



VIRGINIA  
LEGAL AID  
SOCIETY

## Special Education Rights

### How do I know if my child may need special education services?

- Your child is repeatedly getting in trouble at school or preschool;
- Your child can't make friends, doesn't get along with any teachers, is sad all the time, expresses his/her feelings and emotions inappropriately;
- Your child is unable to do or understand things as well as his/her friends;
- Your child is unable to do or understand things that his/her siblings did and understood at that age.

### How will special education services help my child?

The school must provide your child with his/her own education plan designed to meet his/her individual and unique needs and might include, for example:

- special transportation
- counseling
- job training
- physical therapy
- extended school year services (ESY) so that your child can continue to receive educational services over the summer
- continuing to educate your child even if s/he is suspended long-term or expelled from school
- evaluations
- accommodations in the classroom and for testing

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## **Who is eligible for special education services?**

Children **aged 0 through 21** who have been evaluated as having a disability covered under the IDEA are eligible for special education services:

- Autism
- Developmental delay (ages 2-8)
- Blindness
- Deafness
- Emotional disturbance
- Hearing impairment
- Mental retardation
- Multiple disabilities
- Orthopedic impairment
- Other health impairments including: limited strength, vitality or alertness due to chronic or acute health problems such as asthma, ADHD, diabetes, epilepsy, Tourette's Syndrome.
- Specific learning disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment.

## **How does my child obtain special education services?**

You can **request an evaluation** from the school - the request should be in writing and should be sent to the school principal. (Remember to keep a copy.)

Teachers, other school staff members or a child study committee (CSC) may refer the child for an evaluation. The school may request your permission to evaluate or provide services to the child, and you agree in writing. The CSC must make a decision within 10 days of that request.

If the committee decides not to evaluate, they must give you written notice within 10 days of the decision.

If the school division decides to evaluate and you consent, the school division has 65 business days to complete the evaluation. However, if the student is subject to disciplinary removal from school, such as long-term suspension or expulsion, the evaluation must be conducted on an *expedited* basis.

## **I got a letter asking to evaluate my kid for special ed. Do I have to let them?**

**No.** If you do not want your child evaluated, you must **tell the school in writing**. (Keep a copy.) However, if the child is suspended or expelled, no special education will be provided. By turning down an evaluation, you may be denying many free and helpful services for your child.

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**I think my child needs special education. I asked for an evaluation and the school said no. What should I do?**

You can have your child evaluated by someone outside the school system and the school has to pay for it. This outside evaluation is called an **Independent Educational Evaluation**, or IEE. If the school division disagrees with the request, it may initiate a due process hearing to defend its evaluation.

Reevaluations are required at least every 3 years, but may consist of a review of existing data. Reevaluations may occur more frequently at the request of a parent or teacher, but not more than once per year.

**What other alternatives do I have if I disagree with the school about special education issues?**

Disagreements with the school regarding special education issues can be resolved through four alternatives:

1. discussion with school officials
2. a mediation conference
3. a due process hearing
4. filing a signed, written complaint with the Virginia Department of Education.

**The school told me that my child is eligible for special education services. What happens now?**

Once your child is found eligible for special education services, an **Individualized Education Program (“IEP”)** will be developed by a team that includes school personnel and you, the parents or guardians.

**Do I have to go to that meeting alone?**

You have the **right to take a representative** with you to the meeting. This can be an acquaintance, a lawyer from Legal Aid, or a private lawyer.

**What does the IEP tell me?**

The IEP specifies:

- what services your child will receive,
- where your child will receive services (placement),
- when the services will begin,
- how long the services will last,
- how your child’s progress will be measured.

**What needs to be considered when developing the IEP?**

- strengths and weaknesses of the child
- parent’s concerns

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- evaluation results
- whether child needs additional assessments or evaluations
- child's performance on statewide and division-wide assessments
- strategies, interventions, supports to address behavior that impedes a child's learning or that of others
- language and communication needs of child
- whether the child needs assistive technology devices and services
- child's need for related services, including therapy, transportation, etc.
- child's interest in extracurricular activities and athletics

**If my child is qualified for Special Ed, where will he go to school?**

Children with disabilities have the right to be educated in the **least restrictive environment**.

This means that your child must be given the opportunity to be in a classroom with children who don't have disabilities in academic, non-academic, and extracurricular activities.

