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Special Education: Protecting Your Child, Protecting Your Rights

October 2016

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Special Education...Protecting Your Child

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Hartford, CT 06105
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New Haven, CT 06510
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Consumer Law Project for Elders

Free legal assistance to people 60 and over throughout Connecticut who have money/debt problems.
1-800-296-1467

This booklet was produced by Connecticut Legal Services, Greater Hartford Legal Aid, New Haven Legal Assistance Association, and Statewide Legal Services of Connecticut. The information in this booklet is based on laws in Connecticut as of 10/2016. We hope that the information is helpful. It is not intended as legal advice. For advice on your situation, call Statewide Legal Services or contact a lawyer.
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Letter E: Request for Mediation

[Name of parent or adult student]

[Address]

[Telephone number]

[Today's date]

Connecticut State Department of Education
Bureau of Special Education
Due Process Unit
P. O. Box 2219, Room 364
Hartford, CT 06145-2219

We request mediation concerning [child's name and date of birth], who is currently within the jurisdiction of the [name of school district] and attends [name of school].

An IEP meeting was held on [insert date of the meeting at which you and the school district did not reach an agreement].

The issue(s) in dispute are as follows: [List all of the actions and/or IEP meeting decisions with which the parties disagree].

We understand that a mediation must be held within 30 days of this request. We would be available for mediation on the following mutually agreeable dates: [List 3 dates.]

Parent Signature

Date

School District Representative Signature

Date

Parent's phone : _____ District phone: _____


Parent's fax : _____ District fax: _____

What is special education?

Special education is classroom instruction that is specifically designed for a child who has a disability. It may include special classes, programs, or services to help the child participate in the regular classroom.

Special education is for children between the ages of 3 and 21 who have a disability that causes them to need special help in school. Disabilities that allow a child to get special education services include

- problems with speech or language;
- autism;
- attention deficit disorder;
- problems with hearing or seeing;
- intellectual or learning disabilities;
- neurological or physical problems;
- serious emotional problems;
- traumatic brain injury; or
- other health problems such as asthma, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, rheumatic fever, sickle cell anemia, and Tourette syndrome.



Your child may have other problems that would allow him or her to get special education. Do not hesitate to ask about special education eligibility.

If your child is younger than 3 years old and you are worried about his or her ability to see, talk, hear, move, eat, or play, the *Birth to Three System* (also called *Early Intervention Services*) can help. For more information:

- Talk to someone at your school district.
- Call the Child Development Infoline at 1-800-505-7000, or go to <http://cdi.211ct.org>.
- Find the Birth to Three System for your town at www.birth23.org/towns.

The rest of this booklet will focus on special education for school-aged children.

How can my child get special education services in school?

If you think your child has a disability, you can ask in writing for your child to be evaluated for special education. This is called a *referral to special education*.



You can write a letter to the school district (see **Sample Letter A** on page 22) or ask if the school has a form you can fill out. You can give the letter or form to the school in person or send it by certified mail and keep a copy for yourself. If you deliver it in person, ask the person who takes it from you to give you a signed and dated copy.

A referral to special education can be made by

- the child's parent or legal guardian,
- the child's teacher or other school staff;
- a professional such as a pediatrician or social worker; or
- the student, if age 18 or older.

The school **must** make a referral to special education if

- the child has been suspended multiple times; or
- his or her attendance, behavior, or progress in school is poor.

What happens after a referral is made?

Once a referral has been made, the school should

- form a *Planning and Placement Team (PPT)*,
- and schedule a *Planning and Placement Team meeting* (also called a *PPT meeting*).

Letter D: Request for Advisory Opinion

Connecticut State Department of Education
Bureau of Special Education
Due Process Unit
P. O. Box 2219, Room 364
Hartford, CT 06145-2219

We request an advisory opinion. We understand that both parties must agree to an advisory opinion and that we are not required to pursue an advisory opinion prior to requesting a due process hearing.

