

# Know Your Rights: Contemporary Issues in Education

Presented by the  
Education and Disability  
Rights Project



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## House Keeping

Please keep your microphone muted.

Please put questions in chat or raise your hand.

Thank you!




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**WHERE DIGNITY MEETS JUSTICE**

Join Nassau Suffolk Law Services as we continue to illuminate pathways to justice under our new name, **Legal Services of Long Island (LSLI)**. Help us guide our communities and neighbors in need toward accessible free legal services for all.

  
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## Who We Are And What We Do

- Over 6,000 legal cases each year
- Free Legal Services for eligible Long Island Residents
- Direct representation, phone consultations
- Brief service or referrals
- Offices in Hempstead, Islandia, Riverhead
- Case handling staff includes attorneys, paralegals, and social workers
- Partnerships with Community Agencies



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## Office Locations

### Hempstead:

1 Helen Keller Way 5th Fl  
Hempstead NY 11550  
(516) 292-8100

### Islandia (Western Suffolk):

1757 Veterans Hwy Ste 50  
Islandia NY 11749  
(631) 232-2400

### Riverhead (Eastern Suffolk):

400 W. Main St Suite 200  
Riverhead, NY 11901  
(631) 369-1112



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## Our Programs

### Family

- Domestic Violence Family Court Project (Suffolk)
- Child Support Defense Project

### Disability & Health-Related Projects

- HIV Unit
- Mental Health
- ICAN - Advocates in Managed Long-Term Care
- Education and Disability Rights (Special Education and Rights of Developmentally Disabled)
- Disability Advocacy Project (SSD/SSI Appeals)



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## Our Programs

### Housing

- Civil Unit (Eviction Prevention)
- Foreclosure Project

### Other

- Consumer Debt
- Education Debt Consumer Advocacy Project
- Veterans Rights
- Human Rights Project
- Public Benefits
- Adult Care Facility Unit
- Senior Citizen Project (Nassau)
- Pro Bono Project (Suffolk)
- Volunteer Lawyers Project (Nassau)
- Community Legal Help Project



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## Legal Support Center for Advocates:

Advocates call (631) 232-2400 for assistance:  
Sharon Campo - x3368 Cathy Lucidi - x3324  
Hannah Fitzpatrick- x3343

- 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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# POLL



POLL

**What type of advocate are you?  
Have you ever called LSCA?**



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## Visit our Website

- All About Our Programs
- Sign up for our “Legal Lessons”
- Trainings
- “Self-Help” Resources
- Other Events



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## Just a Note

Legal Services of Long Island makes every effort to keep legal educational materials up to date. 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.



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## Special Education Overview & Steps Towards Classification

Presented by  
Danielle Leake, Esq.



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## Education & Disability Rights Project- Who We Are & What We Do



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The EDRP represents students with disabilities between the ages of 5-21 and adults with developmental disabilities on a variety of issues, including:

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

**Lynn Iacona Esq., Supervising Attorney**  
**Danielle Leake, Esq., Staff Attorney**  
**Kimberly Curran, Esq., Staff Attorney**  
**Marcia Vogel, Disability Advocate**



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## Key Terms in Special Education

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### Federal and State Special Education Laws

- Individuals with Disabilities Education Improvement Act ("IDEA" or "IDEIA")
- New York State Education Law
- New York State Commissioner of Education Regulations

### Free Appropriate Public Education ("FAPE")

- Federal and State Special Education Laws listed above require school districts to provide students with disabilities a FAPE. *20 U.S.C. § 1412(a)(1)(A)*



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# Key Terms in Special Education Cont.



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## Individualized Education Program (“IEP”)

- The way a FAPE is delivered. An IEP is a written plan to meet the unique education needs of a student with a disability. 8 NYCRR § 200.1(y)

## Committee on Special Education (“CSE”)

- Every school district has a CSE. The CSE is responsible for developing the IEP.
- 8 NYCRR § 200.4(d)(2)



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# Steps Towards Classification

## Step 1: Initial Referral

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

## Step 2: Individual Evaluation

- CSE arranges evaluations 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 a student must be reevaluated at least once every three years



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## Steps Towards Classification (cont.)

### Step 1: Initial Referral

Parents, teachers, or doctors may refer a child to the CSE

The initial referral should 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.
- Request must be in writing



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## Steps Towards Classification (cont.)

