*New Jersey Department of Education*

# Parental Rights in Special Education

**Revised August 2019**

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# Parental Rights in Special Education

New Jersey Administrative Code for special education *(N.J.A.C.* 6A:14*)* and the federal *Individuals with Disabilities Education Act of 2004 (IDEA* 2004*)* are laws that ensure children with disabilities a free, appropriate public education in the least restrictive environment. An important part of these laws provides parents with the right to participate in their children's education.

You and representatives of your school district are team members who are responsible for developing an appropriate educational program for your child. This document will describe the state and federal laws affecting the provision of special education to help you understand your rights in the special education process. With this knowledge, you will be prepared to take an active role in your child's education.

This document has been developed for you by the Department of Education, Office of Special Education Policy and Dispute Resolution, in an effort to provide the most comprehensive and up-to-date information. The document is periodically revised to reflect changes in the law, provide additional information that would be of use to you, and to provide the information in a more clear and concise manner.

If you need additional help in understanding your rights, contact information for the Statewide Parent Advocacy Network (SPAN), Disability Rights New Jersey (DRNJ), the County Offices of the New Jersey Department of Education and your local school district is listed on page 42.

**This is the procedural safeguards statement required in accordance with *New Jersey Administrative Code (N.J.A.C.)* 6A:14-2.3(g)7.**

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*New Jersey Department of Education*

# Parental Rights in Special Education

## REFERRAL

### *What is a referral?*

A referral is a written request for an evaluation that is given to the school district when a child is suspected of having a disability and might need special education services.

### *Who can make a referral?*

- Parents
- School personnel
- Agencies concerned with the welfare of students, including the New Jersey Department of Education

If you believe that your child may have a disability, you may refer your child for an evaluation by submitting a written request to your school district[1].

### *What happens when a referral is made?*

Within 20 calendar days[2] of receiving a referral, the school district must hold a meeting to decide whether an evaluation will be conducted. If an evaluation will be conducted, another decision is made about the types of testing and other procedures that will be used to determine if your child needs special education services. If an evaluation will not be conducted, recommendations may be made with respect to interventions or services to be provided the student in general education.

## DECISION-MAKING AND PARTICIPATION IN MEETINGS

### *How are decisions made about my child's special education needs?*

Decisions regarding your child's special education needs are made at meetings. As the parent of a child who has or may have a disability, **you have the right to participate in meetings regarding**:

- **Identification** (decision to evaluate);
- **Evaluation** (nature and scope of assessment procedures);
- **Classification** (determination of whether your child is eligible for special education and related services);
- Development and review of your child's **individualized education program (IEP)**;
- Educational **placement** of your child; and
- **Reevaluation** of your child.

**You are considered a member of the multi-disciplinary team** of qualified persons who meet to make these determinations and develop your child's individualized education program (IEP).

[1] *When writing to the school district about special education issues, you may write to the school principal, director of special education, child study team supervisor, case manager or other appropriate school official.*

[2] *This time frame excludes school holidays, but does not exclude summer vacation.*

**You have the right to:**

- Have an interpreter, translator or sign language interpreter provided by the school at no cost to you, when necessary;
- Participate in required meetings through other means such as individual or conference telephone calls or video-conferencing if you cannot attend in person; and
- Receive a copy of the evaluation reports(s), documentation and information that will be used for a determination of eligibility not less than 10 calendar days prior to the eligibility meeting.

### *Must all members of the IEP team attend IEP team meetings?*

All required members of the IEP team must attend all meetings of the IEP team unless you provide written consent to excuse a required member of the IEP team. There are two circumstances when a school district may request your consent to excuse a member of the IEP team from a meeting:

- If a required IEP team member's area is not being discussed[3], the school district may ask for your written consent to have that member of the team excused from part of the meeting or from the entire meeting. The request for consent must be sent with the notice of the meeting. If you agree that the team member may be excused, you must sign the request for consent and return it to the school. As with all requests for consent, you may decline to provide consent and the team member must then attend the meeting.
- If a required IEP team member's area is being discussed, the school district may ask for your written consent to have that member excused from part of the meeting or from the entire meeting. The request for consent must be sent with the notice of the meeting and must include written input from the team member. The written input must also be sent to the other members of the IEP team prior to the meeting. If you agree that the team member may be excused, you must sign the request for consent and return it to the school. As with all requests for consent, you may decline to provide consent and the team member must then attend the meeting.

## NOTICE OF A MEETING

### *How will I be invited to participate in meetings?*

To assure that you have the opportunity to participate in meetings and the decision-making process for your child, meetings about special education for your child must be scheduled at a time and place agreeable to you and the district. The school district must notify you in writing early enough to ensure that you will have an opportunity to attend.

### *What information must be included in the notice of a meeting?*

The written notice of the meeting must state the purpose, time, location and who will be attending and:

- Inform you that you or the school district may invite to the meeting other individuals who have knowledge or special expertise regarding your child, including related services personnel. The determination of whether the individual has such knowledge or special expertise is determined by the party (you or the school district) who invited the individual;
- Beginning at age 14, or younger, if appropriate, the notice for a student with a disability must also indicate that the purpose of a meeting is the consideration of needed transition services and that the school will invite the student to attend the meeting.

[3]*For example, if the purpose of an IEP team meeting is to discuss changes to a related service such as speech language therapy, the school district may ask to excuse the general education teacher or special education teacher because there is no change to the classroom instruction and therefore, the teacher's area will not be discussed.*

### *May the school district hold a meeting if I am unable to attend?*

Yes. The school district may hold a meeting without you. The school district may do so if it is able to document that it made multiple attempts to schedule a meeting with you or obtain your participation in the meeting through telephone or video-conferencing and was unable to do so.

## WRITTEN NOTICE

### *How will I be informed of decisions regarding my child's special education needs?*

Your school district will inform you of decisions being made about your child by giving you written notice.

**Written notice must be given when the school district:**

- **Proposes to start or change:**
  - The identification, evaluation, and classification;
  - The implementation of an IEP or educational placement;
  - The provision of a free, appropriate public education (FAPE) to your child;
  - A reevaluation;
- **Asks for consent;** and
- **Approves or denies a request** you have made in writing about the identification, evaluation, educational placement or provision of a free, appropriate public education to your child.

### *What must be included in written notice?*

Written notice must include a full description of the district's proposal and a statement that you have rights under special education law. If the district decides to conduct or not to conduct an initial evaluation, in addition to everything listed below, the district must give you a copy of the special education rules and the due process hearing rules.

**When providing written notice, the school district must always:**

- Describe the action it is proposing or refusing;
- Explain why it is or is not taking the action;
- Describe other options considered and explain why those options were rejected;
- Describe as applicable, the procedures, tests, records or reports used by the district to make the decision;
- Describe any other factors relevant to the district's proposal or refusal; and
- Include notice that you have rights under special education law.

### *When must I be provided a copy of this booklet?*

You must be given a copy of this booklet one time per year and whenever:

- A parent requests a copy;
- Your child is referred for an initial evaluation;
- The first request for a due process hearing or first request for a complaint is submitted to the Department of Education in a school year; and
- The decision to take a disciplinary action is made that constitutes a change of placement.

All other times, the district must give you a statement explaining:

- That as a parent of a student who is or may be eligible for special education services, you have rights under special education law;
- How you can obtain a copy of the procedural safeguards statement (PRISE); and
- Sources you may contact for assistance in understanding the special education rules.

**Electronic Mail**

If your school district offers parents the option to receive notices via e-mail, you may opt to receive the following notices electronically:

- Written notice;
- Procedural safeguards notice; and
- Notices related to a due process complaint.

## NATIVE LANGUAGE AND WRITTEN NOTICE

**Written notice must be in language understandable to the general public and in your native language or other principal mode of communication.** If this is not a written language, the school must take steps to ensure that the notice is translated orally or by other means into your native language or other mode of communication. If your language is not a written language, the school district must assure that you understand the notice, and it must document that you understand the notice.[4]

### *When must the district provide me with written notice?*

Within 15 calendar days of a meeting regarding identification, evaluation or reevaluation, the IEP, or placement, the school district must give you written notice of any decisions that were made and/or any actions that were proposed or denied. Written notice must also be provided when the school district seeks your consent for a proposed action. The proposed action may be implemented sooner, if the parent agrees in writing.

## CONSENT

### *What does consent mean?*

Consent means that you have been given all the information necessary to make an informed decision about the proposed activity. Consent also means that you understand and agree in writing to the proposed activity. Therefore, written notice must be part of any request for your written consent.

**Consent is immediate.** This means, after you have given your written consent, the school district must start the activity as soon as possible.

[4]*This requirement includes providing a sign language interpreter when appropriate.*

## *When must the school district obtain my consent?*

Your consent is required:

- **Before your child is evaluated for the first time** to determine whether your child is eligible for special education;
- **Before your child's special education program starts for the first time;**
- **Before your child is tested as part of a reevaluation.** However, if the district can show that it tried to get your consent for the reevaluation of your child and you did not respond, then the district may proceed to evaluate without your consent;
- **Before your child's records are released** to a person or organization that is not otherwise authorized to see them;
- **Each time your school district wants to access private insurance** covering your child;
- **The first time your school district wants to access public benefits or insurance** covering your child;
- **Whenever your school district wants to excuse a required team member** from a meeting of the IEP team;
- **Whenever your child's IEP is amended without a meeting of the IEP team;** and
- **Whenever you agree to waive a reevaluation of your child.**

## *What happens if I do not give consent for the proposed activity?*

If you disagree with the proposed initial evaluation, reevaluation, or release of records and will not give consent, the school district cannot proceed. If the school district wants to proceed with any of these proposed activities, the school district must ask for a due process hearing (see page 17) to obtain consent from an administrative law judge (ALJ). At the due process hearing, the ALJ will decide if your child can be evaluated, reevaluated or if your child's records can be released without your consent.

If you do not agree with a proposal to implement the initial IEP, access public insurance (such as Medicaid) or your private insurance covering your child, a request to excuse a required IEP team member from a meeting, a request to amend your child's IEP without a meeting, or a request by your school district to waive the (three year) reevaluation of your child, the school district may not do what it is requesting. If you do not consent, the school district may not file for a due process hearing to ask an ALJ to provide consent for any of these types of requests.

## *Can I withdraw my consent after it has been given?*

**Giving consent is voluntary.** You can revoke (withdraw) your consent at any time by writing to the school district. Revoking consent does not negate an action that has occurred after the consent was given and before the consent was revoked. If you write to the school district to revoke your consent after your child has received special education and/or related serves, the school district has 10 days to respond to your written withdrawal with notice. The school district must accept your written revocation of consent and cannot utilize mediation or a due process hearing to seek to overturn your written revocation of consent.

The school district may decide to meet with you to discuss the revocation of consent. The meeting must be held within the 20-day time period to respond to the written revocation of consent and the school district must send you notice by the 20th day after you provide the school district your written revocation of consent. Once written notice is sent to you, you have 15 days to consider the written notice and withdraw the written revocation of consent if you choose. After the 15 day time period ends, your child will be considered a general education student for all purposes, including disciplinary matters, from that date forward.

If you later determine you would like to have your child receive special education and related services, you must make a written request for an evaluation of your child. Services may not be immediately reinstated. Instead, an initial evaluation of your child must be completed and, if your child is determined eligible for special education and related services after that evaluation is completed, an individualized education program (IEP) will be developed for him or her. Special education and related services cannot be provided to your child until a new IEP is completed "and agreed to by you," and notice is provided to you.

### *Can I withdraw my consent for part of my child's program?*

**No.** When you revoke consent, it is for all special education and related services. You may not revoke consent only for those services you do not wish your child to receive. If you have a disagreement with your district over specific services or the placement where the services are being provided, you should seek a meeting with the IEP team to discuss the services. If you and the other members of the team do not agree when you meet, you may use the dispute resolution procedures described later in this booklet to resolve the dispute.