Parent's Signature

Date

School District Representative's Signature

Date

Both parties are available on the following dates: *[List two dates.]*

We understand that one of these dates will be selected for the advisory opinion.

Letter C: Request for Impartial Hearing

[Name of parent or adult student]

[Address]

[Telephone number]

[Today's date]

Connecticut State Department of Education
Bureau of Special Education
Due Process Unit
P. O. Box 2219, Room 364
Hartford, CT 06145-2219

I request an impartial hearing concerning [child's name and date of birth], who is currently within the jurisdiction of the [name of school district] and attends [name of school].

I attended an IEP meeting on [date of the meeting at which you and the school district did not reach an agreement].

The issue(s) in dispute are as follows:

[List all the school district's actions and/or IEP meeting decisions you disagree with.]

I suggest the following resolution to the dispute: [List the changes you would like to have happen for your child's school program].

Sincerely,

[Parent's or adult student's signature]

cc: [Name of director of special education]

The Planning and Placement Team

The *Planning and Placement Team (PPT)* is a group of people who know your child's abilities. Parents are important and equal members of the team.

While your child is being evaluated for special education, the PPT **must include**

- the child's parent or guardian;
- a school administrator or someone named by the administrator;
- the child's teacher; **and**
- a member of the special education staff.

The PPT **may also include**

- other school staff;
- your child, if appropriate; or
- other people you think could be helpful.



When will the first PPT meeting take place?

The school district must tell you in writing at least **5 school days** before the meeting. The notice they send you must include

- the date, time, location, and reason for the PPT meeting;
- who has been invited; and
- what your rights are.

If PPT meeting doesn't work with your schedule, you can ask the school district to reschedule it. If you can't get to the meeting in person, the school district must try other ways to get you involved, such as meeting with you by phone. If it's impossible for you to attend the PPT meeting at all, the meeting may be held without you.

The school district must send you copies of any written reports within **5 days after the meeting**.

What will happen at the first PPT meeting?

At the first PPT meeting, the team will

- talk about the referral to special education,
- look at how your child is doing in school, and
- decide if your child needs to be evaluated to get more information.

The PPT will also look at information about your child that may come from

- you;
- teachers and other school staff; and
- professionals such as a school psychologist or an occupational, speech, or physical therapist.

► **If the school decides it will evaluate your child for special education**, then **within 45 days** of when the referral was made, it must

- get your written permission to have your child evaluated,
- evaluate your child, and
- have a PPT meeting to discuss the results of the evaluations.

► **If the school decides it will not evaluate your child**, it must tell you **in writing within 45 days** of when the referral to special education was made. If you don't agree with the decision, you can ask for a *due process hearing*. See page 20 for more information about due process.

Letter B: Request for School Records

[Name of parent or adult student]

[Address]

[Telephone number]

[Today's date]

[School principal]

[Address]

Dear _____:

Please send me one copy of all of the school records of [child's name], [child's date of birth], as provided by Section 10-76d-18(b), Regulations of Connecticut State Agencies and 20 USC 1232(g).

Please include any evaluations, attendance records, and/or disciplinary records which exist regarding [child's name].

I look forward to receiving a copy of the records within 5 days, as required by the above regulations.

Sincerely,

[Parent's or adult student's signature]

Letter A: Request for Special Education Evaluation

[Name of parent or adult student]
[Address]
[Telephone number]

[Today's Date]

[Name of school principal, director of special education,
or director of pupil personnel]
[Address]

Dear _____:

I request that [child's name], [child's date of birth], who currently attends [name of school], be evaluated for special education. I am requesting an evaluation because [reason you are asking for an evaluation].

Please contact me at the above number to schedule a mutually convenient date and time for a PPT meeting.

Sincerely,

[Parent's or adult student's signature]

What is an evaluation?

An *evaluation* is a way to gather information about your child that will help you and the school to make important decisions about your child's education.

