and report data on the use of restraints as prescribed by the Secretary of Education. A physical restraint as defined above must be reported regardless of the length of time used, the role of the adult performing the restraint, or the employer of that adult. The LEA must report the use of restraints within 30 days to the Pennsylvania Department of Education (PDE) through the Restraint Information System of Collection (RISC), a secure website. PDE recommends that all LEAs designate a person who will be responsible for reporting restraints to the RISC website in a timely manner.**

**If a school district does not have any restraints within a school year, this also must be reported.**

The web-based system for reporting all restraints of special education students (RISC) is located at <https://apps.leadervservices.com/risc>.

This system is only accessible to LEA designated individuals. Each district has a mechanism to conduct this function. However, it is important staff understand all of the elements that are required to be reported.

## Monitoring of Restraint Tracking

Each time a restraint is entered into RISC, the Bureau of Special Education (BSE) staff is notified. A person from the Bureau reviews the data within ten working days of recording. If BSE has questions, the contact person for the school entity will be notified.

## **SECTION 6**

### **SUPPLEMENTARY AIDS AND SERVICES**

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IDEA {§ 300.42} defines supplementary aids and services to mean aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate. The purpose of providing supplementary aids and services is to support students with disabilities as active participants with nondisabled peers as well as to enable their access to the general curriculum. Supplementary aids and services include modification to the general curriculum.

Supplementary aids and services must be available to all students who need them, designed to provide meaningful educational benefit, and provided in a manner that avoids stigmatizing students. A framework for considering the full range of supplementary aids and services can be found on a publication titled, 'Supplementary Aids and Services Fact Sheet' available on the PaTTAN website: <https://www.pattan.net/Publications/Supplementary-Aids-and-Services>. This framework includes four categories of supplementary aids and services (collaborative, instructional, physical, and social-behavioral).

PaTTAN has developed the following grid to provide an overview of these supports:

<p><b>Collaborative</b></p> <p>Adults working together to support students</p>	<ul style="list-style-type: none"> <li>● Scheduled time for co-planning and team meetings</li> <li>● Instructional arrangements that support collaboration (e.g., co-teaching, paraeducator support)</li> <li>● Professional development related to collaboration</li> <li>● Coaching and guided support for team members in the use of assistive technology for an individual student</li> <li>● Scheduled opportunities for parental collaboration All school personnel collaborate in the development and delivery of SAS</li> </ul>
<p><b>Instructional</b></p> <p>Development and delivery of instruction that addresses diverse learning needs</p>	<ul style="list-style-type: none"> <li>● Providing modified curricular goals</li> <li>● Providing alternate ways for students to demonstrate learning</li> <li>● Providing test modification</li> <li>● Providing alternate materials and/or assistive technology (e.g., materials on tape, transcribe text into Braille, large print, alternate computer access)</li> <li>● Providing instruction on functional skills in the context of the typical routines in the regular classroom</li> <li>● Changing method of presentation Using reader services</li> <li>● Providing research-based supplementary materials</li> <li>● Providing instructional adaptations (e.g., pre-teaching, repeating directions, extra examples and non-examples, providing visual cues, using scaffolding to plan for written work, providing guided notes)</li> </ul>
<p><b>Physical</b></p> <p>Adaptations and modifications to the physical environment</p>	<ul style="list-style-type: none"> <li>● Furniture arrangement in environments Specific seating arrangements Individualized desk, chair, etc.</li> <li>● Adaptive equipment</li> <li>● Adjustments to sensory input (e.g.,</li> </ul>

	<p>light, sound)</p> <ul style="list-style-type: none"> <li>● Environmental Aids (e.g., classroom acoustics, hearing, ventilation)</li> <li>● Structural Aids (e.g., wheelchair accessibility, trays, grab bars)</li> </ul>
<p><b>Social-Behavioral</b> Supports and services to increase appropriate behavior and reduce disruptive or interfering behavior</p>	<ul style="list-style-type: none"> <li>● Social skills instruction</li> <li>● Counseling supports</li> <li>● Peer supports (e.g., facilitating friendships) Individualized behavior support plans Modification of rules and expectations Cooperative learning strategies</li> </ul>

**\*\*The IEP team determines supplementary aids and services necessary for each child to receive specially designed instruction in the least restrictive environment.**

### **Adaptations [Accommodations or Modifications]**

There are many adaptations an IEP team can use when developing programs for students with disabilities. The following are types of adaptations a team might consider when developing an individualized program for a student:

**Curricular Adaptations-** changes in educational environments that allow students equal opportunity to obtain access, results, benefits, and levels of achievement. These adaptations consist of both **accommodations and modifications**. These changes make learning – or work – more manageable for the individual. Some curricular adaptations do not fundamentally alter or lower standards or expectations in either the instructional or assessment phases of a course of study and can be designated as 'accommodations.' These accommodations provide access to participate in the Least Restrictive Environment (LRE) and an opportunity to demonstrate mastery of performance standards.

Some adaptations **do** alter or lower standards or expectations and can be termed '**modifications**'. These modifications, although providing access, will necessitate careful selection of assessment components to achieve accountability for performance.

**Accommodations** are adaptations which change course content, teaching strategies, standards, test presentation, location, timing, scheduling, expectations, student responses, environmental structuring, and/or other attributes which provide access for a student with a disability to participate in a course/standard/test, and which **DO NOT fundamentally alter or lower the standard or expectations**.

**Modifications** are changes in course content, teaching strategies, standards, test presentation, location, timing, scheduling, expectations, student responses, environmental structuring, and/or

other attributes which provide access for a student with a disability to participate in a course/standard/test, and which **DO fundamentally alter or lower the standard or expectations**.

**It is important to note that accommodations and modifications are both considered adaptations. *The difference is that accommodations do not alter expectations of students, while modifications DO alter expectations of students.***

**Implementation of Adaptations:**

*\*All educational personnel (including regular education and specialty teachers) are responsible for providing adaptations or accommodations and modifications in the general education classroom in accordance with a student's IEP.*

**The Supplementary Aids and Services (SaS) Consideration Toolkit**

PaTTAN developed the SaS Toolkit to assist IEP teams determine necessary supplementary aids and services for students with significant educational challenges.

<https://www.pattan.net/Supports/Inclusive-Practices/Supplementary-Aids-and-Services-Consideration-Tool>

**SECTION 7  
EXTENDED SCHOOL YEAR (ESY)**

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**TIMELINE FOR ESY ELIGIBILITY DETERMINATION**

- **September – February: Gather information regarding student progress on all IEP goals (especially after breaks in the school schedule).**
- **Prior to February 28th:**
  - a. **Make the determination regarding ESY eligibility (Can be done at annual IEP meeting held from Aug.-Feb., if there is enough data to determine eligibility at that time)**
  - b. **Notify LEA Admin. of determination**
  - c. **Once LEA Admin. approves notify parent to gain consent.**
  - d. **Revise IEP to add esy eligibility (if not done as part of a new annual IEP**
- **Prior to March 31st: Issue a Notice of Recommended Educational Placement (NOREP) indicating ESY eligibility, if eligibility was added via an IEP revision, and not included as part of an annual IEP meeting**

**ESY CRITERIA**

*(Note: "Skills and behaviors" must be related to IEP goals)*

- Will the student lose skills or behaviors that they have been taught during program breaks?
- Will the student take a long time to "catch back up" on lost skills or behaviors after a break?
- Is it unlikely that the student will maintain learned skills and/or behaviors due to patterns of difficulties with losing skills and catching up?
- Will a break substantially reduce a student's chance of EVER learning a critical life skill or behavior?
- Is the student at a critical stage for mastering a skill related to IEP goals of self-sufficiency and independence from caregivers?
- Will repeated breaks in education program result in the student withdrawing from learning?
- Does the student have a severe disability, such as autism, intellectual disability, degenerative impairments with mental involvement and/or multiple disabilities?