### *If a parent revokes consent for special education and related services, is the district required to amend the student's record because consent has been revoked?*

**No.** A parent may request that the school district amend the student's record to remove refer- ences to the provision of special education and related services if the parent revokes consent after the student has been initially provided special education and related services. However, the school district is not required to remove any references to the receipt of special education and related services because the consent has been revoked.

### *Must the school district obtain my consent each time there is a proposal to change my child's program or placement?*

**No.** Once services have started, you or the school district may propose changes to your child's program or placement at an IEP meeting. Your consent is not required to implement the changes. The school district must provide you with written notice of the proposed changes as described above.

### *How can I stop the proposed action when I disagree?*

**You must request mediation or a due process hearing after receipt of the written notice (see Native Language and Written Notice sections).** To request mediation or a due process hearing, you must put your request in writing and send it to the Department of Education and the school district. A mediation/due process hearing request form is included at the end of this booklet. While the disagreement is being resolved, your child's current placement and services will remain the same. This is called **"stay-put."**

**If you disagree with the proposed action and you do not inform the school district of your disagreement by requesting mediation or a due process hearing, the proposed action may be implemented.**

## PARENTAL REQUESTS

You may request a change in the evaluation, eligibility, IEP or placement of your child. Whenever you make such a request of the school, you should make the request in writing and keep a copy for your records. The school has 20 calendar days to answer you in writing. School holidays are not counted in the 20 days. But, schools are required to respond within 20 days during the summer. The answer must include the components of notice (see page 3). In addition, if a meeting is necessary to respond to your request, the meeting must be held within 20 days of the request. If your school district adopts a policy permitting parents to submit written requests by electronic mail, you may submit your requests by following the school's e-mail policy. Otherwise, such requests must be written or typed and provided to the school district.

## USE OF INSURANCE

### *May the school district require that I utilize my private medical insurance or public insurance or benefits covering my child to obtain evaluations of my child, or special education or related services required to provide my child a free, appropriate public education (FAPE)?*

No. The school district may not require you to consent to using public or private insurance covering your child to obtain an evaluation of your child, or to provide special education or related services (e.g. physical therapy, speech-language services) that your child needs to receive a FAPE. However, if your school district provides written notice and you consent, public or private insurance or benefits may be used. The district must inform you that providing consent is voluntary.[5] Also, your consent must be requested and obtained by the school district every time it uses private insurance covering your child to obtain special education or related services for your child, and in accordance with federal regulations, the first time the school district seeks to use public insurance or benefits covering your child. This means, for example, if the school district asks to use your insurance to provide physical therapy for your child one time a week for the school year covered by your child's IEP, your consent must be provided at the beginning of the school year to use your insurance to provide the physical therapy for the year. If the school district later wants to use your insurance to provide another service, it must again ask for your consent before it may use your insurance.

### *Can my district access my Medicaid benefits?*

Your school district may access your Medicaid benefits to receive money through the Special Education Medicaid Initiative (SEMI) program. A school district may access Medicaid benefits only if a consent form is signed by the parent. Signing the consent form will have no effect on your child's Medicaid health coverage. The district is also required to send a reminder to parents once per year which describes the SEMI program.

## EVALUATION

### *What is an evaluation?*

An evaluation is the process used to determine whether your child has a disability. This process includes a review of any relevant data, and the individual administration of any tests, assessments and observations of your child. For an initial evaluation, at least two child study team members[6] and other specialists,[7] as required or as determined necessary, must participate. A minimum of two assessments of your child are needed to determine eligibility for special education and related services. Each assessment must be conducted by a person who has appropriate training, or who is qualified to conduct the assessment through his or her professional license or certification.

### *When is an evaluation needed?*

An evaluation is needed when you, the members of the child study team, and your child's teacher meet and decide that your child may have a disability.

[5] *If you do not consent to use your insurance, the district must still provide the service(s) at no cost to you.*

[6] *When the suspected disability is a language disorder, the speech language specialist may participate as one of the two required child study team members.*

[7] *Specialists include but are not limited to, speech language specialists, occupational therapists, physical therapists and physicians.*

### *May evaluations/assessments of my child that have been prepared by someone that does not work for the school district be used as one of the two assessments required for an initial evaluation of my child?*

Yes. Reports and assessments prepared by child study teams or persons who provide related services (such as physical therapy or speech-language services) may be used as assessments for an initial evaluation. The assessments and reports must be from persons who work for other public school districts (or educational services or jointure commissions), clinics or agencies approved by the Department of Education, or professionals in private practice. To be used, the report must have been completed within the past year and must be reviewed by the child study team member or other person in the district qualified to review the report. If the district determines that the report meets the requirements in the State regulations for evaluating students, the report may be used as one of the required assessments of your child.

## INDEPENDENT EVALUATION

### *What is an independent evaluation?*

An independent evaluation is an evaluation by a qualified person who is not employed by your school district. If you do not agree with the evaluation or reevaluation completed by your school district, you are entitled to ask for ONE independent evaluation. This means you may decide that the evaluation by the district was not performed correctly or was incomplete, and that you would like an evaluation that is done by others.

You may request as many (or as few) separate assessments as you wish when you request your ONE independent evaluation. For example, you may decide that one or more assessments that your school district completed, such as the learning assessment or psychological assessment of your child, were incorrect, and that you would like others to conduct new assessment(s). Or, you may believe that the school district's evaluation should have included an assessment(s) that the school district did not do, such as a medical or behavioral assessment of your child.

Once you make your request for an independent evaluation after the school district completes its evaluation or reevaluation, the assessment(s) you requested will be completed by other persons (unless an ALJ says they should not be). After the assessments are completed, you may not ask for another independent evaluation to be paid for by your school district until the next reevaluation of your child has been completed by your school district. Therefore, you must be sure to ask for all assessments you believe are needed as part of your request for an independent evaluation because you will have to wait for a reevaluation before you may make another request for an independent evaluation to be paid for by your school district.

### *What are the requirements for an independent evaluation?*

An independent evaluation is provided at no cost to you. It is at public expense. If, as part of a due process hearing, an ALJ requests an independent evaluation, it, too, must be obtained by the school district at public expense. Independent evaluations must meet the same requirements as evaluations conducted by the school district.

### *What if the school district believes its evaluation is appropriate?*

When the school district disagrees with the need for an independent evaluation, the school district must ask for a due process hearing within 20 days of receipt of your request. If an ALJ decides that the district's evaluation was appropriate, the district will not have to pay for the independent evaluation. Your right to obtain an independent evaluation at your own expense would not change.

### *Must my school district have assessed my child in the area(s) where I am asking for an independent evaluation before I am allowed to get an independent evaluation?*

No. A district cannot limit your right to an independent evaluation by first conducting an assessment in an area not already assessed by the initial evaluation or reevaluation. Upon receiving your request, the district must provide information on where an independent evaluation can be obtained, or ask for a due process hearing.

### *Where can an independent evaluation be obtained?*

An independent evaluation may be obtained from another school district, an educational services commission, a jointure commission, an approved clinic or agency, or a private practitioner, who is certified and/or licensed as required. Information regarding these resources must be provided to you by your school.

### *Can the school district impose limitations or restrictions on the choice of evaluators?*

If the school district agrees to your request for an independent evaluation, the school district must provide information on where an independent evaluation may be obtained. To assist school districts and parents, the Department of Education maintains a list of approved clinics and agencies. School districts may suggest a number of clinics or agencies within the geographic area from that list. Parents must be able to obtain the requested evaluation from the suggested list within a reasonable time frame and at the rate determined by the district.

If you do not agree to select a provider from those suggested by the school district, the district must consider your request for a different provider. Also, the school district must consider your request for an evaluator that costs more than the school district usually pays for the same evaluation. If the school district disagrees with your request, it must request a due process hearing to deny your request.

Such consideration and the district's decision to grant or request a due process hearing to deny the request must occur within 20 days of receipt of the request for an independent evaluation.

### *Are there any circumstances that would allow a school district to deny a request for an independent evaluation without requesting a due process hearing?*

Yes. A school district may deny a parent's choice of evaluator without requesting a due process hearing, if the evaluator does not hold a New Jersey certificate and/or license, where a certificate and/or license is required. Additionally, parents are entitled to one independent evaluation (which may include more than one assessment) for each initial evaluation or reevaluation. Thus, after an independent evaluation has been conducted or an ALJ has decided that an independent will not be conducted, the school district may deny subsequent requests for an independent evaluation without requesting a due process hearing. When the district conducts another reevaluation, a parent may seek an independent evaluation if he or she disagrees with that reevaluation.

### *What is the school district required to do when it receives an independent evaluation?*

The school district must consider any independent evaluation, including one you pay for, when making decisions regarding your child's special education program. However, the school district is not required to accept the evaluation report or incorporate any of its recommendations in your child's IEP. An independent evaluation may be presented as evidence at a due process hearing.

## ELIGIBILITY

### *How is eligibility determined?*

When the evaluation is completed, eligibility is determined collaboratively at a meeting according to *N.J.A.C.* 6A:14-2.3(k)1.[8] To be eligible for special education and related services:

- A student must have a disability according to one of the eligibility categories;
- The disability must adversely affect the student's educational performance; and
- The student must be in need of special education and related services.

The school district must provide a copy of the evaluation report(s) and documentation to be used to make a determination of eligibility to the parent (or adult student, when applicable) not less than 10 days prior to the meeting.

## INDIVIDUALIZED EDUCATION PROGRAM (IEP)

### *What is an individualized education program?*

After your child is determined to be eligible for special education and related services, a meeting will be held to develop your child's IEP. The IEP is a written plan that describes in detail your child's special education program. The IEP should describe how your child currently performs and your child's specific instructional needs. The IEP must include detailed and measurable annual goals and short-term objectives or benchmarks.

### *Who must attend the IEP meeting?*

Except when they have been excused from attending the meeting with your consent in accordance with the procedure on page 2, the following persons must attend IEP meetings:

- Student, if appropriate[9];
- Parent;
- Not less than one general education teacher (to the extent appropriate), if the student is or will be participating in regular education;
- Not less than one special education teacher (or special education provider where appropriate);
- At least one child study team member;
- Case manager;
- School district representative;
- Others at the discretion of the parent or school district; and
- If transition will be discussed at the IEP meeting, a representative of any other agency likely to provide or pay for services; and
- At request of the parent, the Part C Service Coordinator for a student transitioning from the Early Intervention Program to the Part B Special Education program offered by the school district.

[8] *Students with a speech and/or language disorder may be eligible for speech language services only as described in N.J.A.C. 6A:14-3.6.*

[9] *Beginning at age 14, the student must be invited to attend the IEP meeting as required to participate in planning for transition to adult life.*

**You have the right to:**

- Copies of your child's IEP;
- Bring others with you to the meetings;
- Tape record IEP meetings if you inform the other persons orally or in writing, prior to the meeting starting that you intend to record the meeting;
- Have the IEP implemented within 90 days of the school's receipt of your consent for the first evaluation;
- Have the IEP implemented as soon as possible following an IEP meeting;
- Have the IEP reviewed at least annually; and
- Have extended school year services considered by the IEP team.

## TRANSITION TO ADULT LIFE

### *What is transition planning?*

Transition planning is a formal, long-range cooperative process that will assist your child to successfully move from school into the adult world. New Jersey regulations require that transition planning begins to be addressed in the IEP that will be in a place for the school year in which your child reaches 14 years of age, or younger if determined appropriate by the IEP team. Transition planning continues to be addressed in your child's IEP each year until graduation or exit from high school.

### *Who is involved in transition planning?*

Transition planning typically involves the IEP team, other family members, school staff, staff from other agencies, employers and other community members. Whenever transition planning will be included in the IEP, the student must be invited to attend the IEP meeting and become an integral member of the IEP team.