The school usually cannot evaluate your child without your **written permission**. If you don't want your child to be evaluated, you can say no.

Before you sign the form agreeing to have your child evaluated, read it carefully and don't be afraid to ask questions.

The school may evaluate the child's

- intelligence;
- motor skills;
- behavior;
- mental health;
- speech or language; and
- hearing, vision, or physical health.

- ▶ Evaluations must be given in the child's native language or way of communicating (for example, sign language).
- ▶ They must not discriminate against the child's race, culture, or disability.
- ▶ They must be free for the child's parent or guardian.
- ▶ The results of the evaluations may not be shared with anyone outside of the team unless you agree in writing.

What happens after the evaluation is finished?

After the evaluation is done, another PPT meeting will be held so the team can look at the results and decide if your child should get special education services.

If the PPT decides your child is eligible for special education, the team's next steps are to identify your child's needs and to decide what services your child needs.

If the PPT decides your child is not eligible for special education, the school must tell you in writing and give you information about what to do if you disagree with the decision.

What if the school won't evaluate my child or I disagree with the school's evaluations?

If the school won't evaluate your child or you disagree with the school's evaluations, you can have your child evaluated by someone who doesn't work for the school. This is called an *independent educational evaluation*. You can choose your own evaluator, or you can ask the school for a list of independent evaluators.

There will be another PPT meeting to review the independent evaluation. The school district must look at the results of the independent evaluation, but it doesn't have to agree with the results or recommendations.

Who pays for an independent evaluation?

The school district must pay for an independent evaluation unless it asks for a *due process hearing*. A due process hearing is a meeting where a hearing officer decides how to resolve a disagreement.

If a due process hearing is held, the school district must prove that its evaluation was appropriate. The hearing officer will make a decision about the school's evaluation.

- If the hearing officer decides the school's evaluation **was acceptable**, you will have to pay for an independent evaluation yourself.
- If the hearing officer decides the school's evaluation **was not acceptable**, the school must pay for an independent evaluation.

■ What is an expedited due process hearing?

An *expedited due process hearing* is like a regular due process hearing except it is held more quickly. You or the school district can ask for a due process hearing to be expedited when there is a disagreement about

- your child's removal from school because of discipline problems;
- if an *interim alternative educational setting* (IAES) is appropriate;
- if your child can return to his or her original school placement at the end of a 45-day IAES.

Advisory Opinion

What is an advisory opinion?

An *advisory opinion* is a way to help you and the school district decide if it would be better to have a full due process hearing or try to settle your dispute through mediation. The advisory opinion process can only happen if both you and the school agree to take part in it. It is only available after you have asked for a due process hearing.

How do I ask for an advisory opinion?

To ask for an advisory opinion, use **Sample Letter D** on page 25 or a form from the school if one is available.

What happens at an advisory opinion meeting?

A hearing officer will meet with you and the school in a confidential meeting. At the meeting, both you and the school

- may bring one or two witnesses,
- may bring a lawyer,
- will each have 45 minutes to present your case,
- may present evidence,
- can respond to the other side's presentation, and
- may continue with due process or ask for mediation.

After this meeting, the hearing officer will give an oral opinion. The opinion will not be in writing and it is not legally binding.

Due Process

A *due process hearing* is a meeting where a hearing officer decides how to resolve a disagreement.

What happens at a due process hearing?

Both you and the school will present evidence such as records, evaluations, and testimony from witnesses. At the end of the hearing, the hearing officer will make a decision about the disagreement.

How do I ask for a due process hearing?

It is best to speak with a lawyer before you ask for a due process hearing. You must ask for the due process hearing in writing within two years of the date that you knew there was a disagreement or problem (see **Sample Letter C** on page 24).

Where will my child be during a due process hearing?

During a due process hearing, your child must stay in his or her current educational placement unless the school district and the parents agree otherwise. This is called the *stay put placement* and applies from the time the hearing is requested until all hearings and proceedings are finished.

