



KNOW YOUR RIGHTS:
Navigating Special Education In New York

with

NASSAU SUFFOLK LAW SERVICES COMMITTEE, INC.
and EDUCATION & DISABILITY RIGHTS PROJECT



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Please keep your microphone muted.

Please put any questions in chat and we will address throughout presentation.

There will be polls throughout the presentation and a survey to complete at the end.

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Hempstead NY 11550
(516) 292-8100

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Islandia NY 11749
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- Education and Disability Rights (Special Education and Rights of Developmentally Disabled)
- Disability Advocacy Project (SSD/SSI Appeals)

Nassau Suffolk Law Services

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- Civil Unit
(Eviction Prevention)
- Adult Home Project
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- Public Benefits
- Senior Citizen
Project (Nassau)
- Pro Bono Project (Suffolk)
- Volunteer Lawyers Project
(Nassau)
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Legal Support Center for Advocates

Advocates call (631) 232-2400 for assistance:

Sharon Campo - x3368 Cathy Lucidi - x3324

- Provide Technical Support to Advocates
- “Advocates” include legislative staff, social workers, outreach workers, medical personnel, and guidance counselors
- Host Community Trainings
- Publish Newsletters



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Just a Note...

Nassau/Suffolk Law Services makes every effort to keep legal educational materials up to date. However, the situation is rapidly evolving. The information contained in this material is not legal advice. Legal Advice depends upon the specific facts of each situation. These materials cannot replace the advice of competent legal counsel.

Education Disability Rights Project (EDRP)

The EDRP represents students with disabilities between ages of 5-21 and adults with developmental disabilities.

Issues include:

- Special education
- Residency Disputes
- Matters pertaining to homelessness
- OPWDD, and much more

Lynn Iacona, Supervising Attorney;

Tracey Discepolo, Staff Attorney;

Danielle Leake, Staff Attorney (pending admission)



NAVIGATING SPECIAL EDUCATION IN NEW YORK

Part 1:

An Overview of Federal and State Special Education Laws

Part 2:

The Five Steps in the New York Special Education Process

Part 3:

Due Process Complaints



Education Disability Rights Project (EDRP)

(continued)

Federal and New York State laws protect the rights of students with disabilities and their parents:

- Individuals with Disabilities Education Improvement Act (“**IDEA**” or “**IDEIA**”)
- Section 504 of the Rehabilitation Act of 1973 (“**Section 504**”)
- Americans with Disabilities Act (“**ADA**”)
- New York State Education Law
- New York State Commissioner of Education Regulations



Overview of Federal and State Special Education Laws

Under these laws, Districts are required to:

1. Provide students with disabilities a **free appropriate public education** (“**FAPE**”) *20 U.S.C. §1412(a)(1)(A)*; and
2. Educate all students with disabilities in the **least restrictive environment** (“**LRE**”).
3. A **FAPE** is delivered through an Individualized Education Program (“**IEP**”) to meet each student's unique needs. *20 U.S.C. §1412(a)(4)*.



Overview of Federal and State Special Education Laws

(continued)

What is Special Education?

- **Special Education** is “specially designed individualized or group instruction or special services or programs, and special transportation, provided at **no cost** to the parent, to meet the unique needs of students with disabilities”. 8 NYCRR §200.1(ww).

What is a 504 Plan?

- **Section 504** Plans ensure that children with disabilities receive accommodations to ensure access to the learning environment. See U.S. Rehabilitation Act of 1973.



Overview of Federal and State Special Education Laws

(continued)

How long is a student with a disability eligible for a FAPE in NY?

Whichever comes first:

- The end of the school year in which the student turns 21, or
- Receipt of a Regents or Local diploma. *8 NYCRR §200.5(a)(5)(iii)*.

Identifying students who need extra help (Child Find)

- All children living in New York who need Special Education and related services must be identified and evaluated, regardless of the severity of their disabilities.
- Children with disabilities must be located even if they are homeless or attend private school. *20 U.S.C. §1412(a)(3)(A)*.



Overview of Federal and State Special Education Laws

(continued)

What is an IEP?

- An IEP is a written plan to meet the unique education needs of a student with a disability. *8 NYCRR §200.1(y)*.
- The District's **Committee on Special Education** (“CSE”) develops the IEP. *8 NYCRR §200.1(y); 8 NYCRR §200.4(d)(2)*

What is the least restrictive environment (“LRE”)?

- Children with disabilities must be educated with students who are not disabled to the maximum extent appropriate.
- **LRE** applies in public or private institutions or other care facilities.
- Children with disabilities should only be removed from the regular school environment if aids and services are not sufficient to allow the child be to educated in a regular class. *20 U.S.C. § 1412(a)(5)(A)*.



Overview of Federal and State Special Education Laws

(continued)

What kind of program should an IEP provide?