### *What are the components of transition planning?*

The following are key components of transition planning in the IEP for children turning 14 and older:

- A statement of the child's strengths, interests and preferences
- Identification of a course of study (course titles for the duration of the IEP and beyond)
- Identification of strategies and/or activities that are intended to assist the child in developing or attaining postsecondary goals
- A description of the need for consultation (information and/or advise) from other agencies (such as the Division of Vocational Rehabilitation Services, Children's System of Care, Division of Developmental Disabilities, etc.)
- A statement of any needed interagency linkages and responsibilities

Additional key components are included as part of transition planning in the IEP for children turning 16 and older:

- The child's postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, if appropriate, independent living
- The transition services needed to assist the child in reaching those postsecondary goals (a coordinated set of activities/strategies that includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation)

For additional information on transition planning, see the Resources section of this document.

## REEVALUATION

### *How often must my child be reevaluated?*

Your child must be reevaluated within three years of his or her last evaluation unless you provide consent to waive the three-year reevaluation. If you provide consent to waive the three-year reevaluation, the next three-year time period for reevaluation begins on the date you provide your written consent to waive the reevaluation. A reevaluation may be conducted sooner than three years if conditions warrant it or if you or your child's teacher requests it. However, a school district may deny your request for a reevaluation that is made within one year of the date the last evaluation of your child was completed. In addition, the school district must reevaluate your child before it may determine that your child is no longer a child with a disability and no longer eligible for special education and related services.

### *What are the requirements for a reevaluation?*

The IEP team must meet to review the current data and decide whether additional testing is required to determine if your child's eligibility for special education and related services should be continued. The IEP team may decide that no additional information is needed to determine your child's continuing eligibility for special education. As a member of the team, you may disagree with the decision and you may request that the school district conduct an assessment of your child. Then, the school district must assess your child to determine eligibility (or ineligibility).

### *Does the school district need my consent to conduct testing as part of a reevaluation?*

The school must obtain your consent before conducting any testing as part of a reevaluation of your child. However, if the school can show that it tried to get your consent for the reevaluation of your child and you did not respond, then the school may proceed with the testing as planned.

## TRANSFER OF RIGHTS UPON REACHING AGE OF MAJORITY

### *What rights do I have when my child reaches age 18?*

When your child reaches age 18, all rights under special education law will transfer to your child unless a court has appointed a legal guardian for your child. Both you and your adult student will receive all the required notices contained within these parental rights. At least three years before your child turns age 18, the school district must inform both you and your child of the transfer of these rights.

## ADULT OUT-OF-STATE PLACEMENTS

### *What should parents consider when students attending out-of-state placements turn age 21?*

When discussing the possibility of a placement out-of-state, parents should bear in mind that any student with a developmental disability who is placed in an out-of-state educational facility after January 1, 2016 will not be able to access any funding for out-of-state services from the New Jersey Division of Developmental Disabilities once the student reaches the age of twenty-one (21).

# CONFIDENTIALITY AND ACCESS TO EDUCATIONAL RECORDS[10]

### *May I see my child's educational records?*

School districts must maintain the confidentiality of information in your child's educational record. However, the public school maintaining your child's educational records must assume you have authority to inspect/review your child's records unless the school has been legally notified in writing that your rights have been terminated under state law, such as through guardianship or divorce.

**You have the right to:**

- Ask to see a list of all the types of records kept regarding your child and where the records are kept;
- Look at any of your child's educational records which are kept or used by the school district:
  - Without unnecessary delay;
  - Before any IEP meeting or hearing; and
  - Within 10 days after asking to see the records. (If possible, this request should be in writing.)
- Ask for an explanation and interpretation of the records;
- Obtain copies of the records. A school may charge a reasonable fee for copying if that fee does not prevent you from reviewing the records. The school may not charge a fee to search for or retrieve the records;
- Be notified before information in your child's records is destroyed; and
- Give consent or refuse to give consent to share your child's records with anyone who does not have an educational or legal purpose in seeing them.

The school must keep a record of those obtaining access to your child's record, including names, dates and purposes for the access. If you ask, you have a right to be told who has been given information from your child's records, the date it was given and how it was used.

The school district must obtain your written consent before any personally identifiable information about your child may be released to any person not otherwise entitled by law to have access to it (see page 5).

If you give the school written consent, you can have someone else receive and/or review the records for you. If a record has information on more than one child, you may look at the information about your child only.

### *Do I have a right to review my child's records when he/she becomes an adult student?*

Until your child reaches age 18, you have access to all educational records maintained by the school. After the transfer of rights upon reaching the age of majority, you have the right to access your child's educational records only if your child is still financially dependent on you and is still enrolled in the public school system, or if you have your adult child's consent for access.

### *How do I get my child's records changed?*

You may ask the school district to change your child's educational records if you believe the records:

- Are irrelevant;
- Are inaccurate;
- Do not protect privacy or other rights of your child; or
- Are otherwise improper.

*[10]The regulations for student records are found at N.J.A.C. 6A:32. The school district is required to give you a copy of these regulations when you ask.*

If you ask the school district to change your child's record, you have a right to receive a decision about your request. The school district may decide to make the change and inform you of the change in writing; otherwise, the school district must meet with you within 10 days to determine whether the change will be made.

If the school district will not make the change, it must inform you of the refusal and your right to appeal by requesting a hearing from the Commissioner of Education pursuant to *N.J.A.C.* 6A:3.

If the Commissioner decides after a hearing that the records do not need to be changed, the school district must notify you in writing of your right to add a statement to your child's records giving the reasons you do not agree with the school's records. This statement must be maintained in your child's records as long as the relevant record is maintained, and the statement must be released whenever the relevant record is disclosed.[11]

## SURROGATE PARENT

### *When is a surrogate parent appointed and what is the surrogate parent's role?*

When the student's parent cannot be identified or the parent cannot be located after reasonable efforts, when an agency of the state has guardianship of the student, when the student is a ward of the state, or when the student is an unaccompanied homeless youth as defined in federal law, a surrogate parent must be appointed for the student. The surrogate parent represents the student in all matters relating to identification, evaluation, development of the IEP, placement of the student, and provision of a free, appropriate public education (FAPE) to the student.

The responsible school district must have in place a method for determining whether a child requires a surrogate parent and for assigning a surrogate parent to a child when necessary. In addition, the school district must make reasonable efforts to appoint a surrogate parent within 30 days of determining that a surrogate parent is needed for a student. The responsible school district must ensure that each surrogate parent meets the following criteria:

- The person must have no interest that conflicts with those of the student he or she represents;
- The person must possess knowledge and skills that ensure adequate representation of the student;
- The person must be at least 18 years of age; and
- The person cannot be an employee of the school district, the New Jersey Department of Education or any other agency involved in the education or care of the child. (If the school district compensates the surrogate parent solely for serving in that capacity, the person is not considered an employee of the school district.)

Finally, a school district may not replace a surrogate parent without cause and, if the school district compensates a surrogate parent for serving as a surrogate parent, the person must undergo a criminal history check in accordance with *N.J.S.A.* 18A:6-7.1.

[11] *According to student records code, N.J.A.C. 6A:32 7.4(e), mandated student records shall be maintained for a period of five years after graduation, termination from the school district, or age 23, whichever is longer.*

## PLACING YOUR CHILD IN A NONPUBLIC (PRIVATE) SCHOOL – DUE TO DISAGREEMENT

***If I disagree with the school district's program and I place my child in a nonpublic (private) school, who is responsible to pay for the costs?***

Your child has the right to a free, appropriate public education. If your child is enrolled in a public school and you disagree with the school district's special education program, you may choose to place your child in a private or a nonpublic school, or a private early childhood program that you believe meets your child's special education needs. You are responsible for the costs, unless it can be proven at a due process hearing that the district failed to provide your child with a free, appropriate public education and the school you chose is appropriate to meet your child's educational needs.

***What must I do if I plan to ask the school district to reimburse me for the costs of the nonpublic (private) school?***

If your child has an IEP developed by the school district, you may place your child in a nonpublic (private) school and seek reimbursement from the district. You must inform the school district at an IEP meeting and provide the school district with written notice at least 10 days (excluding weekends only) prior to the enrollment of your child in the nonpublic (private) school. You must state your disagreement with the school district's IEP, the placement proposed by the school district and your intention to enroll your child in a nonpublic (private) school.
If the school district has provided you with written notice of its intent to evaluate your child, before your removal of your child from the public school, you should make your child available to the school district for evaluation in order to protect your claim for reimbursement.

Failure to inform the school district of your intention to make a private placement at public expense, failure to make your child available for evaluation, or other unreasonable action on your part could result in an ALJ's decision to reduce or deny reimbursement for the private placement.

## PLACING YOUR CHILD IN A NONPUBLIC (PRIVATE) SCHOOL – DUE TO PREFERENCE (EQUITABLE PARTICIPATION SERVICES)

***If I have placed my child in a nonpublic (private) school because I prefer the type of education offered by the nonpublic school, does my child have a right to special education and related services from a public school district?***

A student with a disability who is enrolled by his or her parents in a nonpublic school does not have an individual entitlement to receive some or all of the special education and related services that he or she would receive if enrolled in the public school. However, your child does have a right to be referred to a child study team for an evaluation for eligibility for special education and related services.

If your child is a preschool student enrolled in an early childhood program, your school district of residence is responsible to identify him or her and, if appropriate, evaluate for eligibility for special education and related services. If your child is found eligible, your school district of residence would offer a program designed to provide him or her a free, appropriate public education. Such a program would be provided following enrollment in the public school district and would be provided in a placement determined by the IEP team. If you decline the program offered by your school district of residence because you want your child to remain in the early childhood

program, you may go to the school district where your child attends the early childhood program (possibly the same district) and seek a service plan and services. A service plan will be written only if your child will be receiving services and need not include the level of services that a public school district could offer if your child were enrolled in the district.

If your child is in a kindergarten through 12th grade program, the child study team of the school district where your child attends nonpublic school (district of attendance) would determine whether to evaluate your child. If an evaluation is warranted, the team must conduct assessments at no cost to you and determine whether your child is eligible for special education and related services. If your child is determined eligible, a service plan will be written only if your child will be receiving services.

### *What are my rights if I disagree with the evaluation or with the determination of eligibility?*

You may request mediation or a due process hearing if the child study team decides an evaluation is not warranted or if you disagree with the assessment plan. You may request an independent evaluation at no cost to you if you disagree with the evaluation conducted by the team. You may also request mediation or a due process hearing if you disagree with the determination of eligibility. (See the sections on mediation and due process hearing, pages 15 and 17.)

### *If my child is determined eligible and I disagree with the proposal for services, what are my rights?*

You do **not** have the right to request mediation or a due process hearing to disagree with the special education and related services that are proposed for your child in a service plan. This is so even when the district decides not to provide any services.[12]

For disagreements regarding the provision of services by the district where the nonpublic school is located, you may file a complaint. SPDR will determine whether the district of attendance (the school district where your child attends the nonpublic school) used the appropriate procedures in determining which children will receive services and whether the services are being provided.

## RESOLVING DISAGREEMENTS

### *What happens if I disagree with the school district over the identification, evaluation, classification, educational placement or the provision of a free, appropriate public education?*

There may be a time when you and the school district disagree. Many disagreements can be resolved by communication with your child's teacher, case manager, the school principal, or other school dis- trict personnel. There are also procedures established under state and federal law to address your concerns, such as complaint resolution, mediation or a due process hearing.

## VOLUNTARY MEDIATION

### *What is mediation?*

Mediation is a way to discuss and resolve disagreements between you and the school district with the help of a trained, impartial third person known as a mediator.

### *Where and when does mediation occur?*

Mediation occurs at a meeting (conference) held by a mediator at a time and place reasonably convenient to the participants. The meeting will be scheduled within 15 days of receipt of a written request.

[12]*If you choose to enroll your child in the public schools and request an IEP, you are permitted to file for a due process hearing to challenge the program and services in the IEP.*

### *How are mediators selected?*

Mediators are not employed by the SEA. They are selected on a rotating basis. When a request for mediation is received, the next available mediator is assigned to conduct the mediation conference.