*Note: Students who have a severe disability as listed above are considered to be part of the "target group" for ESY consideration.*

## **ESY Overview**

Extended School Year (ESY) services are special education and related services provided to students with disabilities beyond the regular school year. IDEA requires schools to provide extended school year services if a student needs these services to receive a free appropriate public education (FAPE). In some cases, interruptions in the school schedule, such as summer break, will result in students with disabilities to lose many of their basic skills or take a long time to get those skills back once school begins again. ESY services are provided during breaks in the educational schedule to prevent this loss.

Extended School Year is not day care or respite services. ESY is not a summer recreation program or other programs or services which are not required to ensure the provision of a free, appropriate public education (FAPE) to a student – even if they provide some educational benefit.

## **Determination of ESY Eligibility**

An IEP team determines if a student with a disability qualifies for ESY. One issue discussed and decided upon at the IEP meeting is whether or not the student needs ESY services as part of the special education program. Extended School Year must be considered each year for **every student** with a disability at the IEP meeting. However, there are certain groups of students that have specific timelines associated with when the IEP must make a termination for ESY. These timelines came about from the legal case titled *Armstrong v. Kline*. The outcome of this case requires IEP teams of students identified with autism, serious emotional disturbance, intellectual disabilities, degenerative impairments with mental involvement, and severe multiple disabilities to determine eligibility for ESY no later than **February 28** of each school year. For students in this target group, the Notice of Recommended Educational Placement (NOREP) containing the ESY decision is to be issued to parents no later than **March 31**. Timelines for other students must allow for parents to have sufficient opportunity to exercise due process rights if they disagree with the IEP team recommendation for ESY.

## **ESY Decision**

The IEP team makes its decision about providing ESY services by looking at information about the student's performance that has been gathered all year. Some reliable sources to help the IEP team determine this need consist of information regarding a student's educational needs, propensity to progress, recoupment potential and year-to-year progress. This may include the following:

- 1) Progress on goals in consecutive IEPs.



- 2) Progress reports maintained by educators, therapists and others having direct contact with the student before and after interruptions in the education program.
- 3) Reports by parents of negative changes in adaptive behaviors or in other skill areas.
- 4) Medical or other agency reports indicating degenerative-type difficulties, which become exacerbated during breaks in educational services.

Some of this information measures student achievement, **before and after** breaks from school. The team can also gather information from teachers' and parents' observations of the student's behavior and skills **before and after** breaks. Medical or other agency reports can also be accessed. The following questions should guide the team's decision.

1. Will the student regress (revert to a lower level of functioning) in skills or behaviors as a result of an interruption in educational programming?
2. Will the student take a long time to recoup (recover) the skills or behavior patterns that were lost during a break in educational programming?
3. Will a pattern of difficulties with regression and recoupment make it unlikely that a student will maintain the skills and behaviors relevant to IEP goals and objectives?
4. Will a lapse in services substantially reduce a student's chances of ever learning a critical like skill or behavior related to the IEP?
5. Is the student at a crucial stage in mastering a life skill that is related to the IEP goals of self-sufficiency and independence from caregivers?
6. Does the student have a severe disability such as autism/pervasive developmental disorder, a serious emotional disturbance, severe intellectual disabilities, degenerative impairments with mental involvement or severe multiple disabilities?

**No one factor, however, can be used to determine eligibility for ESY services.**

### **Services for Extended School Year**

The IEP team will determine which services and how much of these services will be provided during the extended school year. The team may decide that the student will continue all the services received during the regular school year, or it may decide that the student will only receive a portion of services or one specific service. This decision is based on the need of each student. The IEP team determines where ESY will be provided.

It can be provided at many different places, like in school or at a job site. It is always provided in the least restrictive environment (LRE) that is appropriate for the student. This means that the student with disabilities is placed in the situation that allows opportunities to be with students who are not disabled. However, the school district, IU, or charter school is not required to assemble non-disabled students just to make the ESY environment less restrictive.

### **ESY & NOREP**

**LEA notice to the parent concerning ESY eligibility or ineligibility must be by NOREP. The NOREP only needs to be issued if the LEA is:**

- Proposing to add ESY services to an IEP that previously did not have it.

- Proposing to delete the provision of ESY services from an IEP.
- Refusing to initiate the provision of ESY services requested by the parent.
- Proposing or refusing to change the provision of the ESY program.

**When ESY services are offered by the LEA, the IEP that accompanies the NOREP must contain the following:**

- Description of the type and amount of ESY service;
- Projected beginning dates and anticipated duration of service;
- Goals; Frequency; Location.

Of course, as with all IEP team decisions, the ESY components of the IEP must be individualized to meet specific student needs and must be developed with the participation of the parents at an IEP team meeting.

**SECTION 8  
DISCIPLINE AND MANIFESTATION DETERMINATION**

**DISCIPLINE FOR STUDENTS WITH IEPs:**

Pennsylvania	Federal, or National
<p><b>CORPORAL PUNISHMENT is Prohibited</b></p>	<ul style="list-style-type: none"> <li>● Not a violation of the Constitution unless shockingly excessive</li> <li>● Possible consequences of state tort liability and teacher termination</li> </ul>
<p><b>PHYSICAL RESTRAINT (Requires prior parental consent)</b></p> <ul style="list-style-type: none"> <li>● Allowed only when the student is clear &amp; present danger to self or others &amp; when less restrictive measures, including de-escalation techniques, have proven to be less effective</li> <li>● Requires timely written notice &amp; IEP meeting within 10 school days unless written waiver by the parents.</li> <li>● Allowed in IEP only upon specified conditions, including staff training and positive behavior support</li> <li>● Requires PDE-prescribed data collection and reporting for cyclical compliance monitoring</li> <li>● Prone position restraint (i.e., student held down facing the floor) is prohibited</li> </ul>	<ul style="list-style-type: none"> <li>● Not a violation of the Constitution unless shockingly excessive or gross departure from professional norms</li> </ul>
<p><b>MECHANICAL RESTRAINT</b></p> <ul style="list-style-type: none"> <li>● Allowed only when in IEP agreed to by the parents <b>and</b> as determined by a qualified medical professional</li> <li>● May not be in prone position</li> </ul>	<ul style="list-style-type: none"> <li>● Not a violation of the IDEA where within limitation of the IEP</li> </ul>
<p><b>TIME-OUT</b></p> <ul style="list-style-type: none"> <li>● Prohibited if in locked structures or in 'spaces from which the student cannot readily exit'</li> </ul>	<ul style="list-style-type: none"> <li>● Possible violation of the Constitution where shockingly excessive</li> <li>● Not a violation of the IDEA where in accordance with the IEP or otherwise accepted limits</li> </ul>
<p><b>OTHER</b> Requires positive behavior support program (including a preceding functional behavioral assessment) in the IEP (1) when an intervention is needed to address problem, learning-interfering behavior, and (2) after referral to law enforcement authorities. Also prohibits other aversive techniques such as:</p> <ul style="list-style-type: none"> <li>● Punishment for a manifestation of the student's disability</li> <li>● Noxious substances</li> <li>● Withholding meals, water, air, or other basic human rights 'Treatment of a demeaning nature'</li> <li>● Methods implemented by untrained personnel or which have not been outlined in the district's plan</li> <li>● Requires school entity policy and procedures on behavior support services, including training in the use of positive behavior supports</li> </ul>	<ul style="list-style-type: none"> <li>● IDEA requires the IEP team to consider 'positive behavioral interventions and supports, and other strategies' to address behavior that impedes the student's learning or that of others</li> <li>● IDEA allows reporting a crime to law enforcement authorities for prosecution of the eligible student</li> </ul>

## **Discipline and Suspension Overview:**

Laws and regulations have established procedural requirements that all public school entities must follow when it comes to discipline and suspension of students with disabilities. These laws and regulations span the U.S. Constitution's due process clause in the Fourteenth Amendment (**interpreted by the U. S. Supreme Court in Goss v. Lopez**), IDEA, PDE Chapter 14 and 711, and PDE Chapter 12. For the purposes of this manual, the focus will be on discipline and suspension for students with disabilities. In addition to this section, the school should also be familiar with the school entity's policy that may provide further procedural requirements.