- The U.S. Supreme Court said that an “appropriate” IEP must be “reasonably calculated to enable the child to receive educational benefits”.*
- An IEP must be “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances”.

**Board of Education v. Rowley, 458 U.S., 176 (1982)

** Endrew F. v. Douglas County School District, 137 S. Ct. 988 (2017)



The Five Steps in the New York Special Education Process

Step 1: Initial Referral

Generally, parents or teachers refer students suspected of having a disability to CSE.

Step 2: Individual Evaluation

CSE arranges evaluation of student's abilities and needs.

Step 3: Eligibility Determination

CSE decides if student is eligible for special education programs and services.

Step 4: IEP Developed

If eligible, CSE develops and implements IEP.

Step 5: Review/Reevaluation

CSE must review IEP at least once a year and student must be evaluated at least once every three years.



Step 1: Initial Referral for Special Education Services

What should the initial referral include?

- Student's **name** and **date of birth**;
- Your **address** and **telephone number**;
- A request that the District **evaluate** the student for Special Education services;
- Your **reasons** or **concerns** for requesting evaluation.
- List **all** your concerns: academic, behavioral, physical and social problems or delays that the student is experiencing. *8 NYCRR §200.4(a)(2)(iii)(a)*.
- Request must be in writing.



Step 2: Individual Evaluation Process

How long does a District have to complete initial evaluation?

- If the student is being evaluated for the first time, the District must complete the initial evaluation within **60 calendar days** of receiving parent's written consent for evaluation. ⁸ NYCRR §200.4(b)(7).

Assessments must be appropriate

Assessments and materials used to assess a student must be:

- In student's native language or other mode of communication;
- Valid and reliable;
- Administered by trained and knowledgeable personnel following developers' instructions;
- Not discriminatory on a racial or cultural basis. ⁸ NYCRR §200.4(b)(6)(i)(a-d).



Step 2: Individual Evaluation Process

(continued)

What should an initial evaluation include?

District must evaluate in all areas of suspected disability, at no cost to parent.

8 NYCRR §200.4(b)(6)(vii).



Step 2: Individual Evaluation Process

(continued)

What are some evaluations District will conduct?

The individual evaluation must be at no cost to the parent and must include:

- Physical examination;
- Psychological evaluation (unless a school psychologist determines evaluation not needed);
- Social history;
- Observation in student's learning environment;
- Functional behavior assessment (if behavior impedes learning);
- Other evaluations needed to determine the factors that contribute to suspected disabilities.

8 NYCRR §200.4(b)(1)(i-v).



Step 2: Individual Evaluation Process

(continued)

What if parent disagrees with evaluation?

- Parent has right to one independent educational evaluation (“IEE”) at public expense each time the District conducts an evaluation that the parent disagrees with. *8 NYCRR §200.5(g)(1)*.
- District may ask why parent objects to public evaluation but may not require explanation.
- If parent requests IEE, District must, without unnecessary delay, either:
 - Ensure IEE is provided at public expense, or
 - File due process complaint (“DPC”) notice to request hearing to show its evaluation is appropriate or that parent's evaluation does not meet District criteria. *8 NYCRR §200.5(g)(1)(iv)*.



Step 2: Individual Evaluation Process

(continued)

What happens after evaluation completed?

CSE meets to review evaluation results to determine:

- If a student has a disability;
- Student's educational needs.



Step 3: Determining Eligibility for Special Education Services

How is CSE meeting scheduled?

- The District sends parent a written notice at least 5 days before CSE meeting. *8 NYCRR §200.5(c)(1)*.
- Notice must include date, time, location and participants.
- Notice must say that parent has right to participate and invite those with knowledge or special expertise about student. *8 NYCRR §200.5(c)(2)(i-iii)*.
- Meeting should be scheduled for mutually agreed upon time and place and be physically accessible to parent. *8 NYCRR §200.5(d)(1)(ii)*.
- CSE and parent may agree to conduct meeting by phone. *8 NYCRR §200.5(d)(1)(iii)*.
- Parents have the right to attend and should attend CSE meeting.



Step 3: Determining Eligibility for Special Education Services

(continued)

Who is on CSE team?

- Parent or guardian;
- Regular education teacher (if the student is or may participate in regular education);
- Special Education teacher or provider;
- School psychologist;
- Representative of the District to serve as Chairperson;
- Person to interpret the evaluation results (usually school psychologist);
- If requested in advance:
- School physician;
- Parent of another student with a disability;
- People with knowledge or special expertise regarding the student invited by the parent or District;
- Student, at the parent's discretion, unless the student is over 18 years old.



Step 3: Determining Eligibility for Special Education Services

(continued)

What does the CSE do when it meets?