### *Who may ask for mediation?*

Either you or the school district may ask for mediation if there is a disagreement.

### *How much does mediation cost?*

Mediation is provided at no cost to you or the school.

### *How can I request mediation?*

| You may submit a written request to: | The request for mediation must: |
|---|---|
| Director<br>Office of Special Education Policy and Dispute Resolution<br>New Jersey Department of Education<br>P.O. Box 500<br>Trenton, New Jersey 08625-0500<br>Or you may email your request to:<br>osepdisputeresolution@doe.nj.gov | State the issue (problem);<br>Specify the relief (solution) sought; and<br>Show that a copy of the request was sent to the school district. |

A request form that may be used to ask for mediation is attached to the end of this booklet. Please note that use of the model form is not required; however, providing the requested information will assist in expediting your request.

### *Can a parent file a request for mediation through electronic mail or other electronic submission?*

The SPDR accepts requests for mediation, a due process hearing, emergent relief (request only; attachments must be sent separately via regular mail) electronically through a SPDR-maintained and monitored email address. The email address is used exclusively for the submission of requests and is not used to communicate with the parties or their representatives. Completed petitions must be saved as Adobe PDF documents and submitted as an attachment to an email sent to: osepdisputeresolution@doe.nj.gov. Adobe Acrobat Reader is document reader software that is available for free download at: https://get.adobe.com/reader/. Please note that requests for an enforcement of a mediation agreement or enforcement of a final decision issued by the Office of Administrative Law will **NOT** be accepted via electronic mail and must be mailed or faxed to the SPDR to be accepted and processed.

### *May I bring an advocate or lawyer to the mediation conference?*

You may bring an advocate and/or lawyer with you to help you in the mediation conference. The school district may also bring a lawyer to the mediation conference even if you do not.

### *What happens to my child during mediation?*

From the time a proper request for mediation is received until the mediation is completed, your child's classification, program or placement cannot be changed unless you agree with the school to make the change or emergent relief (see page 20) is requested by you or the district and granted by an ALJ.

### *What happens if an agreement is reached? If an agreement is not reached?*

If you and the school district reach an agreement, it will be written by the mediator and signed by both you and the school district. If discussions during mediation do not result in a written agreement, then only the date and the names of persons at the mediation will be recorded. Mediation discussions are confidential and may not be used as evidence in a hearing. Mediation conferences may not be tape-recorded.

### *What happens if the parties need more time to complete the mediation?*

If both parties agree that more time is needed to obtain additional information or explore options, the mediator and parties may extend the mediation for an appropriate period of time.

### *What happens if the school district fails to comply with a mediated agreement?*

If you believe that the school district has not implemented the mediated agreement as written, you may request enforcement of the agreement by completing the appropriate form and submitting it to the Director of the Office of Special Education Policy and Dispute Resolution at the address listed above or by seeking enforcement in court. A form that may be used to request enforcement of the mediation agreement is attached to the end of this booklet.

### *What may happen if I do not want to mediate?*

Mediation is voluntary and may not be used to delay or deny your right to a due process hearing. However, the school district may establish procedures that require you to speak with a state mediator to discuss the benefits of mediation, if you choose not to use the mediation process.

## DUE PROCESS HEARINGS

### *What is a due process hearing?*

A due process hearing is a legal process in which the resolution of a disagreement between you and the school district is decided by an administrative law judge (ALJ) from the Office of Administrative Law (OAL).

### *Who may ask for a due process hearing?*

Either you or the school district may ask for an impartial due process hearing if there is a disagreement over the identification, evaluation, program, placement or provision of a free, appropriate public education to your child.

### *How can I request a due process hearing?*

| You may submit a written request to: | The request for Due Process must: |
|---|---|
| Director<br>Office of Special Education Policy and Dispute Resolution<br>New Jersey Department of Education P.O. Box 500<br>Trenton, New Jersey 08625-0500<br>Or you may email your request to:<br>osepdisputeresolution@doe.nj.gov | Give the name and age of the child; Give the child's address;<br>Identify the school the child is attending;<br>Describe the problem and facts relating to the problem;<br>Propose a solution to the problem; and<br>Show that a copy of the request was sent to the school district.<br>In the case of a homeless child, available contact information for the child and name of the school the child is attending. |

A form that may be used to request a due process hearing is attached to the end of this booklet. Failure to provide the information listed above may result in: (1) dismissal of your request because it is insufficient, (2) a delay in the proceedings, or (3) a reduction of the award of any attorney fees to which you may be entitled if you win your case. Please note that use of the model form is not required; however, providing the requested information will assist in expediting your request.

### *Can a parent file a request for due process through electronic mail or other electronic submission?*

The SPDR accepts requests for mediation, a due process hearing, emergent relief (request only; attachments must be sent separately via regular mail) electronically through a SPDR-maintained and monitored email address. The email address is used exclusively for the submission of requests and is not used to communicate with the parties or their representatives. Completed petitions must be saved as Adobe PDF documents and submitted as an attachment to: osepdisputeresolution@doe.nj.gov. Adobe Acrobat Reader is document reader software that is available for free download at: https://get.adobe.com/reader/. Please note that requests for a enforcement of an mediation agreement or enforcement of a final decision issued by the Office of Administrative Law will **NOT** be accepted via electronic mail and must be mailed or faxed to the SPDR to be accepted and processed.

### *May I request mediation and a due process hearing at the same time?*

Yes. Either you or the school district may request mediation as part of a request for a due process hearing.

### *When must I file my request for a due process hearing?*

You must file your request for a due process hearing within two years of the date you knew or should have known of the action of the school district you are challenging. The time period will only be increased if you demonstrate to an ALJ that the school district made you believe the matter has been resolved to your satisfaction, or if the school district withheld information from you that it was required by law to provide to you.

### *What happens when I request a due process hearing?*

Within 15 days of receipt of the request for a due process hearing, you and the school district (the parties) must participate in a resolution meeting arranged and conducted by the district. In place of the resolution meeting, the parties may agree to mediation conducted by the SPDR, or the parties may agree in writing to waive the resolution meeting. If the parties are participating in a resolution meeting, the district will arrange this meeting. If the parties have agreed to mediation, a representative from the district must contact the SPDR to facilitate the scheduling of the mediation conference, at which time the SPDR staff will obtain available dates from the parties and arrange the mediation conference. The resolution period, during which a resolution meeting or mediation is held, lasts for 30 days, after which the matter may be transmitted to the OAL for a due process hearing if the parties have not resolved the dispute.

In addition to participating in mediation or a resolution meeting, the school district must file the necessary response to your request for a due process hearing within 10 days of receiving the request.

### *What happens if the school district fails to schedule the resolution meeting within 15 days?*

If the school district does not schedule a resolution meeting within the required timeline ,and you and the school district are not participating in mediation and have not waived the resolution meeting, you may file a request with the SPDR at the address listed above to ask an ALJ to schedule your case for a due process hearing and begin the 45-day timeline. The ALJ will decide whether the school district had a good reason for not scheduling a resolution meeting. If the ALJ determines the school district did not have a good reason for failing to schedule the resolution meeting, the ALJ may order the due process hearing to begin. If the ALJ decides that the school district had a good reason for not scheduling the resolution meeting, the ALJ may order that the resolution meeting or a mediation conference be held within a specific time period before the case goes to a due process hearing.

### *What happens If I choose not to attend, or I fail to attend, the resolution meeting with the school district?*

If you fail to attend a resolution meeting with the school district and you and the school district are not participating in mediation and have not waived the resolution meeting, the school district may file a request to have your request for a due process hearing dismissed by an ALJ. If the ALJ determines that you did not have a valid reason for not attending the resolution meeting, the ALJ may dismiss your request for a due process hearing. If the ALJ determines that you did have a valid reason for not attending the resolution meeting, the ALJ may order the resolution meeting or a mediation conference be held within a specific time period before the case goes to a due process hearing.

If the ALJ dismisses your case, you may file a new request for a due process hearing. All requirements for resolution prior to the start of the due process hearing will begin again.

### *May the school district challenge my request for a due process hearing?*

If the school district believes you failed to meet the requirements for a sufficient request listed on page 17, it may challenge the sufficiency of your petition. If an ALJ agrees that your petition is insufficient, the ALJ may either permit you to amend your request or dismiss the request. If amendment is permitted, you must amend your petition as directed by the ALJ. If the request is dismissed, you may correct the deficiencies and file a new request for a due process hearing.

### *May I amend my request for a due process hearing after it has been filed with the SPDR?*

Yes. However, you may amend your request for a due process hearing only with the consent of the school district or if you request and receive permission from the ALJ hearing your case. If you do not receive consent from the school district or an ALJ, your request may not be amended.

### *What happens if the school district requests a due process hearing?*

If your school district requests a due process hearing with respect to an issue concerning your child, you and the school district may agree to mediate the dispute. If so, the matter will be scheduled for mediation and the mediation conference will be held prior to the case being sent to the OAL for a due process hearing (if the matter is not resolved at the mediation conference). If either you or the school district does not wish to mediate the matter, it will be immediately sent for a due process hearing, as there is no requirement for a resolution period as there is with a request by a parent for a due process hearing.

### *How long does it take for the case to be decided?*

After resolution activities have occurred and the case has been transmitted to the OAL, the due process hearing must be completed, and a copy of the decision mailed to you and the school district within 45 days, unless specific extensions of time have been granted by the ALJ.

### *What happens to my child if I file a request for mediation and/or due process hearing when I disagree with a proposal or decision to change my child's IEP?*

Under IDEA, while any proceeding regarding a request for due process hearing is pending, your child must remain in his or her current educational placement unless you and the district agree otherwise. This commonly referred to as "stay put."

IDEA presumes that your child's current educational placement is the last agreed upon placement and your child has a right to "stay put" regardless of when you file your request for mediation and/or due process.

If your request for a due process hearing involves one or more issues regarding your child's current educational placement for the purposes of "stay-put," it is appropriate for an ALJ to make an initial determination regarding the placement pending the final decision in a due process hearing. However, if your request for a due process hearing does not involve a dispute about your child's educational placement, an initial determination concerning your child's placement by an ALJ is not required.

### *What happens if the school district does not comply with the decision of an ALJ in a due process hearing?*

You have the right to either go to court to seek an order that the school district comply with the decision of the ALJ, or you may submit a written request to the Director of the SPDR at the address listed above and seek enforcement of the decision of the ALJ. You must make your request within 90 days of when the school district was to complete the action you assert did not occur, and your request must include a copy of the decision of the Office of Administrative Law. The school district may then respond to the request and seek to resolve the disagreement with you. If the matter is not resolved, the SPDR will determine whether the school district failed to comply with the decision of the ALJ and, if it is determined that the school district did not do so, the SPDR will direct the school district to comply. However, if you and the school district agree to modify the ALJ's decision after it is issued, you may not seek enforcement of that part of the ALJ's deci-sion that you modified. A form that may be used to request enforcement of the due process decision is attached to the end of this booklet.

## EXPEDITED DUE PROCESS HEARINGS

### *What is an expedited due process hearing?*

An expedited due process hearing is a hearing before an ALJ on disciplinary matters. For example, if you disagree with the determination of the IEP team that your child's behavior was not a manifestation of his disability, you may request an expedited hearing. If the school district believes it is dangerous for your child to remain in his or her current placement and you and the district cannot agree to an appropriate placement, the district must request an expedited hearing to remove your child.

### *What is the difference between an expedited due process hearing and other due process hearings?*

An expedited due process hearing must be held within 20 school days of the request for a due process hearing, and the decision of the ALJ must be issued within 10 school days of the hearing. In addition, the resolution period for an expedited due process hearing is 15 days, and the mediation or resolution meeting should be held within 7 days of the request for the due process hearing. Sufficiency challenges to requests for expedited due process hearings are not permitted. Further, requests to extend the timeline for an expedited due process hearing are not permitted. All decisions resulting from expedited due process hearings must be issued within the shortened timeline described above.