### Step 2: Individual Evaluation Process

- The District must evaluate in all areas of suspected disability, at no cost to the parent. 8 NYCRR § 200.4(b)(1); 8 NYCRR § 200.4(b)(6)(vii).
- 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).
- If applicable, the assessments and materials used to assess a student must be in the student's native language or other mode of communication. 8 NYCRR § 200.4(b)(6)(i)(a)
- If the parent disagrees with an evaluation that was completed by the district, the parent has the 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)



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## Steps Towards Classification (cont.)



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### Step 2: Individual Evaluation Process (cont.)

#### The individual evaluation must include:

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

8 NYCRR § 200.4(b)(1)(i-v)



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## Steps Towards Classification (cont.)

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### Step 3: Determining Eligibility

After the initial evaluation is completed, the CSE meets to review the results of the evaluation. The District must send the parent a written notice at least 5 days before the CSE meeting is scheduled. 8 NYCRR § 200.5(c)(1). Parents have the right to attend and should attend CSE meetings.

If the CSE identifies the student as a student with a disability, the CSE will determine which of 13 classifications most accurately describes the disability that most directly interferes with the students learning

8 NYCRR § 200.4 (d)(2)(ii)



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## Steps Towards Classification (cont.)

- 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



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## Steps Towards Classification (cont.)

### Step 4: Developing the IEP

- The CSE will go over the students Present Levels of Performance ("PLEPS") in four basic areas: (1) academic achievement; (2) social development; (3) physical development; (4) management needs
- The CSE develops measurable annual goals, which must include academic and functional goals. Additionally, the goals must be specific and measurable so that progress can be easily quantified. 8 NYCRR § 200.4 (d)(2)(iii).
- The CSE then identifies special education programs and services that must be provided in the least restrictive environment ("LRE"). 8 NYCRR § 200.4(d)(4)(ii).



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## Steps Towards Classification (cont.)



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### Step 4: Developing the IEP (cont.)

#### • Other things of note the CSE must consider:

- Need for supplementary aids and services, for example, a Behavior Intervention Plan ("BIP") or a 1:1 aide;
- Parent Counseling & Training (required for students with Autism)
- Testing accommodations, if needed
- Summer school: A student is eligible for Extended School Year ("ESY") if needed to prevent substantial regression over the summer months.
- Special transportation needs
- Adapted physical education, if needed. 8 NYCRR § 200.4(d)(2)(viii)(d)

**8 NYCRR § 200.4(d)(3)**



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## Steps Towards Classification (cont.)

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### Step 5: Annual Review/Reevaluation

#### 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)

#### Triennial Review

- The student must be reevaluated at least once every 3 years unless District and parent agree in writing that it is not needed. 8 NYCRR § 200.4(b)(4).

#### 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)



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# Independent Educational Evaluations (IEE), Declassification, & School Refusal

Presented by  
Kimberly Curran, Esq.



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## A Closer Look at the IEE

Independent evaluations can be a valuable tool for the parent when used to determine the student's educational needs. The right to an IEE strengthens the role of parents in the decision-making process.

If the parent disagrees with an evaluation that was completed by the district, the parent has the 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 an explanation.
- This should be done in a written letter to the district.



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## A Closer Look at the IEE (cont.)

If the parent requests an IEE at public expense, the district must, "without unnecessary delay," either file for a due process hearing to show its evaluation is appropriate or ensure that the independent evaluation is provided. 34 CFR § 300.502(a)(2).

If the district approves the independent evaluation, they may provide a list of qualified examiners to the parent, but the parent is not restricted to that list. 34 CFR § 300.502(b). However, the qualifications of the examiner the parent chooses must be the same as the school district used for its evaluation.

An IEE is not limited to evaluating a student's academic needs. It may include evaluations for behavioral needs, sensory needs, transition needs (person-centered plans), and other issues that impact a child's education



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## A Closer Look at the IEE (con't.)

The CSE must consider outside evaluations brought to the CSE team by a parent. It does not mean the district has to accept the recommendations. The team must review the information and discuss it appropriately. 34 CFR § 300.503.

The report from the IEE should be comprehensive, including an explanation of the recommendations. It should not be a summary of findings. It should describe the evaluations conducted, the results of the evaluations, and a list of recommendations based on those results.



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# Declassification

If a school district wants to declassify a student with an IEP, they must follow the correct declassification procedures.