Exception to stay put placement: If your child is placed in an *interim alternative educational setting (IEAS)*, your child would stay in that setting for 45 days or until the hearing officer makes a decision—whichever happens first.

What if there is a disagreement about the results?

If you or the school district do not agree with the results of the hearing, then either of you can appeal to a state or federal court.

My child is eligible for special education. What happens next?

The Individualized Education Program (IEP)

The next step is to hold a meeting to create a plan for your child's education. This plan is called an *Individualized Education Program*, or *IEP*. At the PPT meeting, the team should

- set reasonable goals for your child's education, and
- talk about the special education services your child will get.

The IEP must be put in writing, and the school district must get your written permission to place your child in special education. The school cannot force you to agree to special education for your child.

Who develops my child's IEP? Can I help?

The Planning and Placement Team (PPT) develops your child's IEP. Remember: You are a very important part of the team and your input is needed.

How can I get ready for the IEP meeting?

Here are some things you can do before the IEP meeting:

- Talk to your child about his or her thoughts and feelings about school.
- Talk to your child's teachers and/or therapists.
- Ask the school for a copy of your child's school records. It should not cost you anything to get them (see **Sample Letter B** on page 23).
- Make a list of your child's strengths, weaknesses, and what you think your child can accomplish during the school year.
- Write down what you want to say during the meeting. Don't be shy about asking questions and sharing your thoughts about your child.

How can I get ready for the IEP meeting?

(continued from page 9)

- Visit your child's class (with the school's permission).
- Make sure that all necessary evaluations have been done. You can ask for more evaluations if you think your child needs them. You may want to have a professional such as your child's pediatrician or a social worker look at your child's records to see if more evaluations are needed.
- Invite professionals to the IEP meeting who will support your suggestions about your child's IEP or placement. These professionals must have evaluated your child or looked at your child's records.

What information should be in the IEP?

It is important to make sure that the IEP includes all of the services that your child needs, including:

1. Information about how your child is doing in school both in academics and in everyday activities.

2. Goals that describe what the team thinks your child can accomplish during the year.

3. Information about the progress your child is making toward the IEP goals.

4. A list of the special education services that will be given to your child.

5. Information about how your child will participate in regular education.

6. Details about your child's school day, including

- where your child will be during the school day;
- who will work with your child;
- the start and end dates of the services; and
- how long each session will last.



What happens after I file a complaint?

After you send a complaint, a Bureau of Special Education worker should

- investigate your complaint;
- decide if the school broke an education law; and
- issue a written decision within 60 days of getting the complaint.

Note: It is best to get advice from a lawyer before going ahead with any of the options below.

Mediation

What is mediation?

Mediation is a way to settle problems between parents and the school. The State Department of Education will appoint a person called a *mediator* to try to help you and the school come to an agreement. The mediator is supposed to make a fair decision about your case. Everything discussed in mediation is confidential and cannot be used in any future hearings.

How do I ask for mediation?

You or the school must ask for mediation in writing by using the school district's form or by writing a letter (**Sample Letter E**).

What happens during mediation?

The mediator will meet you and the school both together and separately to hear about the disagreement and to try to help you reach an agreement.

If you and the school can reach an agreement, the agreement will be put in writing and signed by you and the school. Once it is signed, the agreement becomes a legal document.

If you and the school cannot reach an agreement, there are other things you can do to resolve the problem, such as ask for a due process hearing.

What can I do if I disagree with the school about what is right for my child?

You have the right to disagree with the school's decisions about your child. If you disagree, you and the school should first meet to talk about your concerns and try to come to an agreement. If you still disagree after trying to work it out, there are other ways to resolve a disagreement.

■ **If you think the school broke a special education law**

If you think the school broke a special education law, you can file a written complaint with the State Department of Education.

How do I make a complaint?

1. Fill out a complaint form. You can get one from the State Department of Education at 860-713-6921 or on their website at www.sde.ct.gov. You can also write a letter. Your complaint should include

- the name and address of the child,
- the name of the child's school,
- the reason for the complaint,
- a proposed resolution to the problem (if possible), and
- the parent's signature and contact information.