- The CSE reviews the evaluation results and information from parent. *8 NYCRR §200.4(c)*.
- CSE decides whether to “identify” student as a student with disability. *8 NYCRR §200.4(c)*.
- To be eligible for Special Education, student must have disability that, for mental, physical, or emotional reasons, affects ability to learn and requires special services and programs. *8 NYCRR §200.1(zz)*.



Step 3: Determining Eligibility for Special Education Services

(continued)

What happens if the student is identified as a student with a disability?

CSE determines which of 13 classifications most accurately describes disability that most directly interferes with student's learning.

8 NYCRR §200.4(d)(2)(ii).

8 NYCRR §200.1(zz)(1-13).

Autism
Deafness
Deaf-blindness
Emotional Disability
Hearing-impairment
Learning Disability
Intellectual Disability
Multiple Disabilities
Orthopedic impairment
Other health-impairment
Speech or language impairment
Traumatic Brain Injury
Visual Impairment including blindness



Step 4:

Developing the Individualized Education Program (IEP)

CSE discusses student's Present Levels of Performance (“PLEPS”) and expected learning outcomes in four categories. *8 NYCRR §200.4(d)(2)(i)*

<p>1.) Academic achievement, functional performance, and learning characteristics:</p> <p>Knowledge in subject and skill areas including activities of daily living, intellectual functioning, adaptive behavior, expected rate of progress;</p>	<p>2.) Social development:</p> <p>Student's relationship with peers and adults, social adjustment in school and community;</p>
<p>3.) Physical development:</p> <p>The quality of the student's motor and sensory development, health, vitality and physical skills or limitations; and</p>	<p>4.) Management needs:</p> <p>Environmental modifications and resources needed for student to benefit from instruction.</p>



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Step 4:

Developing the Individualized Education Program (IEP)

(continued)

Among other factors, CSE must consider:

- Positive behavior interventions and strategies to address any disruptive behavior NYCRR §200.4(d)(3)(i);
- Language needs of a student with limited English proficiency NYCRR §200.4(d)(3)(ii);
- Braille for a visually impaired student NYCRR §200.4(d)(3)(iii);
- Students' communication needs NYCRR §200.4(d)(3)(iv);
- Assistive Technology (e.g., pencil grip, Braille reader, IPAD, or software) and whether it is needed at home and other places. NYCRR §200.4(d)(3)(v).



Step 4:

Developing the Individualized Education Program (IEP)

(continued)

- The CSE develops **measurable annual goals**.
 - Goals must include academic and functional goals.
 - Goals must be specific and measurable so that progress can be easily quantified. *8 NYCRR §200.4(d)(2)(iii)*.
- The CSE identifies special education programs and services that must be provided in the LRE (least restrictive environment). *8 NYCRR §200.4(d)(4)(ii)*.



Step 4:

Developing the Individualized Education Program (IEP)

(continued)

CSE considers “**Continuum of Services**” to meet student's needs. *8 NYCRR §200.6.*

In increasing order of restrictiveness, this continuum includes:

1. **Consultant Teacher Services** - Direct or indirect services to student in regular education classes.
 - Students receiving Consultant Teacher Services must receive at least 2 hours per week of these services. *8 NYCRR §200.6 (d).*
2. **Related Services** – (e.g., Speech/Language Therapy, Occupational Therapy, Physical Therapy, Parent Counseling and Training and Rehabilitation Counseling Services);
 - Related services may be individual or in a group;
 - Groups may not exceed 5 students. *8 NYCRR §200.6 (e).*



Step 4:

Developing the Individualized Education Program (IEP)

(continued)

Continuum of Services (continued)

3. **Resource Room Program** – For student who needs specialized supplementary instruction at most half of school day.
 - Students who need a Resource Room program must receive at least 3 hours of instruction per week.
 - Max 5 students in a Resource Room group. *8 NYCRR §200.6(f)*.
4. **Integrated Co-Teaching (“ICT”) Services** – Special education and general education teacher teach students with disabilities and non-disabled students together.
 - Maximum number of students with a disability in an **ICT** is 12. *8 NYCRR §200.6(g)*.



Step 4:

Developing the Individualized Education Program (IEP)

(continued)

Continuum of Services (continued)

5. Special Classes – Special Education teachers and supplementary personnel

- Class must be composed based on similar needs and strengths, achievement, learning characteristics, social and physical development, and management needs.
- Max class size ranges from 6-15 students depending on intensity of needs.
- Student age range is 36 months. But no age range if 16 and older. 8 *NYCRR §200.6(h)*.



Step 4:

Developing the Individualized Education Program (IEP)

(continued)

Continuum of placement options

Home and hospital instruction

- Elementary students receiving home or hospital instruction shall receive at least 5 hours per week (preferably 1 hour daily);
- Secondary students receiving home or hospital instruction shall receive at least 10 hours per week (preferably 2 hours daily). *8 NYCRR §200.6(i)*.