Under 8 NYCRR § 200.4(c)(3), a school district must evaluate a student with a disability prior to determining that the student is no longer a student with a disability . . . and the school district must provide a copy of the evaluation report and the documentation of eligibility to the student's parent.

In addition, anytime a school district conducts an evaluation of a student, the parent may state that they disagree with the evaluation and request an independent educational evaluation (IEE) in the same area of disability. Under an IEE, the parent chooses the evaluator and the District pays for the evaluation. 34 CFR § 300.502(b).



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# Disenrollment

A school district must follow the proper procedures if they want to disenroll a student. Under Education Law § 3202(1)(a), no student over the compulsory school age can be dropped from enrollment unless:

- They have been absent over 20 consecutive days; and
- The principal or superintendent reasonably notified, in writing sent to the last known address, both the student and parent of an informal conference.
  - At the conference, the principal or superintendent determined the reasons for the absence and whether a reasonable change in the educational program would encourage the student's reentry.
  - The student and parent are informed orally and in writing of the student's right to reenroll.



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## School Refusal- What is the legal requirement regarding school attendance in New York State?

- In New York, every child between the ages of 6 and 16 must attend full-time school. Education Law § 3205(1)(a). This legal requirement is known as the "compulsory school age". Students must remain in school up until the last day of session in the school year in which they turn 16, or until they graduate from high school. Education Law § 3205(1)(c).
- The State also allows local school districts to raise the compulsory age in its district from 16 to 17 years of age for those students who are not employed. Education Law § 3205(3).



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## What is truancy?

- Truancy occurs when a child of compulsory school age frequently skips school without a valid excuse. Absences are permitted only as allowed by the general rules of the public school. Education Law § 3210(1)(a), (2)(b); *In the Matter of Sheena S.S.*, 263 A.D.2d 809 (3rd Dept. 1999).
- Each school district is required to have an attendance policy describing, among other things, a list of excused and unexcused student absences and tardiness.
- The policy may also establish a minimum standard of attendance necessary for a pupil to be eligible for course credit.
- The school district must provide a plain language summary of the policy to the parents of all pupils at the beginning of each school year (generally available in the student handbook). 8 NYCRR § 104.1(i)(1-4).



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## What causes school refusal?

- In our experience, school districts can misperceive school refusal as truancy.
- In fact, a root cause of school refusal is often related to mental health issues (e.g. anxiety/depression).
- Mental health issues are frequently exacerbated by bullying, both on and off campus, including cyberbullying.



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## What is the current state of our children's mental health?

- It is widely reported that the mental health of many American children is at risk, and has been so, even prior to the pandemic.
- In October 2021, a joint statement issued by children's health professionals warned of a national state of emergency in child and adolescent mental health. That organization noted that "we are caring for young people with soaring rates of depression, anxiety, trauma, loneliness and suicidality that will have lasting impacts on them. . . ."<sup>1</sup> The statement also mentions that the physical isolation, uncertainty, fear and grief brought on by the pandemic, together with issues of racial injustice, intensified the existing crisis.



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(1) AMERICAN ACADEMY OF CHILD & ADOLESCENT, PSYCHIATRY, PEDIATRICIANS, CHILD AND ADOLESCENT PSYCHIATRISTS AND CHILDREN'S HOSPITALS DECLARE NATIONAL EMERGENCY IN CHILDREN'S MENTAL HEALTH (OCTOBER 2021) p. 1.

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## What is the state of our childrens' mental health?

- In December 2021, U.S. Surgeon General Vivek Murthy warned that the pandemic and other major issues faced by youth were causing “devastating” mental health effects in that population.<sup>2</sup>
- During President Biden’s February 2023 State of the Union address he stated, “When millions of young people are struggling with bullying, violence, trauma, we owe them greater access to mental health care at school.”<sup>3</sup>
- In April 2024, Politico magazine reported that state and local governments across the country are “scrambling to find new strategies to slow an epidemic of kids' mental illness that exploded during the pandemic” and noted that “levels of anxiety and depression remain sky high.”<sup>4</sup>

(2) THE U.S. SURGEON GENERAL'S ADVISORY, [PROTECTING YOUTH MENTAL HEALTH](#) (DECEMBER 2021) p. 3-4.