2. Send the complaint to:

Connecticut State Department of
Education Bureau of Special Education
165 Capitol Avenue, Room 359
P.O. Box 2219
Hartford, CT 06415-2219
Fax: 860-713-7153

7. A list of changes your child may need to the length of the school day or year. This could include a longer school year, summer school, or services before or after school.

8. An explanation of changes your child may need while taking state tests or district-wide tests.

9. Transition goals and services your child may need in order to prepare for life after school.

After the meeting to develop the IEP, the school must give you a written report about what was talked about at the meeting and what will be in the IEP.

Placement in Special Education

Where will my child get special education services?

Your child's special education program may be given in

- regular classes with support services,
- special classes or schools,
- your home,
- a hospital, or
- a residential program.

Your child must be placed in the least restrictive environment possible. This means your child should stay in the regular classroom unless the team decides that your child cannot be successful there, even with support services. Support services might include

- an aide in the classroom,
- use of computers or other technology, or
- changes to the regular education curriculum.

Remember: The school district must pay for the special education program and the services recommended by the Planning and Placement Team.

What happens after my child is placed in special education?

After your child has been placed in a special education program, a **PPT meeting must be held**

- at least once a year,
- whenever you ask for one (within reason),
- if your child is suspended for 10 or more days,
- before the PPT can change or remove your child's special education services.

The school must tell you in writing every time a PPT meeting is scheduled. The school must also give you a written explanation of your legal rights once during each school year and whenever you ask for one (within reason).

The annual PPT meeting

At the annual PPT meeting, you and the other team members will talk about your child's progress towards the goals and objectives in the current IEP and develop an IEP for the next school year. The team should consider

- your child's strengths,
- your child's areas of improvement,
- your concerns,
- the results of any evaluations,
- behaviors that may interfere with your child's learning, and
- whether your child needs technology to help communicate.

Can my child's IEP be changed?

Yes. Make sure any changes are put in writing and given to all of the team members. You should ask for a copy of the revised IEP for your records, too.

During the 45 days, your child may be evaluated or observed again. After the 45-day period, the school will decide whether to move forward with an expulsion hearing.

What could happen at an expulsion hearing?

While an expulsion hearing is not as formal as a court trial, it is a legal proceeding and it may be the only chance you get to tell your story. There is no right to appeal the hearing officer's decision in court if you are not happy with the outcome. The hearing officer will listen while each side tells its story and will then decide

- if your child broke the rules,
- if your child should be expelled, and
- how long the expulsion will last.

You have the right to bring an attorney with you to the hearing. Call Statewide Legal Services (1-800-453-3320) as soon as you think your child might be expelled. If you don't have an attorney, you can bring someone else as an advocate.

- ▶ If your child is expelled, he or she is **still entitled to get special education services.**
- ▶ **A PPT meeting should be held after the expulsion hearing** to make sure your child will get enough services to be able to make progress on his or her goals and objectives. **Schools don't usually hold this PPT**, so you should get legal help as soon as you think your child might be expelled from school.

Once your child is expelled, it will be very hard for your child to go to another school, even if you move to a different school district. Therefore, it is important that you try to talk to a lawyer right away.

See the legal aid booklet, *School Expulsions*.

■ Expulsion

If your child is facing expulsion, you should talk to a lawyer right away. The school must give you an expulsion notice that tells you how to get low cost or free legal help. If you have low income, you can call Statewide Legal Services at 1-800-453-3320. They may give you advice over the phone, mail you information, or refer you to a free attorney.

What should happen if the school district is thinking about expelling my child?

First, a manifestation meeting should be held.

If the team decides that the behavior was caused by your child's disability or that it happened because the IEP wasn't followed, then your child will return to school.



If the team decides that your child's behavior was **not** caused by your child's disability, then an expulsion hearing will probably be scheduled.