### *Is mediation available as part of an expedited hearing?*

Yes. Mediation is available.

## APPLICATION FOR EMERGENT RELIEF

### *What is emergent relief?*

Emergent relief is an immediate (interim) decision on an issue that is related to a due process hearing. The interim decision is made pending the final decision in the case.

### *What issues are considered "emergent"?*

A request for emergent relief may be made for the following issues:

- Issues involving a break in the delivery of services (e.g. failure to provide a home instructor or a change in, or failure to provide, extended school year services);
- Issues involving disciplinary action, including manifestation determinations and determinations of interim alternative educational settings;
- Issues concerning placement pending the outcome of due process proceedings; and
- Issues involving graduation or participation in graduation ceremonies.

### *How is emergent relief decided?*

Emergent relief may be granted if the ALJ determines that:

- The petitioner will suffer irreparable harm if the requested relief is not granted;
- The legal right underlying the petitioner's claim is settled;
- The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

### *How do I request emergent relief?*

In addition to the information required for requesting a due process hearing or an expedited due process hearing, requests for emergent relief must be supported by a signed certification specifying the reason for the request. A blank certification is included in this booklet. You must provide a copy of the request to the school district and the request must note that you provided it to the school district. The original copy of the request must be provided to the SPDR even if the request is initially faxed or emailed to the office.

### *Can a parent file a request for emergent relief through electronic mail or other electronic submission?*

The SPDR accepts a request for emergent relief (petition only; attachments must be sent separately via regular mail) electronically through a SPDR- maintained and monitored email address. This email address is used exclusively for the submission of requests and will not be used to communicate with the parties or their representatives. Completed petitions must be saved as Adobe PDF documents and submitted as an attachment to an email sent to: osepdisputeresolution@doe.nj.gov. Adobe Acrobat Reader is document reader software that is available for free download at: https://get.adobe.com/reader/.

### *What happens if I need to request emergent relief after my case has been sent for a due process hearing?*

If you need to request an emergent order after your case is sent to the Office of Administrative Law for a due process hearing, you may file your request with the ALJ that is assigned to hear your due process case. The ALJ will then review your request, hear arguments from you and the school district, and issue a decision with respect to your request for emergent relief.

## DUE PROCESS HEARING RIGHTS

**The following are due process rights for both parties:**

- The parent has the right to be advised and accompanied at the due process hearing by legal counsel and by individuals with special knowledge or training regarding children with disabilities. The district must be represented by legal counsel;

- Either party may present evidence, require the attendance of witnesses and cross-examine witnesses;
- Either party may ask the ALJ to stop the introduction of any evidence, including any evaluations or recommendations based upon those evaluations, that has not been exchanged at least five days before a due process hearing or at least two days before an expedited due process hearing; and
- Either party may get a written or electronic verbatim record of the hearing. You have the right, at your option, to a written or electronic word for word record of the hearing and the findings of fact and decision. The recorded findings of fact and decision will be provided to you the parent, at no cost.

**You have the right to:**

- Ask for and receive, from your school district, a list of any free or low-cost legal and other advocacy services available. The SPDR sends you this list when you submit a request for a due process hearing;
- See the list of the ALJs and their qualifications which is maintained by the OAL;
- Have the hearing open to the public;
- Have your child present at the hearing;
- Have an interpreter present, if needed, at no cost to you; and
- Have the hearing held at a time and place reasonably convenient to you.

Students with disabilities who are over age 21 and are receiving special education services have the right to request mediation or a due process hearing to resolve a dispute regarding identification, evaluation, placement or provision of a free, appropriate public education.

**Administrative Law Judges**

- Hearings cannot be conducted by a person employed by any public agency involved in the education or care of your child or otherwise having a personal or professional conflict of interest. In New Jersey, the hearing is conducted by an administrative law judge from the Office of Administrative Law. An ALJ is not considered an employee of a public agency involved in the education or care of your child solely because he or she is paid to conduct the due process hearing.
- The decision made by an ALJ is final and must be followed by you and the school district unless either party appeals the decision to a state or federal court within 90 days of the date of the decision.

### *Can I appeal the decision of the Administrative Law Judge in a due process hearing if I do not agree with it?*

Yes. The decision of the ALJ in a due process hearing is final and may only be reviewed and changed by the United States District Court or the Superior Court of New Jersey in accordance with the rules of each court for filing a case with them. If you disagree with the decision of the ALJ in your due process case, you may appeal to either of these courts within 90 CALENDAR DAYS of the date the decision is issued by the ALJ. In an appeal, the court will review the record of the due process hearing provided by you and the school district and hear additional evidence at the request of you or the school district. The court will then issue a decision based on a preponderance of the evidence.

## ATTORNEY FEES

### *How can I recover attorney fees?*

You may request an order from either a state or federal court to award reasonable attorney fees and costs within the limits of the law if you prevail in your due process hearing.

### *Can attorney fees be denied or reduced?*

An award of attorney fees may be reduced by the judge considering the request based on applicable standards for awarding fees, including, if during the proceeding you unreasonably delayed the settlement or decision in the case, the time spent and services furnished were excessive or the fees charged by your attorney exceed reasonable rates.

### *May the school district request attorney fees?*

Yes. A school district may request attorney fees if the school district prevails in the due process case you filed. If the state or federal court judge determines the due process case was frivolous, unreasonable or without foundation, or, was presented for any improper purpose, the judge may order your attorney to pay the attorney fees of the school district. If you have no attorney and the state or federal judge determines that your due process case was presented for any improper purpose, such as to harass, cause unnecessary delay or to needlessly increase the cost of litigation, the judge may order you to pay the attorney fees of the school district.

### *What is a complaint?*

A complaint is a concern (allegation) that an education agency has violated federal or state special education law. A complaint may be initiated on behalf of an individual child or on behalf of a group of children. A complaint may be filed with the New Jersey Department of Education for an independent review of the alleged violation(s).

## COMPLAINT RESOLUTION

### *Who can request a complaint?*

Anyone can request a complaint investigation by mailing a signed, written request to:

Director
Office of Special Education Policy and Dispute Resolution
New Jersey Department of Education
P.O. Box 500
Trenton, New Jersey 08625-0500

### *Can a parent file for a request for a complaint investigation through electronic mail or other electronic submission?*

Yes. The Office of Special Education Policy and Dispute Resolution (SPDR) accepts requests for special education complaint investigations using a SPDR-maintained and monitored email address. Completed requests for complaint investigations must be saved as Adobe PDF documents and emailed to specialeducationcomplaints@doe.nj.gov.

### *Is there a time limit for filing a complaint?*

Yes. Time limits for filing a complaint have been established so that the issues are not too out of date to arrive at an appropriate resolution. The complainant (person filing the complaint) must submit the request no later than one year after the alleged violation occurred.

### *How is a complaint resolved?*

1. The most desirable method to resolve a complaint is for the complainant and the education agency to work together to come to an understanding of mutual concerns and come to an agreement in the best interest of the student with a disability, before it becomes necessary to file a formal complaint.
2. If a formal complaint is filed with the SPDR, a ten-day period is allowed for the parties to resolve the issues in the complaint before an investigation begins. This ten-day period is referred to as an opportunity for Early Resolution. A signed resolution statement is submitted to the SPDR to show that the matter is resolved. Mediation is also available at no cost to the parties.

3. During the investigation period, the SPDR conducts interviews and reviews documentation submitted by the parties to determine whether the education agency was compliant or non-compliant.
4. Unless a complaint is resolved early, a report will be issued, which will include factual findings, conclusions and corrective action, if necessary.

### *What information must be included in the complaint investigation request?*

The complaint must:

- State the specific violation of special education law that you believe has occurred;
- Provide the facts on which the statement is based; and
- State when the alleged violation occurred.

A model form to assist you in filing a complaint is provided at the end of this booklet. Please note that use of the model form is not required; however, providing the requested information will assist in expediting your request.

### *How long does it take to make a determination on a complaint?*

Federal/state law and regulations require that a determination be made on a complaint within 60 calendar days of receipt of the written, signed complaint, unless an extension of the time line has been obtained, as permitted by regulation. For this reason, the parties are asked to work cooperatively to resolve the issues raised in the complaint and/or to submit necessary documentation promptly.

### *What happens if there are areas of noncompliance?*

If the education agency is found to be non-compliant, a corrective action plan in accordance with the directive(s) in the report shall be developed by the education agency and submitted to the SPDR.

### *What happens if a complaint is filed on the same issue that is being addressed in a due process hearing?*

If a complaint is submitted on the same issue that is being addressed in a due process hearing, the complaint must be set aside until the conclusion of the due process hearing. If the complaint contains multiple issues, and one or more are issues included in a due process hearing, the issues in the complaint that are being addressed by the due process hearing must be set aside until the conclusion of the due process hearing. However, any issue in the complaint that is not a part of the due process hearing must still be resolved within the required time limits.

### *If I have already filed a request for a complaint investigation, can I still request a due process hearing?*

Yes. However, if a complaint is also the subject of a due process hearing, the SPDR must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. If an issue is raised in a complaint that has been previously decided in a due process hearing involving the same parties, the hearing decision is binding.

### *What happens if a complaint is filed on an issue that has already been decided in a due process hearing?*

The Office of Special Education Policy and Dispute Resolution must inform the individual or organization submitting the complaint that the decision in the due process hearing is binding. Therefore, an investigation cannot be conducted.

### *Will I have the opportunity to provide information about the complaint?*

Yes. The complainant is given the opportunity to provide information, either orally or in writing about the complaint.

### *How will I be notified of the results of the complaint investigation?*

You will receive a written report of findings, conclusions and resolutions within 60 calendar days of receipt of the request, unless an extension is granted for extenuating circumstances. The decision of the Department of Education is final.

### *What is the complaint system not able to do?*

The SPDR does not investigate complaints regarding alleged violations of Section 504 of the Rehabilitation Act of 1973 or other allegations of violations of civil rights. These matters are addressed directly to the Office for Civil Rights in the U.S. Department of Education at (646) 428-3900. Also, the SPDR cannot address personnel issues or general education matters. Local boards are responsible for the operations of their schools, including the supervision of personnel and the administration of programs.

### *What action can be taken if a party believes there is a mistake in the report?*

If a party (the complainant or the education agency) believes there is a mistake that affects the conclusion, determination of compliance or noncompliance, or corrective action, the party may inform SPDR and the other party, in writing, within 15 days of the date of the report. The letter must identify the alleged error and include any documentation in support of the claim that an error was made. If a party fails to submit relevant documentation, the SPDR will not be able to review the claim. After receipt of the letter and documentation, the SPDR will decide what steps will be taken to determine whether an error was made. Both parties will be notified in writing of the outcome. If an error is substantiated, the report will be revised, as necessary.

### *How do I appeal the outcome of a complaint investigation?*

A complaint investigation report is considered a final agency decision. Therefore, you may file an appeal with the Superior Court of New Jersey Appellate Division. You have 45 days from the date of the decision to file the appeal. More information is available at: http://www.judiciary.state.nj.us/appdiv/index.htm

## DISCIPLINARY PROCEDURES

### *Must my school district discipline my child if he or she violates a code of student conduct?*

No. Your school district may consider your child's unique circumstances when determining whether a change in placement is appropriate as a disciplinary action for violating a code of student conduct.

### *Can the school district remove my child from his or her current placement for disciplinary reasons?*

Yes. School authorities can suspend (remove) your child from his or her current placement for not more than 10 school days at a time for any violation of school rules if nondisabled children would be subjected to removal for the same offense. However, preschool students with disabilities cannot be suspended, long-term or short-term, and cannot be expelled.

### *Will my child receive any services if he or she is removed for a period of less than 10 school days?*

Yes. Regulations covering general education require that all students be provided educational services no later than the fifth consecutive day of removal for disciplinary reasons. This means that students with disabilities must be provided services consistent with their IEP on the fifth day of any removal for disciplinary reasons, or sooner if the district determines it is appropriate to provide services.