The following are the legal requirements for all students regarding suspensions. More information can be obtained by reviewing IDEA, Chapter 14 and 711, and Chapter 12 of the Pennsylvania School Code:

<https://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/022/022toc.html&d=reduce>

### **In-School Suspension (ISS):**

**Students Without Disabilities:** Give the student prior oral notice and an opportunity to respond plus:

- Notify the parents or guardian within a reasonable time afterwards
- Make provision for the student's education during the ISS
- **Informal Hearing:** If ISS exceeds 10 days, provide an informal hearing before the 11th day. For the **informal hearing**, the administration must provide notification to the parents and the student that includes the reasons for the suspension and the time and place of an informal hearing sufficiently in advance, but within the first 5 days, of the suspension. Provide informal hearing with appropriate school officials, where a student has the right to question witnesses present, to speak, and to produce his own witnesses.

**Student with Disabilities:** Give the student prior oral notice and an opportunity to respond, and notify the parents or guardian and the Supervisor of Special Education, as soon as possible.

**Critical Note:** If instruction is not continued during the ISS in accordance with the student's IEP, the ISS might count towards a formal change of placement, which would require full special education procedures, including a Notice of Recommended Educational Placement (NOREP) and the right to a hearing. It is also a denial of FAPE. The Supervisor of Special Education can help determine if ISS would constitute a change in placement, and whether additional due process rights are required.

### **Suspension of 1 to 3 Consecutive School Days:**

**Students Without Disabilities:** Give oral notice to the student and an opportunity to respond prior to the suspension. The **Exception-** When it is clear the student poses a threat to the health, safety, or welfare of the school community, this informal notice and hearing may be delayed until as soon as possible afterwards.

- Immediately notify the parents and the other school district officials as required in writing.
- Give the student the right and responsibility to make up missed work and exams.

**Student with Disabilities:** Use the same 1-3 day suspension procedures as for students without disabilities. **If instruction is not continued during the suspension in accordance with the student's IEP, the suspension could be considered a denial of FAPE.** The Supervisor of Special Education can help determine if the suspension would constitute a change in placement and whether additional due process rights are required.

**Student with Disabilities Diagnosed with intellectual disabilities:** This step is a **formal change in placement**, which requires full special education procedures, including a NOREP and the right to a hearing. **Exception:** Unless the student's actions involve weapons, illegal drugs, or infliction of 60 serious bodily injuries. If this occurs, **immediately contact the Supervisor of Special Education.**

#### **Suspension of 4 to 10 Consecutive School Days:**

##### **Students Without Disabilities:**

Give oral notice to the student and an opportunity to respond prior to the suspension. The Exception- When it is clear the student poses a threat to the health, safety, or welfare of the school community, this informal notice and hearing may be delayed until as soon as possible afterwards. In addition:

- Provide written notification to the parents and the student that includes the reasons for the suspension and the time and place of an informal hearing sufficiently in advance, but within the **first 5 days of the suspension.**
- Provide informal hearing with appropriate school officials, where the student has the right to question witnesses present, to speak, and to produce his own witnesses.
- Immediately notify other school district officials as required in writing

**Student with Disabilities:** Use the same **4-10 day suspension procedures** as for students without disabilities. **If instruction is not continued during the suspension in accordance with the student's IEP, the suspension could be considered a denial of FAPE.** The Supervisor of Special Education can help determine if suspensions would constitute a change in placement and therefore additional due process rights are required.

**Student with Disabilities Diagnosed with intellectual disabilities:** This step IS a **formal change in placement**, which requires full special education procedures, including a NOREP and the right to a hearing. Exception: Unless the student's actions involve weapons, illegal drugs, or infliction of serious bodily injury. If this occurs, **immediately contact the Supervisor of Special Education**

#### **Suspension of More than 10 Consecutive Days or More than 15 Cumulative School Days:**

If this step were to occur, it is common practice the school district solicitor will be involved.

### **Students Without Disabilities:**

The following are the various steps to implement after consultation with central administration and/or district solicitor:

Notify the parents by certified mail of the charges and **provide at least three days notice of the time and place of a formal hearing**, a copy of the expulsion policy, notice that legal counsel may represent the student, and the hearing procedures.

*Keep the student in his current class unless informal hearing determines that Student would constitute threat to health, safety, or welfare of to others, and It is not possible to hold the formal hearing within 10 days*

**Note:** If the student is determined to be a threat, the student may be excluded for more than 10 school days, but not more than 15 school days without a formal hearing, unless the parties agree and the student excluded shall be provided with alternative education.

3. Provide a formal hearing with the school board, its committee, or its hearing officer, where student has these rights:

- ❖ Choice of private or public hearing Right to counsel at own expense
- ❖ Requirement that attorney prosecuting the student be separate from and Not subordinate to the attorney advising the board
- ❖ Names of adverse witnesses and copies of their statements or affidavits
- ❖ Right to confront and cross examine these witnesses
- ❖ Right to testify and to present his own witnesses
- ❖ Record of the hearing Right to judicial appeal
- ❖ Make provision for compulsory school-age students if parents are unable to provide education.

### **Student with Disabilities:**

Have the specified team, including the parents, determine within the 10 school day period whether the misconduct is a manifestation of the disability (see section in this manual on manifestation determination). If the team determines that the misconduct is not a manifestation of the student's disability, the district may either use the same disciplinary procedure as for students without disabilities, except that it must continue to provide FAPE, or implement an Interim Alternative Education Setting. If the team determines that the misconduct is a manifestation of the student's disability, IEP team must conduct a Functional Behavior Assessment (FBA) and develop a Positive Behavior Support Plan. If the student has an IEP that includes a Functional Behavior Assessment and Positive Behavior Support Plan, revise if needed and do one of the following:

- Return the student to the current placement
- Move the student to a new placement (with signed NOREP)

- Unilaterally implement Interim Alternative Education Setting if weapons, illegal drugs, or infliction of serious bodily injury are present
- Arrange for a due process hearing or parental agreement (with signed NOREP) to place student in an interim alternative education setting while a reevaluation is conducted.

**Student with Disabilities Diagnosed with intellectual disabilities:** This step IS a **formal change in placement**, which requires full special education procedures, including a NOREP and the right to a hearing. **Immediately contact the Supervisor of Special Education.**

### **Manifestation Determination**

A Manifestation Determination is a process, required by the Individuals with Disabilities Education Act (IDEA 2004), which is conducted when considering the exclusion of a student with a disability that constitutes a change of placement.