Approved private schools

To place a student at a state approved private school, the District must document efforts to place student in public school and demonstrate that available public options are not suitable. *8 NYCRR §200.6(j)*.



Step 4:

Developing the Individualized Education Program (IEP)

(continued)

The CSE must also consider:

1. Need for supplementary aids and services (for example, study guide, Behavior Intervention Plan (“**BIP**”), note taker, 1-1 aide, behavioral consultation);
2. Program modifications: change in curriculum or measurement of learning;
3. Program accommodations: adjustments to environment, instruction or materials (for example, Braille, fewer items on a page, extra time to complete assignments, preferential seating);
4. Parent Counseling and Training: required for students with Autism;
5. Projected date to start Special Education program and services;
6. Date of initiation, frequency and duration of services. *8 NYCRR §200.4(d)(2)(v)(b).*



Step 4:

Developing the Individualized Education Program (IEP)

(continued)

Assessments and Alternate Assessments

- CSE determines whether student needs testing accommodations e.g.:
 - Extended time
 - Directions read
 - Tests taken in separate location. 8 NYCRR §200.4(d)(2)(vi).
- Only “severely disabled” students are eligible to take “alternate assessments”, rather than Districtwide or Statewide regular assessments, such as Regents. 8 NYCRR §100.1(t)(2)(iv).
- If student is assessed alternatively, **IEP** must explain why regular assessments are not appropriate. 8 NYCRR §200.4(d)(2)(vii).



Step 4:

Developing the Individualized Education Program (IEP)

(continued)

Summer school

- A student is eligible for **Extended School Year (“ESY”)** (12-month service/program) if needed to prevent substantial regression over the summer months. *8 NYCRR §200.4(d)(2)(x)*.

Special transportation needs

- **CSE** should document special transportation needs in student’s **IEP**. *34 C.F.R. §300.34(c)(16), 8 NYCRR §200.4(d)(2)(v)*.
- No maximum school bus ride, but travel time must be reasonable. Many Districts consider this to be one hour per trip.



Step 4:

Developing the Individualized Education Program (IEP) (continued)

Physical Education For Students With Physical Limitations

- Adapted physical education (APE) may be required in an IEP.
8 NYCRR §200.1(ww)(2), 8 NYCRR §200.4(d)(2)(viii)(d).
- Adapted physical education includes development activities, games, sports and rhythms, suited to the interests, capacities and limitations of students with disabilities.

8 NYCRR §200.1(b).



Step 4:

Developing the Individualized Education Program (IEP)

(continued)

How long does a District have to provide Special Education programs and services specified in the student's IEP?

If the CSE decides a student has a disability, the District must provide the special education services and programs in the student's IEP within 60 school days of receipt of the parent's consent to evaluate the student. *8 NYCRR §200.4(e)(1), §200.6(k).*

Who gets a copy of the IEP?

- Parent
- Each regular education teacher, Special Education teacher and service provider responsible for implementing the IEP. *8 NYCRR §200.4(e)(3)(i), (iii), (iv).*



Step 5: Annual Review/Reevaluation

What is an annual review?

- Each student's **IEP** must be reviewed at least once a year to determine if student achieved annual goals. *8 NYCRR §200.4(f)*.

What is a triennial review?

- The student must be reevaluated at least once every three years unless District and parent agree in writing that it is not needed. *8 NYCRR §200.4(b)(4)*.

What is declassification?

- District must evaluate a student and provide the evaluation report to parents before determining that the student no longer needs special education services. *8 NYCRR §200.4(c)(3)*.



Due Process Complaints

What can a parent do if he/she disagrees with the determination of the CSE?

- Due Process Complaint (“**DPC**”) challenges the identification, evaluation or placement of a student with a disability, or the provision of **FAPE** for the student. *8 NYCRR §200.5(i)*.
- No money damages, but parent may be reimbursed for education services paid out-of-pocket.
- Mail **DPC** Notice and **DPC** to the District's Board of Education, with a copy to NY State Education Department.
- **DPC** Notice requests an “Impartial Hearing”: administrative proceeding before an **Impartial Hearing Officer** (“**IHO**”). *New York Education Law Article 89 §4404(1)*.
- **DPC** must be submitted within 2 years of the action or within 2 years of when parent discovered the action. *New York Education Law Article 89 §4404(1), 8 NYCRR §200.5(j)(1)(i)*.



Due Process Complaints

(continued)

Student, Parent and School Information

Subject of the complaint:

*Describe **problem** including all **specific facts** relating to problem. Attach additional pages or documents if needed.

Proposed solution:

*Explain how you want the problem solved. Attach additional pages or documents if needed.



Thank you for attending!

If you have any questions, please contact the Legal Support Center for Advocates: (631) 232-2400 ext. 3368 (Sharon Campo) or 3324 (Cathy Lucidi).



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