



CHAPTER 7: Students With Disabilities

Research has shown that children with disabilities, especially students of color with disabilities, are punished at a higher rate than students without disabilities. Children with disabilities also have more than average contact with the juvenile justice and child welfare system. They have more difficulties in school than other students.

When children with disabilities are not receiving good educational services, they may show signs of:

- Wanting to skip school or not being interested in school
- Lacking motivation
- Acting out at school

A. What are some special rights that students with disabilities have?

Children with disabilities have many rights! Including:

- To be free from discrimination based on their disability
- To have full and equal access to education
- To receive a Free Appropriate Public Education (FAPE)
- To be educated in the Least Restrictive Environment (LRE)
- To due process and many procedural safeguards before being removed from school

Students with disabilities have the right to a free, appropriate, public education (FAPE). A physical or

mental impairment that affects a child's ability to learn may be a disability under the law.

Schools must identify and evaluate students with disabilities through an assessment, which is when a student is tested. Parents have the right to request that their child be assessed to determine if they should get special education services and/or reasonable accommodations and services. Teachers, specialized professional persons, agencies, and other members of the public may refer a child for an assessment.

B. What is an Individualized Education Plan (IEP)?

An IEP is an important legal document that describes the plan for providing specialized instruction, services, and support to a child with a disability so that they can participate in and benefit from school and make progress towards their individual education goals. Parents and students must be involved in creating this plan. They have a right to bring up any concerns they have about the plan before they sign their approval of the plan and to request revisions or IEP meetings any time they have new concerns or issues that have not been resolved.

C. What is a 504 plan?

A 504 plan says what the reasonable accommodations are that must be given to a student who is identified as having a physical or mental issue that impairs one or more major life activities (such as learning and concentrating).

Some examples of accommodations include:

- Extended time on assignments/test
- Changing the grading standards
- Breaks
- Better seating
- Teacher re-direction
- The teachers ignores minor, bad behavior
- Praise when the student does something good
- Schedule changes

The needs of students with disabilities vary widely, and it is important to remember that the fact that a child has a disability does not mean that they are less than others or that they are not intelligent and cannot succeed in school. The truth is that every child has a different way of learning and must be worked with differently because each student has different needs, and as soon as those are figured out, the more likely that student will do well in school.

If you, a teacher or someone else at school thinks that your child may have a disability, it is important that your child be referred for a psychoeducational assessment. Sometimes disabilities will not be noticed and can really hurt a child's ability to do well in school if they are not provided with the special support they need.

D. How can I obtain services for my child if I suspect they may have a disability?

1. Request Assessments in Writing

- a. Parents have the right to request Assessments when they think that their child has a disability. It is always best to make any request to your school in writing to stop delays and to make sure the school is doing their job. **See Appendix for a sample letter to request Special Education and 504 Assessments.**

2. Give authorization to the school to conduct the Assessments

- a. After putting in your request for Assessments, the school will have 15 days to give you an assessment plan. Once you get the assessment plan, you will have 15 days to review it and give your permission. After that, the school will have 60 days to complete the assessments and hold an IEP meeting.

- b. If you disagree with the school district's assessment, you can get an independent assessment at public expense.

3. Ask to Obtain Assessment Reports One Week before IEP meeting

- a. Ask the school early on to provide you with copies of the written assessment reports that will be discussed at the initial IEP meeting in order to decide whether your child is eligible for Special Education services. It will be good for you to come ready to this first meeting with any questions you have ahead of time. Do not be afraid to ask for them to be clear, explain what a word means, or to explain results you do not understand. You have right to fully understand what is being discussed about your child's educational plan. If English is not your primary language, request that the reports and all other documents be translated for you.

- b. If you request an interpreter and one is not provided at the meeting, or the interpretation is not good, request a better interpreter and delay the meeting if needed so that a qualified interpreter may be provided to you. If the school does not provide you with a qualified interpreter, consider speaking to a lawyer and filing a discrimination complaint. **See Chapter 9 on See Chapter 9 on Administrative Complaint Procedures.**

4. Identify and invite, as appropriate, people who have special knowledge about your child and how your child's disability may affect their ability to learn. For example, you may want to invite a local mental health case manager, social worker, probation officer, public defender, friend or relative.

5. Consider speaking to an attorney or community advocate

- a. These are legal matters! You may greatly benefit from legal advice or support from an advocate with experience participating in IEP meetings. These meetings can be scary at times as everyone else at the meeting will be for the school, but it is very important that both you and your child feel comfortable voicing your opinions. Therefore, if you would like some guidance and

support, look for a legal aid office in your area, local community advocacy groups, and/or private special education attorneys to assist you.