**STATUTORY REQUIREMENTS:** A manifestation determination must be conducted when a disciplinary change of placement occurs. Disciplinary change of placement occurs when a student with a disability, because of a violation of the school code of conduct, is removed from his/her current educational setting for:

- ❖ More than 10 school days consecutively, OR
- ❖ More than 15 school days cumulatively in a school year, OR
- ❖ When school days 11-15 constitute a pattern of exclusion, OR
- ❖ An exclusion of even one school day for a student with intellectual disabilities, OR
- ❖ Under the following circumstances, school personnel may unilaterally remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:
  1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a local educational agency (LEA);
  2. 2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an LEA; or
  3. 3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an LEA. In these circumstances, the LEA must notify the parent:

### **Manifestation Determination Process**

**Within 10 school days of the decision to change the student's placement, the LEA, parent, and relevant members of the IEP team conduct a review to decide if the behavior of concern is a manifestation of the student's disability.** The team must determine:

**1. Was the behavior caused by, or directly and substantially related to, the student's disability?**

**OR**

**2. Was the behavior a direct result of LEA's failure to implement the Individualized Education Program (IEP)?**

If the answer to either question is 'Yes,' the behavior **IS** a manifestation of the student's disability. The IEP Team must either:

1. Conduct a functional behavioral assessment (**FBA**), **unless the LEA had conducted a FBA** before the behavior that resulted in the change of placement occurred, and implement a positive behavior support plan (PBSP) for the child; or
2. If a PBSP has already been developed, review the **PBSP**, and modify it, as necessary, to address the behavior; and return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the PBSP. If the answer to both questions is 'No', the behavior **IS NOT** a manifestation of the student's disability. The student may be disciplined in the same manner as a student without a disability who has violated the same or similar code of conduct.

PaTTAN has developed a Manifestation Determination Worksheet for Teams to use. It can be found at: <https://www.pattan.net/Publications/Manifestation-Determination-Worksheet>

**What happens if the school decides that the student's conduct was NOT a manifestation of the disability, and the parent disagrees?**

If the school decides that the behavior was not a '**manifestation**' of the disability, it may discipline the student, including a change of placement. The school must give the family a Notice of Recommended Educational Placement/Prior Written Notice or NOREP/PWN that explains the change in placement. The school must include a copy of the 'Procedural Safeguard Notice (a document that explains students' and parents' legal rights) with the NOREP/PWN. The NOREP/PWN tells the family how the school or school district is proposing to discipline the student and why.

**Due Process:**

If the parents disagree with the manifestation determination, they may file a due process complaint. The Office for Dispute Resolution provides a Due Process Fact Sheet:

<https://odr-pa.org/wp-content/uploads/Due-Process-Fact-Sheet-English.pdf>

**Special Education Services in Alternative Education Settings:**



*Any student who is suspended has the right to make up the school work missed.* This state law applies even if the suspension is so short that it does not count as a 'change in placement.' If a school 'changes the placement' of a student with a disability, federal law requires the school to provide the student with a free and appropriate public education (FAPE).

When the school 'changes the placement' of a student for discipline reasons, it must hold an IEP meeting to schedule a functional behavior assessment for the student (if one has not already been done). This assessment should give the IEP Team information on the things that 'trigger' the student's misbehavior and give the Team suggestions on how to prevent the misbehavior. The IEP Team should also write or revise the student's behavior plan.

### **Discipline and Thought-To-Be Exceptional:**

The law says that a public school entity is considered to have 'knowledge' that the student has a disability in three situations:

- Prior to the incident, the parents had expressed a concern that the student needed special education in writing to the student's teacher or school administrator; or
- Prior to the incident, the parent had requested an evaluation; or
- Prior to the incident, the teacher or other school staff expressed specific concerns about the student's pattern of behavior to others, the principal, the director of special education or other supervisory personnel of the school.

If none of these rules apply to the situation, a student can be disciplined by the school under the rules that apply to students who do not have disabilities. **However**, if a parent asks for an evaluation while a student is being disciplined (for example, parent put in the request after the student was sent to an alternative school or expelled), the school must conduct the evaluation.

It is important to note that a school does not have to treat the student as eligible and follow the special education discipline rules if: (1) the parent has refused to allow the school to evaluate the student (2) the parent has refused special education services for the student, or (3) the school evaluated the student and concluded that the student did not have a disability.

### **Rules for Bus Suspension for Students with Disabilities:**

A proposed suspension from the school bus is also subject to the same guidelines for special education students, as a proposed for out-of-school or in-school suspension, if transportation is listed on the student's IEP as a related service. For example, if a student demonstrates behaviors of concern on the bus, the school may want to suspend the student from the bus for an extended period of time (example three weeks). If this is the case, AND bus transportation is listed as a related service on the student's IEP, it constitutes a 'change in placement' (since it is for more than **10 consecutive school days**). The school must follow the manifestation determination protocol.

**\*Reminder: even one day of school or bus exclusion is a 'change in placement' for a student with intellectual disabilities.**



## **SECTION 9 INDEPENDENT EDUCATION EVALUATION (IEE)**

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- ★ Neither IDEA or PDE Chapter 14 and 711 establish mandatory timelines when a school entity must respond to a parent request for an IEE.
- ★ A school entity cannot unreasonably delay a request for an IEE.
- ★ Best practice has established that a school entity should consider responding to a parent's request for an IEE within **10 school days**.

### **Overview**

An independent educational evaluation ('IEE') is an evaluation conducted by an independent qualified examiner (a person who does not work for the school district). A qualified examiner is defined as an individual who meets the same requirements as a school district employee. It is important that if a school is to consider the results of the independent evaluation, the person conducting the IEE must have the same 'credentials' as required by the school district or intermediate unit, and the evaluation meets the same criteria the school entity would use to evaluate students.

### **Parents Right to Request IEE**

Parents are always entitled to an IEE, [34 CER §300.502 (a)(1)]. However, parents are not always entitled to an IEE at public expense (i.e., paid for by the school district or LEA) [34 CER §300.502 (b)(1)-(5)].

The regulations state that the public agency is permitted to ask the parent what their reason is for rejecting the school's evaluation. However, the IDEA is also clear that parents are not required to provide an explanation, and reiterates that the school entities inquiry cannot unreasonably delay the decision to either request a hearing or agree to fund the IEE [34 CER §300.502 (b)(4)]. Since there is not a set period, it is very important to promptly respond to any request for an IEE at public expense, as a failure to do so (i.e., failure to request a timely hearing) could be interpreted by a hearing officer as a tacit strategy/attempt not to pay for the parents' IEE. A guiding best practice would suggest the school entity should act within 10 school days unless documentation shows a good effort has been attempted and a timeframe of 10 school days cannot be adhered to by the district or intermediate unit.

## **Procedures When Parent Requests IEE**

A parent needs to make the request in writing to the Supervisor of Special Education. The Supervisor of Special Education must review the request. The school entity must notify the parent indicating approval or denial of the request. **If the school entity denies the request for an IEE at public expense, the district must request a due process hearing.**

If the district or intermediate unit (for early intervention only) approves the request, the following guidelines are recommended to be followed:

**Completion of 'Release of Information' form(s):** Parent must sign for the release of information to share current evaluation report and IEP, if available with the Independent Evaluator. The release should also require the evaluator to release all information to the school district or intermediate unit.

### **Requirements of IEE**

The District or intermediate unit will require as part of the evaluation an observation of the student in the student's current educational setting, unless the student is not then in such a setting. The evaluator shall obtain information concerning the performance of the student directly from at least one current teacher of the student, unless the student does not have a current teacher.

### **The IEE Needs to Comply to the Following Guidelines:**

- (a) A clear explanation of the testing and assessment results;
- (b) A complete summary of all test scores, including, for all standardized testing administered, all applicable full scale or battery scores, domain or composite scores, and subtest scores reported in standard, scaled, or T-score format;
- (c) A complete summary of all information obtained or reviewed from sources other than testing conducted by the evaluator;
- (d) Specific recommendations for educational programming;
- (e) The evaluator must sign the report;
- (f) The complete report must be submitted to the District/Intermediate Unit concurrently with submission to the parent.
- (g) Administration of all testing and all assessment procedures should rule in or rule out the existence of disabilities defined in IDEA and Chapter 14 and 711. These disabilities include Traumatic Brain Injury, Hearing Impairment, Specific Learning Disability, Gifted without disability, intellectual disabilities, Orthopedic Impairment, Emotional Disturbance, Speech or Language Impairment, Visual Impairment, Multiple Disabilities, Autism, and Developmentally Delayed (early intervention only). Administration of assessments needs to be based on the reasonable suspicion of above stated disability(ies) expressed by staff, parents, and/or evaluator.