If you don't agree with the decision, you can ask for a *due process hearing* (see page 20). Your child should stay in his or her current placement until due process is completed. But if the school district thinks that keeping your child in school will result in your child or someone else getting hurt, then it may ask for an *expedited hearing* (See page 21).

Sometimes, a PPT may decide that keeping your child in his or her current placement will probably result in injury to your child or to others, so your child may be placed in a temporary *alternative educational setting* for no more than 45 school days.

A PPT meeting will usually be held before a child's IEP is changed, but there may be times when you and the school agree to a change without holding a meeting. This type of change is called an *Amendment to the IEP*. There is a form you must fill out (form ED634), and the agreement is only official after you've signed and returned it.

Will my child be evaluated again?

Yes. Your child must be reevaluated at least once every three years unless you and the school agree otherwise. Evaluations must also be held

- before any significant changes are made to a child's special education placement, and
- before a child is removed from special education.

Discipline

Can my child be disciplined?

Yes, but there are limits on how the school can discipline a child with a disability. Children with disabilities get extra protections if they are removed from school for more than 10 days or if the child's behavior was caused by the disability.

Exception: Weapons, illegal drugs, or causing serious injury

Your child may be moved to a different educational setting (an *Interim Alternative Educational Setting* or *IEAS*) for 45 school days, even if the behavior was caused by the child's disability, if your child does any of these things on school grounds or at a school activity (even a different school):

- carries a weapon;
- knowingly has, uses, sells, or tries to buy illegal drugs; or
- causes someone serious bodily injury.

■ Suspension for 10 or fewer school days

If your child is to be suspended for 10 school days or fewer, he or she may be

- placed in in-school suspension;
- placed in a different educational setting; or
- suspended.

Any child who is suspended from school must be given a chance to complete missed classwork, including tests.

■ Suspension for more than 10 school days

For a child in special education, a removal or suspension for more than 10 school days is considered a *change in placement*. The removal can be 10 or more days

- in a row, or
- during the school year in a way that shows a pattern.

In this case, the school district must give your child educational services so he or she can keep working toward the goals in the IEP. The educational services do not have to be at the school.

The Planning and Placement Team must also hold a *manifestation determination meeting* within ten school days of the decision to remove your child from school.

At the meeting, the PPT must decide whether your child's behavior

- was caused by or related to your child's disability, or
- happened because the school did not carry out your child's IEP.

The child's parents, other members of the PPT, and school staff attend the manifestation determination meeting. You may invite a professional or a friend to support you.

The school must tell you in writing about the meeting at least 5 days ahead of time, along with a written statement telling you about your rights. The manifestation determination meeting is important. If you can't go to the meeting, you have a right to call the school and ask them to reschedule it.

If the group determines that your child's disability did not cause your child's behavior, your child may be disciplined just like any other child, except that the school district must keep providing special education services.

If it is found that your child's behavior was caused by his or her disability or that it happened because the IEP was not followed, then your child cannot be removed from school unless the behavior involved weapons, drugs, or serious injury.

The team must also do these things:

- Try to find out why the behavior is happening. This is called a *functional behavioral assessment* (FBA).
- Create a plan to stop the behaviors and teach the child proper behavioral and social skills. This plan is called a *behavioral intervention plan* (BIP) or *behavioral intervention services* (BIS).

If your child already has a behavioral intervention plan, the team must look at it and make changes as needed. Your child must be returned to the placement he or she was in before being removed unless you and the school agree to a change in placement.

You may ask the PPT to reevaluate your child to decide if the assessment and plans are appropriate.

NOTE: If your child is repeatedly suspended or removed from the classroom, you should ask the school to hold a PPT meeting. **If your child is suspended for more than 10 days in a school year, a PPT meeting must be held.** If you disagree with any decisions made about your child, you can ask for a *due process hearing* to be held without delay. (See *Due Process* on page 20.)