(3) NATIONAL PUBLIC RADIO, [READ PRESIDENT BIDEN'S STATE OF THE UNION SPEECH](#) (FEBRUARY 2023) p. 30.

(4) POLITICO, [ANXIETY AND DEPRESSION IS SPIKING AMONG YOUNG PEOPLE. NO ONE KNOWS WHY](#) (APRIL 2024) p.1.

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## Is bullying on the rise?

In August 2023, Axios writer April Rubin reported that bullying in schools has “shot up over the past five years”, according to an annual survey by the Boys & Girls Club of America. 130,000 students across the nation between ages 9-18 were surveyed during an 8 week period, commencing February 2023. 40% of participants indicated that they were bullied at school during that school year, which was 14 percentage points higher than in 2019. 18 % of participants indicated that they had experienced cyberbullying during that time period.<sup>5</sup>

(5) AXIOS, [STUDENTS FACE NEW SCHOOL YEAR WITH JUMP IN BULLYING](#) (AUGUST 2023) p.1.



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## Does bullying affect the mental health and educational advancement of the targeted student?

- According to New York State Department of Education guidance issued in 2018, research indicates that “bullying and school climate are linked to children's academic achievement, learning and development.”<sup>6</sup>
- “[C]hildren who are bullied are more likely to avoid school, more likely to drop out of school, have lower academic achievement, have lower self-esteem and higher levels of anxiety, depression and loneliness.”<sup>7</sup>
- Bullied children “are more likely to attempt suicide, [not only] during childhood [but also] later in life.”<sup>8</sup>

(6) NEW YORK STATE BOARD OF REGENTS, THE STATE EDUCATION DEPARTMENT OFFICE OF COMMUNICATIONS, [BOARD OF REGENTS ACTS TO AMEND DIGNITY FOR ALL STUDENTS ACT REGULATIONS](#) (APRIL 2018) p. 3.

(7) *Id.* at 3.

(8) *Id.*



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## How can we assist a school avoidant student struggling with mental health and/or bullying issues?

- In our practice, we have represented many students who exhibit school refusal due to anxiety and depression issues, frequently related to bullying. Often these students also have learning disabilities or other conditions which interfere with learning.
- Typically, the family reaches out to us when the school district has contacted CPS (due to lack of attendance) and there is a pending investigation of the parent(s)/guardian(s) for educational neglect.
- We assist families to address the bullying issues with the school district and to either develop a supportive plan to transition the student back to district school or, alternatively, for another appropriate program and services. Under certain circumstances, that may include asking the school district to place the student in another school in the district, due to health and safety concerns. Education Law § 2802(7).



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## Is there a law that seeks to protect students from harassment, bullying and discrimination?

- Yes. The Dignity for All Students Act (DASA). Education Law § 12.
- DASA provides that “[n]o student shall be subjected to harassment or bullying by employees or students on school property or at a school function.” Education Law § 12(1).
- Acts of harassment and bullying include, but are not limited to, acts based on a person’s race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex. Education Law §§ 11(7), 12(1); 8 N.Y.C.R.R § 100.2(kk)(1)(viii)(d).



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## What are the obligations of the school district under DASA?

- After a written report of harassment, bullying and/or discrimination is filed, the school district must conduct a thorough investigation and ensure that it is completed promptly. Education Law § 13(1)(d).
- If an investigation reveals any verified harassment, bullying and/or discrimination, the school district must, among other things, take prompt action to end the prohibited conduct and ensure the safety of the student(s) against whom the conduct was directed. Education Law § 13(1)(e).



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## What can schools do to help get students back to school?

There are multiple ways schools can help a student transition back into the school setting.

Schools can and should work with mental health providers who know the student and make them a part of the team.

- Parents can provide the school with letters from these providers that are comprehensive and have detailed information supporting their recommendation.
- Districts are required to consider the recommendations but do not have to implement them if they feel they are not appropriate to the situation. 34 CFR § 300.503.



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## What can schools do to help get students back to school? (con't.)

- At times, switching to another school in the district, if there is one available, can provide the student with a fresh start. Education Law § 2802(7).
- Schools can also transition the student back through a truncated day.
  - The school should look into scheduling only the classes the students likes and/or feels comfortable attending to start, then add on more classes over time as the student begins to adjust.
- Schools should identify a safe space and person to go to if the student is having difficulty.
- They should also identify pathways for the student to make up missed work.



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