### **Timelines for IEE:**

**Neither IDEA nor Chapter 14 and 711 delineates a time frame when an IEE must be completed.**

### **Payment for IEE:**

After the school entity has approved the request, a letter should be sent to the parent. The contents of the letter should include:

- An assurance that the school district/intermediate unit will pay for an independent educational evaluation as long as the evaluation meets all of the requirements of an appropriate evaluation identified under section Procedures when Parents Requests IEE;
- A direction that the school district/intermediate unit shall not pay for the evaluation until it receives directly from the evaluator a complete copy of a report of that evaluation and determines that the evaluation meets all of the requirements of this procedure;
- A request that the parents consider accessing reimbursement for all or part of the evaluation from public or private sources of insurance or reimbursement. However, the district will make it understood to parents that any reimbursement not covered by such sources, will then be assumed by the district; Directions that the parent is responsible for arranging for the evaluation and for ensuring that the evaluator contacts the Office of Pupil Services/Special Education to arrange for payment of the evaluation.
- If the evaluation has already been conducted and paid for, the correspondence shall advise the parent that the school district/intermediate unit will not reimburse the parent for the reevaluation until it receives:
  - (1) A complete and unredacted copy of the report of the evaluation and determines that the evaluation meets all of the requirements of this procedure, and
  - (2) Documentation substantiating that the parents paid for or incurred the obligation to pay for the evaluation without reimbursement from a public or private source of insurance or reimbursement.

The Special Education Office shall send the correspondence to the parent by certified mail or by other independently verifiable means of conveyance and enclose a copy of school district/intermediate unit procedure as outlined in section 'Procedures When Parent Requests 'IEE.'

### **Allowable Number of IEEs**

Certainly the cost of going to hearing is a factor to consider whenever a district is deciding between requesting a hearing to defend its own evaluation or paying for an IEE. However, the IDEA regulations state that a parent is **only** entitled to one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. Obviously, the parent is free to obtain as many IEEs at their own expense as they wish. 34 CER §300.502 (b)(5).

### **Guidelines Once an IEE Received**

The school entity must consider the results of the IEE. Regardless of who funds the IEE, the district/intermediate unit or the parent, if the IEE is shared with the district, the district/intermediate unit must consider those results with respect to providing FAPE to the student [34 CER § 300.502 (c)(1)]. **It is important to remember, a school district's obligation is only to 'consider' the results of any IEE.** There is no requirement about how much weight the district must give the IEE or that the district must incorporate any of the IEE recommendations into the student's educational program. This is true even if the IEE was at public expense.

## SECTION 10 REVOCAION OF SPECIAL EDUCATION

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### REVOCAION OF SPECIAL EDUCATION TIMELINES

After the school receives a written request from a parent, the school district must issue a NOREP/PWR **within 10 calendar days**

Revocation of services will commence **on the 11th day**

#### Overview of Revocation

Revocation occurs any time subsequent to the initial provision of special education and related services, when a parent of a student revokes consent in writing for the continued provision of special education and related services. When this occurs, the school district....

- (i) Must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services. Written notice is defined as issuing of a NOREP for revocation;
- (ii) May not go to due process to maintain services to the student;
- (iii) May not continue to provide special education and related services to the student;
- (iv) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and
- (v) Is not required to convene an IEP Team meeting or develop an IEP under §300.320 and §300.324 for the student for further provision of special education and related services.

The regulation governing Revocation provides that a student who was previously identified by a school district for special education or related services under the IDEA/Chapter 14 and 711 may be withdrawn from services by his or her parent(s) at any time and for any reason, provided that such withdrawal is in writing.

### **Five points to remember about Revocation:**

- 1) **Revocation of consent must be in writing.** A parent may request his or her student's withdrawal orally or in writing. If a parent requests it orally, ask the parent to then put it in writing.
- 2) **Parents cannot revoke some service:** Revocation of consent requires the district to cease all special education and services. The parents cannot submit a revocation for some special education programs or services. Revocation is all or nothing.
- 3) **Districts may not invoke due process and/or mediation procedures to dispute the Parent's attempted revocation of consent:** Despite the fact that the best interests of the student presumably are not served by parents' unilateral withdrawal of their student from the receipt of special education, school districts may not challenge revocation through the Dispute Resolution process. This precludes districts from seeking a ruling that special education services must be provided to a student.
- 4) **FAPE and Service After Revocation:** After revocation, districts will not be bound to provide FAPE to the student. Once revocation of special education services has been properly affected by way of parental written consent and the issuance of a NOREP/PWN, school districts are no longer bound to provide a FAPE to that particular student. The student should be treated as a regular education student from that point forward.
- 5) **Discipline After Revocation of Consent Goes into Effect:** Regular discipline rules apply. The district would not be considered to have knowledge that the student is a student with a disability who needs special education and services and not required to determine whether the conduct was a manifestation of the student's disability before implementing regular discipline.

### **Records of Students When Parent Elects Revocation:**

#### **Districts will not have to remove references to special education services and eligibility from a withdrawn student's record.**

Parental withdrawal of a student from special education pursuant to this regulation does not require school districts to remove special education documentation from that student's record. The district should preserve these records. Parents who have realized that their student is not receiving the support and services that he or she needs may later have second thoughts, opting to bring 'child find' claims against the district. It is in those instances where it will be vital for districts to demonstrate that they properly identified and programmed for those students.



## **Procedure Required for Revocation**

The following are the district's requirements when revocation is requested:

1. Parents must submit a signed, dated, written request revoking consent for special education programs and services.
2. The district must issue prior written notice (NOREP/PWN) within a reasonable period of time. PaTTAN has provided an example NOREP to use for revocation of services. <https://www.pattan.net/Forms/Notice-Of-Recommended-Educational-PlacementPri-2?NodeId=1097943>
3. Reasonable notice is defined as ten calendar days.
4. The parents are informed that all special education programs and services will cease on the eleventh day from the receipt of the parents' revocation letter.

### **When Parents Disagree Regarding Revocation:**

If both parents have legal custody to make education decisions, either parent may revoke consent. According to the Office for Special Education Program (OSEP), United States Department of Education, one parent can submit a written revocation of consent to cease special education programs and services, even though the other parent disagrees. Even though both parents may have educational rights, one parent can stop education programs and services and the local education agency (LEA) must abide by that parent's wishes. The LEA would issue notice in accordance with 34 CFR 300.503 and cease providing special education programs and services. If subsequent to the revocation of consent by one parent, any request for an evaluation would be an initial evaluation. The LEA and the dissenting parent cannot use due process to stop the other parent's revocation of consent.

## **SECTION 11**

### **EXITING FROM SPECIAL EDUCATION SERVICES**

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The goal of a special education program should be to support a student appropriately so that the student's weaknesses can be remedied to the point where the student no longer needs special help. Some students with significant disabilities will always require specially designed instruction, but others may, at some point in their education, no longer require special education supports and services.

A student's IEP Team can decide that the student no longer requires special education services. For instance, a student who had been receiving services due to an emotional disability may have improved so much that the student no longer needs special supports in school. A student may be learning at or above grade level, be advanced on all PSSA subtests, and no longer requires special services (although it's important to note that a student is not ineligible for special education just because the student is passing from grade to grade).