### *Can the school district remove my child repeatedly for separate incidents of misconduct?*

Yes. School officials can remove your child from his or her current placement for up to 10 school days at a time, whenever discipline is appropriate, and such removal is consistent with the treatment of nondisabled children. In addition, school officials also may implement additional suspensions of up to 10 school days at a time in the school year for separate incidents of misconduct if educational services are provided for the remainder of the removals, to the extent required. School officials do not have to involve you in the decision to remove your child or in the decision about the services to be provided. However, school officials cannot repeatedly remove your child for short–term suspensions (up to 10 school days at a time) if these suspensions constitute a pattern that is a change of placement.

### *What steps must the school take when implementing a series of short-term removals?*

A series of short-term removals from your child's current educational placement may be a pattern that results in a change in placement when the total number of school days accumulates (adds up) to more than 10. School officials in consultation with the case manager determine whether the series of short-term removals is a change in placement. The determination of whether the series of short-term removals constitutes a change in placement is based on whether the conduct that resulted in a removal is similar to conduct that resulted in previous removals and consideration of the following factors: the length of each removal, the total amount of time your child is removed, and the proximity (nearness) of the removals to each other.

If the series of short-term removals is not a change in placement, your child may be removed from his or her current placement. School district officials in consultation with the child's case manager and at least one of your child's teachers determine the extent to which services are necessary to enable your child to participate in the general education curriculum and to advance appropriately toward achieving the goals set out in your child's IEP.

If school officials in consultation with the case manager, determine that the series of short-term removals is a change of placement, the IEP team must meet to determine whether the misconduct is a manifestation of the student's disability (a **manifestation determination**). As a member of the IEP team, you have a right to participate in these meetings. A manifestation determination is made by school district officials, relevant members of the IEP team and you. Conduct is a manifestation of a student's disability if:

- the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; OR
- the conduct in question was the direct result of the school district's failure to implement the child's IEP.

If either of these criteria is met, the conduct in question is a manifestation of your child's disability. If so, the school district must conduct a functional behavioral assessment (FBA) of your child unless it had already conducted one prior to the behavior that resulted in the disciplinary action. The school district must also develop a behavior intervention plan (BIP) for your child or amend the BIP if your child already has a BIP. If the conduct is determined to not be a manifestation of your child's disability, you and the school district still may agree to conduct a functional behavioral assessment of your child and to revise or develop a BIP for your child.

If the behavior is a manifestation of your child's disability, your child must not be removed from his or her current educational placement (except in the case of drugs, weapons or serious bodily injury) unless the IEP team develops a new IEP and proposes a new placement for your child. If the behavior is not a manifestation of your child's disability, he or she may be disciplined as any other child except that the school must continue to provide services to your child. The IEP

team determines the extent of services necessary for your child to participate and progress in the general education curriculum and to advance appropriately toward achieving the goals set out in your child's IEP.

You may disagree with the determination to remove your child for more than 10 cumulative school days by requesting mediation, a due process hearing or an expedited due process hearing.

### *What steps must the school take to suspend my child for more than 10 consecutive school days?*

Removal from your child's current educational placement for more than 10 consecutive school days for disciplinary reasons is a change in placement. If the school district wants to suspend your child for more than 10 consecutive school days, the IEP team must hold a meeting to review the BIP that was developed for your child as part of his or her IEP. If a BIP was not part of your child's IEP, then the IEP team must conduct an FBA and develop a BIP. In addition, the IEP team must determine whether the behavior is or is not a manifestation of your child's disability. As a member of the IEP team, you have a right to participate in these meetings.
A manifestation determination is made by school district officials and relevant members of the IEP team which includes you. Conduct is a manifestation of a student's disability if:

- the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; OR
- the conduct in question was the direct result of the school district's failure to implement the child's IEP.

If either of these criteria is met, the conduct in question is a manifestation of your child's disability. If so, the school district must conduct an FBA of your child unless it had already conducted one prior to the behavior that resulted in the disciplinary action. The school district must also develop a BIP for your child or amend the BIP if you child already has a BIP. If the conduct is determined to not be a manifestation of your child's disability, you and the school district still may agree to conduct a FBA of your child and to revise or develop a BIP for your child.

If the behavior is a manifestation of your child's disability, your child must not be removed from his or her current educational placement (except in the case of drugs, weapons or serious bodily injury) unless the IEP team develops a new IEP and proposes a new placement for your child. If the behavior is not a manifestation of your child's disability, he or she may be disciplined as any other child except that the school must continue to provide services to your child. The IEP team determines the extent of services necessary for your child to participate in the general education curriculum.

### *What steps can the school take to remove my child for discipline if weapons, drugs or serious bodily injury are involved?*

The school district may place your child in an interim alternative educational setting (IAES) for up to 45 calendar days, if your child:

- Possesses a weapon at or carries a weapon to school or a school function;
- Possesses or uses illegal drugs, or sells or solicits the sale of controlled substances while at school or a school function; or
- Caused a serious bodily injury.

The IEP team will decide the IAES and the steps to be taken at the end of the 45-day placement.

### *What steps can the school take to remove my child for danger to self or others?*

The school district may get an order from an ALJ to change your child's educational placement to an IAES for up to 45 days, if there is a danger that your child or others are likely to be injured if your child stays in the current placement. The ALJ will decide the IAES.

**Placement During the Pendency of Mediation or a Due Process Hearing for Disciplinary Action**

If you initiate mediation, a due process hearing, or an expedited due process hearing for a removal of more than 10 cumulative school days in a school year, the removal may occur while the disagreement is resolved.

If you initiate mediation, a due process hearing or an expedited due process hearing for a removal of more than 10 consecutive school days, you and your school district must conduct a manifestation determination to determine whether the conduct that resulted in the discipline was caused by your child's disability. If the conduct was a manifestation of your child's disability, your child must be returned to his former placement while the matter is pending unless you and the school district agree otherwise or emergent relief altering your child's placement is granted by an ALJ. If it is determined that the conduct was not a manifestation of your child's disability, your child will remain in the IAES until the matter has been resolved by final decision or an agreement between you and the school district, or until the period of removal expires, whichever occurs first.

In cases where your child is placed in an IAES for drugs, weapons or serious bodily injury, unless you and your school district agree otherwise your child will remain in the IAES for a period of 45 calendar days or until a final decision is issued by the ALJ, whichever occurs sooner. Thereafter, your child will return to his or her previously agreed upon placement unless the ALJ orders another placement or you and the school district agree to another placement.

## COMMONLY USED TERMS

**Evaluation** — The tests and other assessment procedures, including a review of information, that are used to decide whether your child is eligible for special education services.

**Free, Appropriate Public Education (FAPE)** — Special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet state and federal requirements; include preschool, elementary school, or secondary school education; and are provided according to an IEP.

**Functional Behavioral Assessment** — The process of coming to an understanding of why a student engages in challenging behavior and how student behavior relates to the environment. The purpose of the functional behavioral assessment is to gather information to better understand the specific reasons for the student's problem behavior.

**Identification** — The decision to evaluate a child to determine whether special education services are needed.

**Least Restrictive Environment (LRE)** — To the maximum extent appropriate, children with disabilities are educated with children who are not disabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

**Stay-Put** — The requirement that no change can be made to the education of a student who is or may be determined eligible for special education during mediation or due process. The student must stay in his or her current program or placement, unless you and the school district agree to a change or an ALJ orders a change.[14]

[14] *According to Federal Regulations, preschool age students with disabilities are not afforded stay put if mediation or a due process hearing has been requested regarding implementation of the initial IEP.*

# NEW JERSEY DEPARTMENT OF EDUCATION

## PARENTAL REQUEST FOR MEDIATION/DUE PROCESS HEARING/ EXPEDITED DUE PROCESS HEARING

***PLEASE NOTE:*** In accordance with IDEA 2004, you must complete all the information requested as fully and accurately as possible. Also, you must identify the specific reasons for the disagreement with the identification, evaluation, eligibility, classification, placement or provision of programs or related services for your child. If the information is incomplete or the reasons for your disagreement are vague or unclear, the district may challenge the sufficiency of your request for a due process hearing. Requests for mediation only are not subject to a sufficiency challenge.

**The entire petition must be filed with the Office of Special Education Policy and Dispute Resolution and one copy of the entire petition must be filed with the district.**

*Date: _____

To: **Director**
**Office of Special Education Policy and Dispute Resolution**
**NJ Department of Education**
**P.O. Box 500**
**Trenton, NJ 08625-0500**

The SPDR accepts requests for mediation, a due process hearing, emergent relief (request only; attachments must be sent separately by regular mail) electronically through an SPDR-maintained and monitored email address. The email address is used exclusively for the submission of requests and is not used to communicate with the parties or their representatives. Completed petitions must be saved as Adobe PDF documents and submitted as an attachment to an email sent to: osepdisputeresolution@doe.nj.gov. Adobe Acrobat Reader is document reader software that is available for free download at: https:// get.adobe.com/reader/.

*From:
(Full name of parent(s) submitting the request)

Address: _____

_____

_____

*County: _____

*Home Phone: (_____)_____-_____ *Fax: (_____)_____-_____

*Work Phone: (_____)_____-_____ *Cell Phone: (_____)_____-_____

*Email Address: _____

*Please check whether you will be represented by_____an attorney or assisted by_____an advocate.

*Name of attorney or advocate: _____

*Address: _____

_____

_____

*Phone: (_____)_____-_____ *Fax: (_____)_____-_____

Child's Name_____Date of Birth: _____

*Child's Address (If different from parent's address): _____

_____

*Items marked with an asterisk are not required.*

# NEW JERSEY DEPARTMENT OF EDUCATION

## PARENTAL REQUEST FOR MEDIATION/DUE PROCESS HEARING/ EXPEDITED DUE PROCESS HEARING

*District of Residence (district in which parent resides):

School the student attends: _____

*District where the school is located: _____

*Disability category: _____

Please Check **ONE** of the following boxes:

☐ **Mediation Only –** Please complete items 2 through 5 below

☐ **Due Process Hearing –** Please complete items 1 through 5 below

☐ **Expedited Due Process Hearing *for disciplinary matters only* –** Please complete items 1 through 5 below

1. **Required Steps for a Due Process Hearing or an Expedited Due Process Hearing (discipline matters only) –** When a parent requests a hearing, the district is given an opportunity to resolve the matter before the hearing is scheduled. The district is required to conduct a resolution session (within 15 days for a due process hearing and 7 days for an expedited due process hearing) and you are required to participate. You and the district may choose to participate in mediation conducted by the SPDR in place of a resolution session, or both parties can agree to waive the resolution session and proceed directly to a hearing.
   **Upon receipt of this notice, a representative of the school district must contact you to arrange a resolution session. If you would like to have the district consider other options, please check ONE of the following:**

   ☐ I am requesting a mediation conference conducted by the SPDR in place of a resolution session. **If the district agrees to mediation in place of a resolution session, a representative of the district must contact the SPDR at 609-376-9061 to facilitate the scheduling of the mediation conference.**

   ☐ I want to waive the resolution conference and proceed directly to a due process hearing. **Both parties must agree to waive the resolution period in order for the matter to be transmitted to the Office of Administrative Law prior to the expiration of the resolution period.**

   By signing below I am waiving the resolution session and mediation. An authorized representative of the district must also agree in writing to waive the resolution period.

   ***Signature:*** _____

2. **Please provide a description of the nature of the problem and any facts related to the problem. Attach additional sheets as needed:**

_____

_____

_____

_____

_____

*Items marked with an asterisk are not required.*

**3. Please provide a description of how this problem could be resolved. Attach additional sheets as needed:**

_____

_____

_____

_____

_____

**4. A copy of this petition must be provided to the other party. Please check to verify.**

**A copy of this request was sent to the superintendent of the school district:**

**Name of the superintendent:** _____

**Address:** _____

_____

**5. Parent's signature:** _____

**Note to parent(s) requesting a due process hearing:** The IDEA Amendments of 2004 provide that attorneys' fees may be reduced if the parent or parent's attorney unreasonably protracted the final resolution of the controversy or the attorney representing the parent did not provide to the district the appropriate information in the due process request.