Schools must provide appropriate services to help your child be successful in regular classes.

**The teachers are not following the IEP, what can I do?**

All teachers and others providing services to the child should read the IEP and implement it as written. If the IEP is not being implemented, there are several choices to attempt to resolve the issues:

- informal procedures, including a review by central office staff
- mediation
- filing complaint with the Virginia Department of Education
- filing a due process hearing request

**My child has a disability but he has been suspended for 5 days. I thought Special Ed kids couldn't be suspended. Can they do that? Someone told me that they can suspend up for 14 days. Is that true?**

Yes, your child can be suspended for 5 days. A child with a disability does not receive special consideration when a school gives a **short-term suspension** (10 school days or less).

However, a child with a disability does receive special consideration when a school gives a **long-term suspension** (more than 10 days), or expulsion.

Also, even if your child is suspended or expelled, s/he still has the right to a free appropriate public education.

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## **So how do they decide to give long-term suspensions or expel kids with disabilities?**

A long-term suspension or expulsion cannot be given unless the school decides that:

- the misconduct was NOT related to the student disability, and
- the student's IEP was appropriate

Long-term suspensions or expulsions require placement of the child in an **alternative setting**. This requires a

- Manifestation Determination Review
- Functional Behavioral Assessment
- Behavioral Intervention Plan

## **What can I do if I disagree with the School's Decision to Suspend or Expel?**

- **Do not sign** the Manifestation Determination Review
- Request a **Due Process hearing**.

## **What happens to my child until they have the due process hearing?**

As long as your child is not in trouble for weapon or drug possession, during the appeal process your child has the right to remain in his or her current placement. This is known as the "**stay put**" provision.

## **So, what happens if the trouble involves weapons or drugs?**

If the offense involves weapons or drugs and you request a Due Process hearing, your child may be placed in an **Interim Alternative Educational Setting (IAES)** for up to 45 days. After 45 days your child must be returned to his/her original placement unless the school can show that s/he is a danger to self or others.

## **My child is turning 18 and hasn't finished school. He's in Special Education classes. What happens now?**

Your child can continue receiving **special education services through age 21**. This is true even if your child is in a juvenile or adult correctional facility.

## **My child doesn't have a social security number; does he have a right to go to school?**

Your child has the right to an education whether or not he/she has a social security number or is in the U.S. legally.

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## **My child is not disabled, she just can't speak English well. Does the school have to help my child?**

Yes. School systems are legally obligated to identify students eligible for **English as a Second Language** programs.

The identification process is in 2 steps.

1. First, you will fill out a home language survey or registration questionnaire for your child.
2. If this survey shows that English is not the dominant language in your home, then your child will be tested on his or her speaking, reading and writing skills.

## **Will they put her in a special education class?**

Your child should not be placed in a special education program just because they have difficulty speaking English.

## **How do I communicate with my child's school if I do not speak English?**

The school **must provide an interpreter** for important school meetings, such as for special education and for disciplinary hearings. Try to let the school know you need an interpreter well in advance of the meeting.

Parents of students receiving special education services **must be notified** of their rights. This notice must be written and in the native language of the parents, unless it is clearly not possible to do so.

Special Education meetings must be conducted in the parents' primary language.

Evaluations must be made in the child's native language.

## **Resources for special education assistance:**

Virginia Department of Education

[www.doe.virginia.gov](http://www.doe.virginia.gov)

1-800-422-2083

Parent Educational Advocacy Training Center (PEATC)

[www.peatc.org](http://www.peatc.org)

1-800-869-6782

Fax: 1-800-693-3514

Virginia Office For Protection and Advocacy

[www.vopa.state.va.us](http://www.vopa.state.va.us)

1-800-552-3962 (voice and TTY) or 804-225-2042

Fax: 804-225-3221

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Just Children – Legal Aid Justice Center

[www.justice4all.org](http://www.justice4all.org)

434-977-0553

Fax: 434-977-0558

**THIS INFORMATION IS NOT LEGAL ADVICE.** Legal advice is dependent upon the specific circumstances of each situation. Therefore, the information contained in this pamphlet cannot replace the advice of competent legal counsel.

*Free Legal information by Web and Phone: [www.vlas.org](http://www.vlas.org) and  
1-866-LeglAid (534-5243)*

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