A student becomes ineligible for special education if he/she graduates from high school or "ages out" (students with disabilities have the right to attend school and receive special services until the end of the school term in which they turn 21) – whichever comes first.

#### **Before a Student Can Exit Special Education Services**

The school must reevaluate the student before deciding that the student is no longer eligible for services. The school must then give the parent a Notice of Recommended Educational Placement/Prior Written Notice (NOREP/PWN) that explains why the student will no longer receive services and on what information the school based this decision. On the NOREP/PWN, the parent must check whether the parent agrees or disagrees with this decision. If the parent disagrees with the school's decision to remove the student from special education, the parent can ask for mediation or a special education hearing to resolve the dispute. If the parent does disagree and asks for mediation or a hearing, the student will remain in special education until the dispute is resolved.

## **Reevaluation Guidelines for Exiting Students**

The IEP team should develop referral questions to be answered to assist the team in determining if a student no longer requires special education supports and services. The following questions are some ideas the team can consider but it does not constitute an exhaustive list of ideas:

- What is the student's academic function compared to district grade level standards? Is the student functioning at grade level?
- What is the student's performance on PSSA and benchmark assessment of the school district?
- What do the district-based assessments tell the team about a student's academic performance compared to the student's peer group?
- Does the student's emotional functioning allow him/her to appropriately cope with emotions in a safe and appropriate manner?
- Is the student able to demonstrate appropriate behaviors in school as outlined by the school's code of conduct?
- Does the student manage his/her behaviors in an appropriate manner that does not interfere with other students?
- Does the student need related services and services to access the general education curriculum? (Identify related services)
- Does the student attend school on a regular basis and over a prolonged period of time (school year)?

## **Exiting Procedures from Special Education**

- 1) For a student who no longer needs specially designed instruction, a reevaluation is proposed by the IEP case manager, and a reevaluation is conducted.
- 2) The Reevaluation Report is prepared by the IEP case manager and/or school psychologist (or by a speech/language therapist for those students whose primary disability is Speech/Language Impairment).
- 3) The Reevaluation Report is provided to the parent/guardian **at least ten school days prior to the IEP meeting.**
- 4) The case manager completes the Invitation to Participate in the IEP Meeting and mails it to the student's parent/guardian. A copy of the Invitation Letter or e-mail notification is provided to all members of the IEP team (psychologist, counselor, regular education teacher(s), OT, PT, speech therapist, OVR, behavior special, I. U., Tech School, etc.). A copy of the Invitation Letter is made for the student's file to document the effort to invite the parent/guardian to the IEP meeting.  
\*Three attempts must be made.\*
- 5) The IEP meeting is held, at which time no IEP is prepared but an IEP meeting signature page is used to document attendance. A Chapter 15 Service Agreement (504 plan) for reasonable accommodations to regular education may be prepared by the IEP team, specifying any regular education accommodations that are proposed for the student, if necessary.
- 6) The parent/guardian is asked to sign a NOREP that includes a statement that the student is returning to regular education, as well as the rationale for the return to regular education only.
- 7) A copy of all completed special education documents is retained at the building level.
- 8) The information is recorded to ensure accurate information for Penn Data Special Education Child Count.

## **SECTION 12 PROCEDURAL SAFEGUARDS**

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**The Procedural Safeguards Notice** includes a full explanation of all the rights available to parents of a child with a disability ages 3-21 when their child has been referred for or is receiving special education services. This model form provides a format that LEAs may choose to use to provide information about procedural safeguards to parents. This revised Procedural Safeguards Notice includes a change in terminology that replaces the term “mental retardation” with the term “intellectual disability.” This change also aligns the Commonwealth’s special education regulations in Chapters 14 and 711 to the Individuals with Disabilities Education Act (IDEA) regulatory revisions resulting from Rosa’s Law.

The PA Procedural Safeguards Notice can be found on PATTAN’s website:

<https://www.pattan.net/Forms/The-Procedural-Safeguards-Notice>

### **Overview of the Office for Dispute Resolution (ODR)**

The Office for Dispute Resolution (ODR) is the agency in Pennsylvania that coordinates the administration of the statewide special education dispute resolution system. There are several official processes in place to assist when a dispute arises.

These are:

- IEP Facilitation
- Mediation
- Due Process Hearing

These processes are used to resolve disputes between a parent and the Local Education Agency (LEA) responsible for providing the student with an education (e.g., a school district, intermediate unit, charter school, or Department of Corrections). These disputes concern the identification, evaluation, educational placement, or the provision of a free appropriate public education (referred to as FAPE) for students with disabilities, students who are gifted, protected handicapped students, and students with disabilities.

**Below is the link used to file a complaint for school age students, Kindergarten through graduation:**

<https://odr-pa.org/parent-resources/state-complaint-process/>

The Complaint Form is used to submit a formal complaint to the Pennsylvania Department of Education, Bureau of Special Education (BSE) – Division of Compliance.

### **ODR Facilitation**

The Office for Dispute Resolution (ODR) is committed to seek out and offer varying alternative dispute resolution activities and options for constituents. ODR understands the importance of due process; however there are several steps that can be taken prior to filing for a due process hearing in an attempt to reach a resolution. The alternative dispute resolution options that ODR offers have shown to be successful in helping parties reach an agreement.

### **IEP Facilitation**

A voluntary process that can be used when all parties to an IEP meeting agree that the presence of a neutral third party would help facilitate communication and the successful drafting of the student's IEP.

### **Resolution Meeting**

A voluntary process during a Resolution Meeting where a trained facilitator works with both parties to resolve disagreements, which could eliminate the need to move forward with due process.

### **Due Process Hearing**

If a parent files for due process or discusses with a staff member of the school that they want to go to due process, the Special Education office needs to be contacted immediately.

Due process is a legal proceeding presided over by a hearing officer who makes determinations about a student's educational program. There are many legal requirements and timelines associated with this action. The oversight of this process will be out of the special education office. There are some specific requirements mandated once a due process request is initiated. Since there will be an attorney representing the school entity and most likely the parent, many of the mandated processes will be lead by counsel.

### **Timeline for Requesting Due Process**

The parent or LEA must request a due process hearing through the filing of a due process complaint which must allege a violation that occurred not more than two (2) years before the date the parent or the LEA knew or should have known about the alleged action that forms the basis of the due process complaint.

There are limited exceptions to this timeline. This timeline will not apply to the parent if the parent was prevented from filing a due process complaint requesting a hearing due to specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or if the LEA withheld information from the parent which was required to be provided to the parent.

### **Timeline for Completion of Due Process Hearing**

- Within **15 calendar days** of receiving notice of parent's due process complaint, and prior to initiation of a due process hearing the LEA must convene a resolution meeting with the parent and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the due process complaint (within 7 calendar days for expedited hearing).
  - The purpose of the resolution meeting is for the parents to discuss the due process complaint and supporting facts so the LEA has the opportunity to resolve the dispute. A resolution meeting gives the parents and the LEA a chance to work together to avoid a due process hearing. The parents and the LEA determine which members of the Individualized Education Program (IEP) team will attend the resolution meeting. Participants include the parents, the LEA representative who can make decisions on behalf of the school, and any IEP team member who has relevant information about the issues that are being discussed. School districts may not bring an attorney to the resolution meeting unless the parents bring an attorney.
- If the LEA has not resolved the due process complaint to the satisfaction of the parents within 30 calendar days of the receipt of the due process complaint, the due process hearing may occur (15 calendar days for expedited hearing).
- If the LEA resolves the due process complaint to the satisfaction of the parents within 30 calendar days of the receipt of the complaint, then the timelines end.