## REQUEST FOR EMERGENT RELIEF

## TO BE COMPLETED WHEN AN INTERIM (TEMPORARY) DECISION IS REQUIRED PENDING A FINAL DECISION OF THE UNDERLYING ISSUES IN DISPUTE.

**Please note:** Emergent relief may only be sought when a temporary interim order is necessary pending completion of the underlying due process hearing in accordance with N.J.A.C. 6A:14-2.7(r). To meet the requirements for requesting emergent relief, complete all of the information required on the form below and the "Certification in Lieu of Affidavit or Notarized Statement of Petitioner Seeking Emergent Relief" form which is also included in this booklet. An original copy of the application must be filed with the Office of Special Education Policy and Dispute Resolution (SPDR). Please attach your request for a due process hearing or expedited due process hearing. All required forms must be completed in their entirety in order to process a request for emergent relief.

**Please submit the original request for emergent relief and the original request for a due process hearing to the SPDR. You must also submit a copy of both the emergent relief and the due process to the district. The SPDR accepts requests for mediation, a due process hearing, emergent relief request electronically through an SPDR-maintained and monitored email address.** This email is used exclusively for the submission of requests and is not used to communicate with the parties or their representatives. Completed petitions must be saved as Adobe PDF documents and submitted as an attachment to an email sent to: osepdisputeresolution@doe.nj.gov.

Adobe Acrobat Reader is document reader software that is available for free download at: https://get.adobe.com/reader/.

**Please describe the nature of the emergent problem and any facts relating to the problem. (Attach additional pages if necessary.):**

## REQUEST FOR EMERGENT RELIEF

## TO BE COMPLETED WHEN AN INTERIM (TEMPORARY) DECISION IS REQUIRED PENDING A FINAL DECISION OF THE UNDERLYING ISSUES IN DISPUTE.

**Please describe how this problem could be resolved. (Attach additional pages if necessary.):**

_____

_____

_____

_____

_____

_____

_____

**Please check to verify that a copy of this request was sent to the district superintendent:**

Name of other party: _____

Address: _____

_____

_____

Phone: (_____)_____-_____

# NEW JERSEY DEPARTMENT OF EDUCATION

## OFFICE OF SPECIAL EDUCATION POLICY AND DISPUTE RESOLUTION

## *CERTIFICATION IN LIEU OF AFFIDAVIT OR NOTARIZED STATEMENT OF PETITIONER SEEKING EMERGENT RELIEF

**I,_____, of full age, certify as follows:**
(Full Name of petitioner)

1. 1. I am the Adult student/Parent/Legal Guardian/Attorney/Advocate of:

_____
(Full Name of Minor Student or School District)

2. I make this Certification in support of my Request for Emergent Relief, which is attached to this Certification.

3. I understand that, pursuant to regulations promulgated by the Department of Education[1] and the Office of Administrative Law[2], Emergent Relief is a remedy that is available in limited circumstances.

4. I believe I am entitled to Emergent Relief because the contested matter involves one or more of the following issues: *(Check all that apply)*

   i. _____ Issues involving a break in the delivery of services;

   ii. _____ Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;

   iii. _____ Issues concerning placement pending the outcome of due process proceedings;

   iv. _____ Issues involving graduation or participation in graduation ceremonies.

5. I understand that pursuant to N.J.A.C. 1:6A-12.1, emergent relief may be granted if the Administrative Law Judge determines from the proofs that:

   i. The petitioner will suffer irreparable harm if the requested relief is not granted;

   ii. The legal right underlying the petitioner's claim is settled;

   iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; AND

   iv. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

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[1] *N.J.A.C.* 6A:14-2.7(r).

[2] *N.J.A.C.* 1:6A-12.1(r).

[*] *Pursuant to N.J. Court Rules, 1969, R. 1:4-4(b).*

# NEW JERSEY DEPARTMENT OF EDUCATION

## OFFICE OF SPECIAL EDUCATION POLICY AND DISPUTRE RESOLUTION
## *CERTIFICATION IN LIEU OF AFFIDAVIT OR NOTARIZED STATEMENT OF PETITIONER SEEKING EMERGENT RELIEF

6. I have completed the Request for Emergent Relief, and provided the Department of Education with the relevant information required on the Request for Emergent Relief.

7. I have provided a completed and signed copy of my Request for Emergent Relief to the Opposing Party.

_____

(Name of Opposing Party)

Note: If you are/represent the Parent or Guardian, you must provide a copy to the Superintendent of the student's school district of residence. If you represent the School District, you must provide a copy to the attorney/parent or guardian/adult student.

_____

(Full Address of Opposing Party)

_____

(Date Submitted to Opposing Party)

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____

(Petitioner's Signature)

Dated:_____, 20_____

*Pursuant to N.J. Court Rules, 1969, R. 1:4-4(b).*

# NEW JERSEY DEPARTMENT OF EDUCATION
# OFFICE OF SPECIAL EDUCATION POLICY AND DISPUTE RESOLUTION
# COMPLAINT FORM

*Date: _____

To: **Director**
**Office of Special Education Policy and Dispute Resolution**
**NJ Department of Education**
**P.O. Box 500**
**Trenton, NJ 08625-0500**

**The SPDR accepts complaint investigation requests by email. Completed requests for complaint investigations must be saved as Adobe PDF documents and emailed to specialeducationcomplaints@doe.nj.gov.**

Relationship to Student(s): (Check One)
☐ Parent/Guardian ☐ Attorney ☐ Advocate Other:_____

Name: _____

Address: _____

_____

(In the case of a homeless child, please provide available contact information.)

Phone: (___)_____- _____ Fax: (___)_____- _____ Email address: _____

Provide the name of the student or specify the group of students affected by the alleged violation(s):

_____

School where the alleged violation(s) occurred: _____

*District:_____ *County: _____

***Note: If this complaint is being filed by someone other than the parent(s) please be prepared to provide contact information for the parent(s), as they may be interviewed by the SPDR during the course of the investigation.*** *1. Please check which statement applies:

☐ I am currently involved in, or have recently requested, a due process hearing. I have enclosed a copy of the request.

☐ I am considering filing for a due process hearing. I will send a copy of the request.

☐ I am not planning on filing for a due process hearing.

***Note: Any issues contained in a request for a complaint investigation that are also the subject of a due process hearing will be set aside until the conclusion of the hearing. If the Administrative Law Judge makes a ruling on the issue(s), that ruling is binding.***

*2. Briefly state the specific violation(s) of **special education law or regulation** that you believe occurred. If you choose to attach additional information or documentation, **you must nevertheless summarize the alleged violations**, as you see them.

_____

_____

_____

_____

_____


*Items marked with an asterisk are not required.

3. Specify the period of time or dates when the alleged violation(s) occurred._____**Note: The complainant must allege a violation that occurred not more than one year prior to the date that the complaint is received.**

*4. Is/Are the alleged violations continuing at present? _____Yes _____No

5. **State the relevant facts,** including any claim that the district has failed to provide services required by the IEP of a student with disabilities. If you are claiming that the district has failed to implement the IEP, please include a copy of the entire IEP. (Attach additional pages, if necessary. If you have other written documentation from the school that you believe would assist in verifying the violation, please submit them with this request.)

_____

_____

_____

_____

_____

_____

6. Please describe how the issue(s) could be resolved. Attach additional pages as necessary.

_____

_____

_____

_____

_____

_____

*7. Please list the district personnel you have already talked with to resolve this complaint, along with their response(s) to your request.

_____

_____

_____

_____

# NEW JERSEY DEPARTMENT OF EDUCATION
# OFFICE OF SPECIAL EDUCATION POLICY AND DISPUTE RESOLUTION COMPLAINT FORM

**Complainants are required to forward a copy of the complaint to the Chief School Administrator of the district/ education agency against which the complaint is directed at the same time the complaint is filed with the Department of Education.**

**Check below to verify whether:**

**A copy of the complaint request, along with attachments, was mailed to:_____(name) on_____(date);**

**or**

**A copy of the complaint request, along with attachments, was hand-delivered to:_____(name) on_____(date).**

**Pursuant to *N.J.A.C.* 6A:14-9.2(b), please note that a complaint cannot be processed until the SPDR is notified that a copy was provided to the appropriate education agency.**

**Signature:_____**
**(Person(s) Submitting Request)**

# NEW JERSEY DEPARTMENT OF EDUCATION
# PARENTAL REQUEST FOR ENFORCEMENT OF A MEDIATION AGREEMENT

Date: _____

To: **Director**
**Office of Special Education Policy and Dispute Resolution**
**NJ Department of Education**
**P.O. Box 500**
**Trenton, NJ 08625-0500**

**The SPDR will NOT accept a request for enforcement of a mediation agreement through electronic submission. All requests must be mailed or faxed to the SPDR to be accepted and processed.**

Relationship to Student(s): (Check One)

☐ Parent/Guardian ☐ Attorney ☐ Advocate

From:_____
(Name of person submitting the request)

Address: _____

_____

Phone: (___)_____- _____ Fax: (___)_____-_____ Email address: _____

***Please Note: The Office of Special Education Policy and Dispute Resolution (SPDR) must have a copy of the mediation agreement before any action can be taken with respect to a request for enforcement.***

Is a copy of the mediation agreement included with this request?_____Yes ____No If not, is a copy being sent by separate mailing?_____Yes ____No

What is the date of the mediation agreement?_____

*Subsequent* to signing the mediation agreement, have the parties reached any agreements that modify the original mediation agreement?_____Yes ____No (If yes, explain below)

_____

_____

_____

_____

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_____

***Note: If any part of the mediation agreement is modified by subsequent agreement of the parties, enforcement may not be sought with respect to that part of the agreement.***

# NEW JERSEY DEPARTMENT OF EDUCATION
# PARENTAL REQUEST FOR ENFORCEMENT OF A MEDIATION AGREEMENT

When was the action that you are seeking to enforce directed to occur?_____

***Note: A request for enforcement must be made to the SPDR no later than the 90th calendar day from the date that the action directed in the mediation agreement that is the subject of the enforcement was required to have occurred. If your request is untimely, the SPDR will not enforce the request.***

Are you currently involved in, or have you recently requested, mediation, or a due process hearing or a complaint investigation?_____Yes _____No

If you *have* recently requested mediation or a due process hearing, what is the subject of the disagreement?

_____

_____

Briefly state the specific provision (identify the page and paragraph) of the mediation agreement that you assert the education agency has failed to implement.