Some general advice is:

- Sign the IEP plan **ONLY** if you are completely satisfied with it
- Ask for regular reports on your child's progress; these reports should be made more than once a year
- Ask for IEP meetings if you have concerns about your child's needs not being met by the services outlined in the current IEP plan or by the school's failure to follow the plan
- Highlight your child's strengths during IEP meetings
- Describe the placement you would like for your child
- Share specific ideas and suggestions about the accommodations or services you feel would help your child
- Meet with your child's teacher and get involved in school activities to build positive relationships
- Ensure your child is re-evaluated every three years and that you have an IEP meeting at least 1 time per year

E. Parents' Rights in the IEP Process

Parents have many rights when it comes to the IEP process. Here are just a few:

- Right to a written notice of the IEP meeting
- Meeting must be held at mutually agreed-upon time and place
- Right to be accompanied by other persons
- Right to present concerns and ask questions
- Right to an interpreter and translation of all important documents before the IEP meeting
- Right to a copy of the IEP in parent's native language

F. Bullying or Harassment of Students with Disabilities

Bullying of a student with a disability on any basis, not just their disability, may result in denial of their right to a free, appropriate, public education. Report any

known or suspected bullying/harassment to your child's school right away and request a 504/IEP meeting to discuss it. At the 504/IEP meeting, raise your concerns and ask for any changes to be made to your child's plan that are needed to stop the bullying, keep your child safe, and to make sure they are still able to make progress towards their education goals at school and participate fully in school.

G. Discipline of Students with Disabilities

Students with disabilities are subject to the same suspension rules as nondisabled students, except that they may not be suspended or removed for more than 10 consecutive school days without a manifestation determination. A series of suspensions exceeding 10 cumulative days in a school year may be a change of placement requiring a manifestation determination if there is a pattern present.

Students with disabilities cannot be expelled from school for behavior that is a direct result of their disability or a failure to implement his/her IEP. An expulsion is a "change of placement". Schools cannot change the placement of a student with a disability without parental consent or a manifestation determination meeting, except for certain serious offenses.

A **manifestation determination** meeting must be held if:

- A student with a disability is being considered for expulsion and/or will be excluded from school for more than 10 school days (for instance, pending an expulsion hearing) OR
- A student has had a pattern of exclusions that over time exceed 10 school days

As members of the IEP team, parents have the right to participate in the manifestation determination meeting. IEP team must meet within 10 days of the decision to recommend/change the student's placement due to misconduct.

IEP team must decide two things:

- #1: Was the behavior caused by, or did it have "a direct and substantial relationship" to, the student's disability;
- #2: Was the student's behavior the direct result of the district's failure to implement the IEP?

If the IEP team answers “YES” to either question #1 or #2, the student cannot be expelled and student’s placement cannot change without consent of parent.

If behavior was not a manifestation of the child’s disability, the school may proceed with the expulsion process and/or the change of placement.

Regardless of the manifestation determination, students with disabilities MUST continue to receive educational services (FAPE). This is true for ANY period of exclusion from school that is BEYOND 10 days (including while a student is waiting for an expulsion hearing).

H. Students not yet Identified as Special Education/504 Students

Students with unidentified disabilities may still be protected by special education and anti-discrimination laws, including the requirement to have a manifestation determination, if the district is deemed to have knowledge of the student’s disability. Some examples of this may be if the school knows that the student has been diagnosed with a disability (like ADHD) and is taking medication or if the parent/another person has previously requested that their child be tested to determine if they have a disability.

I. What can I do if my child’s school does not timely assess my child, provide my child with the services or supports in their IEP/504 plan, or if I disagree with my child’s school regarding the services/placement my child needs?

- Consider speaking with a special education attorney regarding your concerns
- Depending upon the issues and your concerns, you may:
 - File a compliance complaint with the California Department of Education
 - File a due process complaint with the Office of Administrative Hearings
 - File a discrimination complaint with the Office for Civil Rights
 - File a lawsuit in court

- Please keep in mind that there are very strict timelines that one must follow if they wish to file a complaint. In some cases, the time to file a complaint may be as little as 6 months from the date that the incident happened so it is very important to speak to an attorney as soon as possible to protect your and your child’s rights.

See Appendix for Sample Compliance Complaint Form for the California Department of Education. ■