**The timeline for completion of due process hearings, once the applicable timelines commence, is forty five (45) days, unless the hearing officer grants specific extensions of time at the request of either party.**

\*In expedited cases involving discipline or extended school year (ESY) issues, these timelines do not apply. Expedited cases involving discipline must be concluded no less than thirty (30) school days after the due process complaint is filed. Expedited cases involving ESY must be concluded within thirty (30) calendar days after the due process complaint is filed.

### **Student Placement During Mediation or Due Process**

If parents or the school have requested mediation or a hearing, the student must “stay put” in his or her current program until the disagreement is resolved. That means that the school cannot change the program until the mediation and hearing have ended.

**A Due Process Fact Sheet can be found on ODR’s website: [https://odr-pa.org/wp-content/uploads/Due-Process-Fact-Sheet\\_English.pdf](https://odr-pa.org/wp-content/uploads/Due-Process-Fact-Sheet_English.pdf)**

## **SECTION 13**

### **TRANSITION FROM PRESCHOOL PROGRAMS TO SCHOOL AGED PROGRAMS**

The Bureau of Special Education (BSE) and the Bureau of Early Intervention Services (BEIS) intend to facilitate the smooth transition of preschool children from Early Intervention programs to the school district or charter school program, while respecting parental choices. This will require Preschool Early Intervention programs and school districts or charter schools to work cooperatively and be flexible in planning in order to accommodate the implementation of these procedures. To assist in this process, BSE and BEIS have developed standardized procedures and forms to be utilized by the Preschool Early Intervention programs and school districts or charter schools throughout the transition process.

While parents have the option of having their child remain in Early Intervention when their child is eligible for kindergarten, it is incumbent on the IEP team to fully inform the parents of the advantages of transitioning to school age programming with same age peers. In the event that the child will remain in Early Intervention an additional year, the child's evaluation must reflect that the team will be providing an additional year of Early Intervention at the request of the family.

22 Pa. Code Chapter 14.154(e) requires the IEPs of children in Early Intervention who are within one year of transition to a school age program, to include goals and objectives which address the transition process.

- By February 1, the Preschool Special Education programs should identify all children who are approaching age of K or grade 1, notify families that if the child is K eligible he/she can remain in EI for another year and about the transition process, convene a meeting (which must also be attended by a school district representative) and ascertain whether the family intends to enroll the child in the school district the following year.
- Notice of a Child's Transition to School Age Meeting (a required document) must be sent by the Intermediate Unit to parents no later than February 1. In addition, the Notice of Options for Your Child's Transition is included with the document.
- Transfer of Records – If a child is no longer eligible for preschool special education services, the student's records cannot be shared with school districts without parental consent (§301(14) of Act 212 of 1990). It is recommended that the records of children who will be transitioning to the local school district should be transferred from the Preschool Early Intervention program to the local school district or charter school at the time of the transition meeting or before, if a records release is signed. If a transition meeting is not held, the records should be transferred upon the child being registered with the local school district or charter school.
- This includes those children who are identified as eligible young children between February 1st and the end of the EI session prior to the start of a school year.
- The Preschool Early Intervention program must provide the parents with the appropriate Intent to Register form (Kindergarten eligible or Age of Beginner eligible). These forms



are available online: <https://www.pattan.net/Forms/INTENT-TO-REGISTER-Kindergarten-Age-Eligible>  
<https://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/Purdons%20Statutes/Attachment%203%20-%20Intent%20to%20Register%20for%20First%20Grade.pdf>

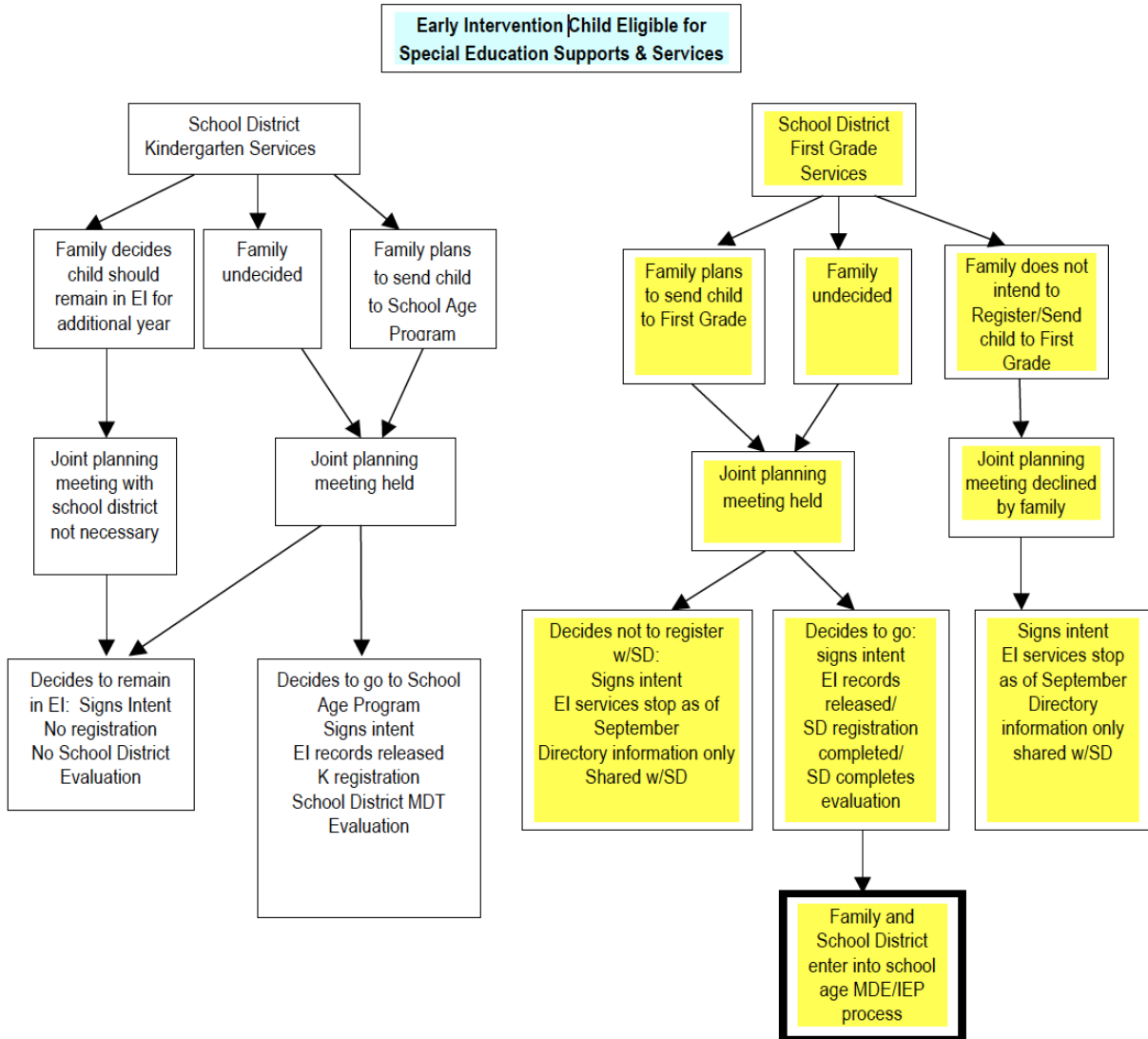
- The parents must indicate on the Intent to Register form whether or not they intend to register their child in the school district or charter school for the next school year.
- The school district or charter school's responsibilities for the transition process for the next school year commence with the receipt of the parents' signed Intent to Register form, if indeed the parents intend to register their child with the school district.
- During the transition meeting, if the parents intend to register their child with the school district or charter school, the Notice of Options For Your Child's Transition: <https://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/Purdons%20Statutes/Attachment%204%20-%20Notice%20of%20Transition%20Options.pdf> must be reviewed with parents by the school district or charter school. The following options should be considered by the parents and the school district team or charter school team:
  1. The parents and the school district or charter school can agree to adopt and implement the child's Preschool Early Intervention IEP for the new school year and, if so, the school district or charter school would then issue the Notice of Recommended Educational Placement (NOREP) indicating this recommendation.
  2. Parents and the school district or charter school can decide to adopt the Preschool EI IEP with revisions. The school district or charter school and parents would discuss the proposed revisions. The school district or charter school would then issue the revised IEP and NOREP indicating this recommendation.
  3. Parents and the school district or charter school will decide if a reevaluation is necessary. The school district or charter school may conduct a reevaluation consisting of a review of existing data and information prior to the development of an IEP. The district or charter school is not required to issue the *Permission to Reevaluate – Consent Form* to obtain parental consent prior to a reevaluation limited to a review of existing data. The school district or charter school will notify the parent in writing within a reasonable amount of time after receipt of the Intent to Register that a reevaluation, which will consist of a review of existing data and information will be conducted. The school district or charter school may notify the parent using a letter/notice developed by the school district or charter school. If the team is meeting to review existing evaluation data, the *Invitation to Participate in the IEP Team Meeting or Other Meeting* notice can be used, noting