_____

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**Upon a receipt of a request for enforcement, the SPDR will forward a copy of the request to the district for response and, if appropriate, the opportunity to resolve the request with the parent. If the matter is not timely and satisfactorily resolved by the parties, however, the district will be directed to submit to the SPDR evidence of compliance, whereupon, the SPDR will determine the implementation of the decision. If it is deter-mined that the district has failed to implement the decision, or part of the decision, the SPDR shall order the district to implement the decision or part of the decision, as appropriate.**

**Signature:_____**

**(Person(s) Submitting Request)**

# NEW JERSEY DEPARTMENT OF EDUCATION

## PARENTAL REQUEST FOR ENFORCEMENT OF A FINAL DECISION ISSUED BY THE OFFICE OF ADMINISTRATIVE LAW

Date: _____

To: **Director**
**Office of Special Education Policy and Dispute Resolution**
**NJ Department of Education**
**P.O. Box 500**
**Trenton, NJ 08625-0500**

**The SPDR will NOT accept a request for enforcement of a final decision issued by the Office of Administrative Law through electronic submission. All requests must be mailed or faxed to the SPDR to be accepted and processed.**

Relationship to Student(s): (Check One)

☐ Parent/Guardian ☐ Attorney ☐ Advocate

From:_____
(Name of person submitting the request)

Address: _____

_____

Phone: (___)_____- _____ Fax: (___)_____- _____ Email address: _____

***Please Note: The Office of Special Education Policy and Dispute Resolution (SPDR) must have a copy of the ALJ's decision before any action can be taken with respect to a request for enforcement.***

Is a copy of the final decision (or Order) issued by the Administrative Law Judge (ALJ) included with this request? ____Yes ____No If not, is a copy being sent by separate mailing?_____Yes ____No

What is the date of the ALJ's decision?_____

*Subsequent* to issuance of the decision, have the parties reached any agreements that modify the decision or the terms of the Order?_____Yes ____No (If yes, explain below)

_____

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***Note: If any part of the decision is modified by subsequent agreement of the parties, enforcement may not be sought with respect to that part of the agreement.***

# NEW JERSEY DEPARTMENT OF EDUCATION

## PARENTAL REQUEST FOR ENFORCEMENT OF A FINAL DECISION ISSUED BY THE OFFICE OF ADMINISTRATIVE LAW

When was the action that you are seeking to enforce directed to occur?_____

***Note: A request for enforcement must be made to the SPDR no later than the 90th calendar day from the date that the action directed in the hearing decision that is the subject of the enforcement was required to have occurred. If your request is untimely, the SPDR will not enforce the request.***

Are you currently involved in, or have you recently requested, mediation, or a due process hearing or a complaint investigation?_____Yes _____No

If you *have* recently requested mediation or a due process hearing, what is the subject of the disagreement?

_____

_____

Briefly state the specific provision (identify the page and paragraph) of the hearing decision that you assert the education agency has failed to implement.

_____

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_____

**Upon a receipt of a request for enforcement, the SPDR will forward a copy of the request to the district for response and, if appropriate, the opportunity to resolve the request with the parent. If the matter is not timely and satisfactorily resolved by the parties, however, the district will be directed to submit to the SPDR evidence of compliance, whereupon, the SPDR will determine the implementation of the decision. If it is determined that the district has failed to implement the decision, or part of the decision, the SPDR shall order the district to implement the decision or part of the decision, as appropriate.**

**Signature:_____**

**(Person(s) Submitting Request)**

# RESOURCES

For help in understanding your rights, you may contact any one of the following:

_____ _____

*School District Representative* *Phone Number*

Statewide Parent Advocacy Network (SPAN) at (800) 654-7726

Disability Rights New Jersey (DRNJ) at (800) 922-7233

New Jersey Department of Education through its_____County Office:

_____ _____

*County Supervisor of Child Study* *Phone Number*

SPDR website: www.state.nj.us/education/specialed/

# RESOURCES FOR TRANSITION TO ADULT LIFE

***Office of Special Education Policy and Dispute Resolution in the New Jersey Department of Education:***

The Office of Special Education Policy and Dispute Resolution provides training and technical assistance on the topic of transition from school to adult life to school staff, students and family members through the Learning Resource Center network. Information and resources on transition are available on the web: http://www.state.nj.us/education/specialed/transition/

The SPDR also sponsors training initiatives for school districts on the transition-related topics of Community-Based Instruction, and Person-Centered Approaches through a partnership with The Boggs Center on Developmental Disabilities at Rutgers.

**Community-Based Instruction**
Community-Based Instruction is research-based practice involving sustained and repeated instruction that takes place in the community rather than in the school building. CBI training and technical assistance efforts assist school districts in providing instruction for students in community-based settings. These efforts include providing information to districts through workshops, sharing successful efforts currently occurring in New Jersey school districts, and offering direct technical assistance to school districts addressing CBI strategies, training needs, and necessary administrative supports. All activities are designed to create positive, observable outcomes for students.

**Person-Centered Approaches**
The New Jersey Department of Education, Office of Special Education Policy and Dispute Resolution, in partnership with The Boggs Center, conducts planning, development, and pilot activities aimed at promoting effective transitions for students with disabili-ties through the use of person-centered approaches. The Boggs Center provides expertise in these approaches to the critical process of planning for effective transitions from school to adult life, including employment and engaging with adult service systems. The project aims to identify strategies to positively impact postschool outcomes. For more infor-mation on transition to adult life go to: http://www.state.nj.us/education/specialed/transition/

**Structured Learning Experience (SLE)**
Structured learning experience means experiential, supervised in-depth learning experiences that are designed to offer students the opportunity to more fully explore career interests. For more information on SLE, go to: http://www.state.nj.us/education/cte/sle/

***Division of Vocational Rehabilitation Services (DVRS) in the New Jersey Department of Labor and Workforce Development:***

The Division of Vocational Rehabilitation Services provides the following types of services to persons with a physical or mental impairment which is a substantial impediment to employment. Interested persons must apply for a determination of eligibility and needed services. Individuals who are blind or have a serious visual impairment are served by the Commission for the Blind and Visually Impaired, not DVRS.

Services that are provided may Include:

- Diagnostic Evaluation
- Individual Vocational Counseling and Guidance
- Job Seeking Skills Training and Selective Job Placement
- Follow-Up Support Services
- Post-Employment Services
- Physical Restoration
- Job Coaching, Vocational, Professional, or On-the-Job Training
- Referrals to Centers for Independent Living for independent living skills training
  http://www.state.nj.us/humanservices/dds/home/cntrindlivindex.html

Contact Information: LWD Building, 12th Floor
John Fitch Plaza
P.O. Box 398
Trenton, N.J. 08625-0398

Phone: (609) 292-5987
FAX: (609) 292-8347
TTY: (609) 292-2919

http://careerconnections.nj.gov/careerconnections/plan/foryou/disable/vocational_rehabilitation_services.shtml

***Division of Developmental Disabilities in the New Jersey Department of Human Services:***

The Division of Developmental Disabilities (DDD) has been providing and funding services for state residents with developmental disabilities since 1959. These supports and services are provided by more than 250 agencies in communities throughout the state, or in five residential developmental centers that are administered by DDD.

DDD funds a wide array of services intended to help support individuals with developmental disabilities who reside in the community. These services are not an entitlement, and their availability depends on current resources. The types of services available also may vary among counties. DDD is always seeking ways to manage its budget and use its funding as effectively as possible in order to serve as many people as possible.

DDD provides case management and/or information and referral services to everyone who is eligible to receive the services it funds. DDD funds three types of services for people who reside in the community:

- Day services, including supports for people who are employed
- Residential services, including individual supports that assist an individual living at home or elsewhere in the community
- Family Support services that assist families caring for loved ones at home

For more information and to begin the application process for DDD eligibility, please go to http://www.state.nj.us/humanservices/ddd/services/apply/index.html

Contact Information: 195 Gateway Center
5 Commerce Way, Suite 100
Hamilton, N.J. 08691

*mailing address:*
P.O. Box 726
Trenton , N.J. 08625-0726
Toll Free: 1-800-832-9173
http://www.state.nj.us/humanservices/ddd/home/

***Division of Mental Health and Addiction Services in the New Jersey Department of Human Services:***

The Division is the state mental health authority (SMHA) and the single state authority on substance abuse (SSA).

Services that are provided may include:

- Services in Four Psychiatric Hospitals Operated by the Division
- Monitoring and Provision of Services in County Hospitals
- Community Mental Health Services Provided by Numerous Agencies may include:
  - Screening and emergency services
  - Intensive case management
  - Partial care/partial hospital
  - Program for Assertive Community Treatment (PACT)
  - Individual, group and family therapy
  - Supported employment/Welfare to work
  - Supported housing
  - Criminal Justice Services
  - Self-help centers and services

Contact Information: P.O. Box 700
Trenton, N.J. 08625

Phone: (800) 382-6717
(609) 777-0702
FAX: (609) 777-0662

http://www.state.nj.us/humanservices/dmhas/home/index.html

***Department of Children and Families:***

***Children's System of Care***

DCF's Children's System of Care, (CSOC), (formerly the Division of Child Behavioral Health Services) serves children and adolescents with emotional and behavioral health care challenges and their families; and children with developmental and intellectual disabilities and their families. CSOC is committed to providing these services based on the needs of the child and family in a family-centered, community-based environment.

Contact Information: 50 East State Street
PO Box 717, 4th Floor
Trenton, NJ 08625-0717
Phone: 1-877-652-7624

If you have questions or concerns, you can contact us at:
http://www.nj.gov/dcf/about/divisions/dcsc/

***Division of the Deaf and Hard of Hearing in the New Jersey Department of Human Services:***

The New Jersey Division of the Deaf and Hard of Hearing (DDHH) is the principal state agency established by New Jersey Law (PL 1977, C. 166) on behalf of people of all ages who are deaf and hard of hearing. The division provides education, advocacy and direct services to eliminate barriers and promote increased accessibility to programs, services, and information routinely available to the state's general population.

DDHH maintains up-to-date and constructive resources on hearing loss including communication access referral services, technical assistance, equipment distribution, stakeholder communications and advocacy.

Contact Information: Division of the Deaf and Hard of Hearing
New Jersey Department of Human Services
P.O. Box 074
Trenton, N.J. 08625-0074

Phone: (Voice/TTY) (800) 792-8339 toll free in New Jersey
(609) 588-2648
FAX: (609) 588-2528

http://www.state.nj.us/humanservices/ddhh/staff/email/index.html

***Division of Disability Services in the New Jersey Department of Human Services:***

The Division of Disability Services (DDS) focuses on serving people who have become disabled as adults, whether through illness or injury. Such conditions are also called late-onset disabilities.

Through its toll free hotline -- 1-888-285-3036 -- the Division also responds to as many as 15,000 requests each year for Information and Referral Assistance on issues affecting people with any type of disability in the State of New Jersey .

And, as one of its primary services, DDS publishes New Jersey Resources 2014, the most comprehensive guide available about services across New Jersey for people with disabilities. This directory is updated annually.

The Division serves as a single point of entry for people with disabilities who need information and/or services within the human services system. DDS administers programs that allow people with different types of disabilities to live more independently in the community, and in many cases, avoid the need to move into an institution. These programs include home and community-based service programs, as well as other resource programs.

Contact Information: NJ Department of Human Services
P.O. Box 705
Trenton, NJ 08625-0705

Phone: (888) 285-3036
FAX: (609) 631-4365
TDD: (609) 631-4366

http://www.nj.gov/humanservices/dds

***Commission for the Blind and Visually Impaired:***

The New Jersey Commission for the Blind and Visually Impaired (CBVI) was established in 1910 by order of the NJ State Legislature. This agency's mission is to promote and provide services in the areas of education, employment, independent living and eye health through informed choice and partnership with persons who are blind or visually impaired, their families and the community.

CBVI's service programs are designed to enable consumers to achieve full inclusion and integration in society through success in employment, independent living, and social self-sufficiency.

These services are made available through state and Federal funding and for the most part, are provided free of charge to residents of New Jersey without regard to other disabling conditions, gender, age, race, ethnicity, religion, or sexual orientation.

Contact Information: New Jersey Commission for the Blind & Visually Impaired
P.O. Box 47017
153 Halsey Street, 6th Floor
Newark, N.J. 07101-47017

Phone: (973) 648-3333
Toll Free: (877) 685-8878

E-Mail: askcbvi@dhs.state.nj.us

http://www.state.nj.us/humanservices/cbvi/home/index.html

***Family Support Center of New Jersey:***

The Transition Matters website is operated by the Family Support Center of New Jersey (FSCNJ). The website has resources regarding transition from school to adulthood for families seeking information and referral. Information includes upcoming webinars and workshops, resources to help caregivers through the transition process, as well as statewide and regional contact information. FSCNJ runs several specialized programs such as the Assistive Technology Project and various sibling support programs. If there is something you can't find, please call one of their Resource Coordinators at 800-372-6510.

Contact Information: Family Support Center of New Jersey

Phone: (800) 372-6510
FAX: (732) 2624373

E-Mail: askcbvi@dhs.state.nj.us

www.transitionmatters.org

**Published by:**

**New Jersey Department of Education**

**PO Box 500**

**Trenton, New Jersey 08625 0500**