that the meeting is to review data as part of a reevaluation. This review of existing data should commence within a reasonable amount of time after receipt of the Intent to Register. The *Reevaluation Report* will summarize the data reviewed during reevaluation, the decision about whether additional evaluation data are needed, and a determination about the child's continued eligibility for special education services.

4. If, through the review of existing evaluation data the IEP team as described above determines that additional data are needed, the school district and charter school will issue the *Permission to Reevaluate – Consent Form* to obtain parental consent to collect the additional data. Within 60 days of the date the school district or charter school receives parental consent (not including summer days) to collect additional data; the parent will receive a copy of the *Reevaluation Report*. The *Reevaluation Report* will summarize the data reviewed during reevaluation, the decision about whether additional evaluation data are needed, and make a determination about the child's continued eligibility for special education services.
  - Once school age eligibility is determined, the school district or charter school must develop an IEP, in accordance with timelines mandated in 22 Pa. Code Chapter 14.
  - School districts and the parent may agree to waive a required reevaluation that is allowed under 34 DFR Sec.300.303 (b)(2). The parent must be in agreement with the determination to waive the reevaluation, and parent signature is required on the *Agreement to Waive Reevaluation form*.

All children currently eligible for special education in Preschool Early Intervention and registered with the school district or charter school remain eligible for special education in their school districts or charter schools unless the school district, charter school or Preschool Early Intervention Program completes a reevaluation that determines the child is no longer eligible for special education. If no longer eligible for special education services, school district, charter school, or Preschool Early Intervention programs must issue a NOREP. If parents disagree with the IEP offered by their school districts or charter schools and initiate a due process hearing or both parties agree to mediation, the children who will transition into kindergarten or school age programs must continue to receive the services described in their preschool IEP (ensuring "status quo") pending completion of dispute resolution options of mediations or due process hearings

# Transition from Early Intervention to School-Aged Flow Chart



## **Education Acronyms**

AAC Augmentative/Alternative Communication  
ABA Applied Behavior Analysis  
ADA Americans With Disabilities Act  
ADD Attention Deficit Disorder  
ADHD Attention Deficit Hyperactivity Disorder  
AIM Accessible Instructional Materials  
ALD Assistive Listening Device  
APS Approved Private School  
ASD Autism Spectrum Disorder  
ASL American Sign Language  
AT Assistive Technology  
AVTS Area Vocational Technical School  
AYP Adequate Yearly Progress  
BEC Basic Education Circular  
BIP Behavior Intervention Plan  
BSE Bureau of Special Education  
CAO Chief Administrative Officer  
CART Computer Aided Realtime Translation  
CASSP Child & Adolescent Service System Program  
CAVP Corrective Action Verification Plan  
CBA Curriculum-Based Assessment  
CERC Corrections Education Records Center  
CFR Code of Federal Regulations  
CLD Cultural and Linguistic Diversity  
COP Communities of Practice  
CTE Career and Technical Education  
CTC Career and Technical Education Center  
DIBELS Dynamic Indicators of Basic Early Literacy Skills  
DPW Department of Public Welfare  
ED Emotional Disturbance  
EI Early Intervention  
EIPA Educational Interpreter Performance Assessment  
EITA Early Intervention Technical Assistance  
ELL English Language Learners  
EPSDT Early Periodic Screening, Diagnosis, and Treatment

ER Evaluation Report

ESEA Elementary and Secondary Education Act  
ESL English as a Second Language  
ESY Extended School Year  
FAPE Free Appropriate Public Education  
FBA Functional Behavioral Assessment  
FERPA Family Educational Rights and Privacy Act  
IAES Interim Alternative Educational Setting  
ICC Interagency Coordinating Council  
IDEA Individuals With Disabilities Education Act  
IEE Independent Education Evaluation  
IEP Individualized Education Program  
IFSP Individualized Family Service Plan  
LEA Local Educational Agency  
LEP Limited English Proficiency  
LICC Local Interagency Coordinating Council  
LRE Least Restrictive Environment  
LTCC Local Transition Coordinating Council  
LTF Local Task Force  
MA Medical Assistance  
MAWA Mutually Agreed Upon Written Arrangement  
MOU Memorandum of Understanding  
MR/DD Mental Retardation/Developmental Delay  
NCLB No Child Left Behind  
NOREP Notice of Recommended Educational Placement  
O & M Orientation & Mobility  
OCD Obsessive Compulsive Disorder  
OCDEL Office of Child Development and Early Learning  
OCR Obsessive Compulsive Disorder  
ODD Oppositional Defiant Disorder  
ODHH Office for the Deaf and Hard of Hearing  
ODR Office for Dispute Resolution  
OHI Other Health Impairment  
OI Orthopedic Impairment  
OSEP Office of Special Education Programs  
OT Occupational Therapy

OVR Office of Vocational Rehabilitation  
PASA Pennsylvania Alternate System of Assessment

PaTTAN Pennsylvania Training and Technical Assistance Network  
PDD Pervasive Developmental Disorder  
PDD-NOS Pervasive Developmental Disorder-Not Otherwise Specified  
PDE Pennsylvania Department of Education  
PSSA Pennsylvania System of School Assessment  
PSSA-M Pennsylvania System of School Assessment-Modified  
PT Physical Therapy  
PVAAS Pennsylvania Value Added Assessment System  
RAST Regional Assessment and Support Team  
RR Reevaluation Report  
RtII Response to Instruction and Intervention  
SAS Standards Aligned System  
SaS Supplementary Aids and Services  
SBBH School Based Behavioral Health  
SDI Specially Designed Instruction  
SEA State Educational Agency  
SEAP Special Education Advisory Panel  
SICC State Interagency Coordinating Council  
SLD Specific Learning Disability  
SLP Speech/Language Pathologist  
STL Short-Term Loan  
SWPBS Schoolwide Positive Behavior Supports  
TBI Traumatic Brain Injury  
TDD Telecommunication Device for the Deaf  
TSS Therapeutic Staff Support  
UDL Universal Design for Learning  
VI Visual Impairment

## **DISABILITY CATEGORIES**

IDEA lists 13 different disability categories under which school age students may be eligible for services.

The disability categories listed in IDEA are:

- Autism
- Deaf-Blindness
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disability
- Multiple Disabilities
- Ortopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment