

# Chapter 1

## Evaluation and Eligibility



For almost forty years, federal law has required public schools to provide special education services to all children with disabilities who are eligible to receive them. The name of the law under which these services are provided to children today is the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA 2004).

IDEIA 2004 is the latest version of the law that Congress first enacted in 1975, the Education for All Handicapped Children Act (EHA or Public Law 94-142). In 1983, Congress amended the EHA. In amendments made to the EHA again in 1990, the name of the law was changed to the Individuals with Disabilities Education Act (IDEA). The IDEA was amended in 1997 and again in 2004 when the name was changed to IDEIA. For ease of reading, IDEIA 2004 will be referred to simply as IDEA in this guide.

### How can services provided under the IDEA help my child in school?

One of the purposes of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) that includes special education and related services - designed to meet their unique needs - so they are prepared for further education, employment, and independent living after graduation.

Another important purpose of the IDEA is to ensure that the rights of children with disabilities and their parents are protected.

### What is a free appropriate public education (FAPE)?

Your child is receiving a FAPE if she's provided with special education services designed specifically to meet her unique needs and if the services are reasonably calculated to allow her to receive educational benefit. These services are laid out annually in your child's Individualized Education Program (IEP).

For a special education program to be appropriate - to meet the IDEA's FAPE standard - it must provide your child the opportunity to interact with like-age peers to the maximum extent appropriate. This is called the least restrictive environment (LRE) for your child. The IDEA requires an IEP Team to begin the LRE decision-making process for your child with the presumption that 1) she will spend all of her day in a regular education classroom with an array of appropriate supports and services designed to enable her to participate successfully and 2) she will be removed from that setting only when her IEP cannot be successfully implemented there.

### At what age are children with disabilities entitled to special education services?

Eligible children with disabilities from birth through age 2 are provided services by Alabama's Early Intervention System, part of the Alabama Department of Rehabilitation Services.

Local public school systems are responsible for providing special education to eligible children from ages 3 to 21.

Your child's right to special education services typically ends when she receives either a regular Alabama High School Diploma or reaches the age of 21, whichever comes first.

Children with disabilities who have not earned the Alabama High School Diploma and who have not reached their 21st birthday by August 1st are entitled to begin and complete the new school year even if it means that they receive more than 12 years of instruction.

The extra years of schooling that are available to older youth can help prepare them for further education, successful independent living, and employment. Encourage your child to stay in school for those extra years. Think creatively with her about how that time can best be used to help her become ready for life as an adult.



Local public school systems are responsible for providing special education to eligible children from ages 3 to 21.





### **What children are eligible for special education and related services?**

To be eligible for special education and related services under the IDEA, your child first must be identified as a “child with a disability.” That is, your child must meet the federal and state eligibility criteria for at least one of these disability categories:

1. Autism
2. Deaf-Blindness
3. Developmental Delay (young children ages 3-9)
4. Emotional Disability (formerly Emotional Disturbance)
5. Hearing Impairment (including deafness)
6. Intellectual Disability (formerly Mental Retardation)
7. Multiple Disabilities
8. Orthopedic Impairment
9. Other Health Impairment
10. Specific Learning Disability
11. Speech or Language Impairment
12. Traumatic Brain Injury
13. Visual Impairment (including blindness)

Second, as a result of her disability/ies, she must also need specially designed instruction and related services in order to benefit from the school’s educational program.

### **What is the purpose of a special education evaluation?**

An evaluation has two purposes.

First, an evaluation determines if your child is a child with a disability as defined under the IDEA and thus eligible for special education and related services.

Second, the evaluation identifies the nature and extent of the special education and related services that your child needs.

### **How do I get a special education evaluation for my child?**

If your child is struggling in school and you suspect she may have a disability, refer her for evaluation.

Your evaluation referral does not have to be in writing. However, it’s better to put your referral in writing so you have a record of it. In a dated letter, set out the reasons why you believe your child has a disability which is interfering with her ability to learn or conduct herself appropriately in school and refer her for a special education evaluation. Send the letter to your school district’s special education coordinator.

Keep a copy of the letter. (See the Appendix for a sample referral letter.)

The IDEA requires a school district to seek out and evaluate a child suspected of being a “child with a disability” who goes to school in that district whether she attends public or private schools. This is often referred to as a district’s “Child Find” obligation.

### **After a referral for evaluation is made, what happens next?**

In a timely manner after the evaluation referral is made, a group of qualified professionals (or an IEP Team) must meet and review the referral to decide if your child should be evaluated. You are an important member of this group.

Follow up with the district’s special education coordinator a few days after sending your referral letter. Ask him when the Team will meet to review your referral for evaluation, reminding him that under federal and state law your referral must be addressed in a timely manner. Too often, this meeting gets delayed or put off; follow up as necessary to get it scheduled. If your child is eligible for services, every day that the process is delayed means that she’s not getting the services she needs to succeed in school.

At the referral meeting, you and other Team members will consider the referral, reviewing information collected from the school and provided by you. The Team may refuse to evaluate your child if it doesn’t suspect that she has a disability or that she needs special education. If the Team refuses to evaluate your child, it must provide you written notice, explaining, among other things, why it refuses to conduct the evaluation and the information that it used to make that decision. You may challenge the Team’s decision by using the conflict resolution mechanisms provided for in the IDEA (see Chapter 5 for more information).

If the Team determines she should not be evaluated, your child should be considered for eligibility under Section 504 (see Chapter 6 for more information) or referred to your school’s Problem Solving Team (PST).

If the Team determines that your child should be evaluated, the school must get your written consent for the evaluation. Typically, you will sign the necessary evaluation consent forms at that referral meeting. It is important that you sign evaluation consent forms as soon as possible; the evaluation timeline that your child’s school must follow (see below) does not start until it receives your signed consent to evaluate.

### **Can my child’s school refer her for evaluation?**

Your child’s school may also make an evaluation referral. Indeed, if your child’s school suspects she may be a “child with a disability” (that is, she meets one of the 13 disability definitions and needs special education) then the school must refer her for evaluation, providing you the appropriate written notice about the meeting described above.

Regardless of who initiates the referral, your child cannot be evaluated without the matter being discussed in a referral meeting and without your written consent.



**If your child is struggling in school and you suspect she may have a disability, refer her for evaluation.**





### **Do I have to give written consent to have my child evaluated?**

For initial evaluations, whether you or your child's school start the process, you must provide written, informed consent before the school can assess your child.

If you refuse to consent to an initial evaluation, or if you don't respond to a request for consent, the school may choose to use the IDEA's mediation and due process procedures to pursue an evaluation of your child. However, these override procedures may not be used to force your consent if your child attends private school or is home-schooled at your expense.

When you consent to have your child evaluated, you are not consenting to have her receive special education and related services; separate written consent is required from you before the school can provide your child with services.

### **What is a Problem Solving Team?**

A school's Problem Solving Team (PST) works to improve general education programming to help struggling students so that referral to, and placement in, special education programming is not necessary. PSTs used to be called Building Based Student Support Teams (BBSSTs) in Alabama.

Under Alabama law, before a child is evaluated for special education eligibility, pre-referral intervention strategies must be implemented in the general education program and monitored by a school's PST for a minimum of eight weeks.

These strategies could include, but are not limited to, interventions such as a behavior plan, remedial school work, tutoring sessions, counselor sessions, etc. If these interventions are determined to be unsuccessful, then the child can be referred for evaluation.

**Do students always have to go through these pre-referral interventions before being evaluated?**

No, Alabama law allows for certain important exceptions to the pre-referral process.

First, the law allows for these interventions to be waived for a child who:

- has severe problems that require immediate attention;
- is three, four, or five years old and hasn't been in kindergarten;
- has only articulation, voice, or fluency problems;
- has a medical diagnosis of traumatic brain injury; or
- has been referred by her parent for evaluation.

Second, Alabama law allows for these interventions to be done at the same time as the special education evaluation process. So, your child can be undergoing evaluation for special education eligibility and be provided the pre-referral interventions by the PST at the same time.

When you meet with your child's IEP Team to discuss your evaluation referral, remind the Team that PST interventions can be done at the same time as the special education evaluation process. When these interventions are done at the same time, they produce a wealth of diagnostic information that can be used by your child's IEP Team to determine special education eligibility and to identify your child's educational needs.

The federal Office for Special Education Programs (OSEP) addressed the use of learning programs like Alabama's PSTs in an important memo sent to state education directors in January 2011. OSEP acknowledged the value of such efforts in addressing the learning needs of students, including students with disabilities. However, OSEP cautioned schools about using such activities to delay or deny a special education evaluation. If a school suspects that a child may have a disability that would make her eligible for special education services, the district must evaluate her. OSEP noted that a district may deny an evaluation if it does not suspect that the child has a disability. However, it must provide written notice to a parent and explain its reason for denying the evaluation.

**What evaluations will my child be given and who will pay for them?**

Your child must be evaluated in all areas of suspected disability. When evaluations are conducted, it's important that all areas of your child's functioning be considered, including health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

Alabama law lays out the minimum evaluations that have to be given to determine eligibility for special education services. (See the Appendix for the relevant section of the Alabama Administrative Code.) However, it's up to the IEP Team to determine if other evaluations are needed to fully assess your child so that there's a clear understanding of your child's disability and its impact on her school needs.

Often a child's IEP Team focuses only on one aspect of her learning difficulties, missing other factors that may affect her ability to learn. For example, your child may be identified as having a specific learning disability but, in the evaluation process, her attention difficulties or emotional problems were ignored. If those disability-related needs are not identified and planned for, how can your child succeed in school? Make sure your child's IEP Team fully discusses - and evaluates - all factors that may be affecting her ability to learn.

Your child's school must arrange and pay for any evaluations needed to determine eligibility and the nature and extent of the special education and related services your child may require.

The evaluation process includes the administration of assessments and testing, observations, and collecting information from any available outside professionals. And, of course, information from you - her parent!

*(Continued on page 11)*

## Children in Private Schools

A school district must identify, locate and evaluate all children within the district who may need special education services, including those enrolled by their parents in private schools. This process is often referred to as Child Find.

The school district where a private school is located is responsible for Child Find for students in that private school - not the district where the students live. Private schools include religious schools. School districts must consult with private school officials and representatives of parents of parentally-placed private school children to ensure that the Child Find process treats such students equitably and that parents, teachers, and private school officials are informed about the process. The Child Find evaluation procedures, standards and time lines for private school students must be the same as those used for public school students in the district.

Children enrolled by their parents in private schools do not have an individual right to receive the special education and related services they would receive if enrolled in a public school.

Instead, the IDEA requires a “Services Plan” be developed and implemented for each private school child with a disability who has been identified to receive special education and related services by the school district in which the private school is located.

A Services Plan describes the specific special education and related services being offered to a private school child - what type of services will be provided, where they will be provided, and by whom.

A Services Plan is different from an IEP because it doesn't necessarily plan for the full range of special education and related services needed by a child with a disability. A Services Plan is not developed in the same way that an IEP is developed; a child's parents and her teachers have little say in determining the services - if any - to be provided to a parentally-placed private school student. The school district must develop the Services Plan with timely and meaningful input from private school officials and from representatives of parents of parentally-placed children in the district. In working with these representatives, the school district must discuss:

- types of special education services;
- how services will be allocated if there is not enough money to fund services for all private school children;
- how and when Services Plan decisions will be made.

In the end, the school district has the final authority to make decisions about all aspects of the Services Plan being offered. Think of a Services Plan as “IEP Lite.”



Children enrolled by their parents in private schools do not have an individual right to receive the special education and related services they would receive if enrolled in a public school.



Evaluations must not discriminate by race or culture and must be given in your child's primary language.

All tests must be selected and given so that your child's suspected disability does not affect the test results, unless a particular test is designed to measure the nature or degree of the disabling condition. For example, the intelligence of a child with visual problems cannot be evaluated by means of a written test. However, if the child is being tested to determine if a visual problem exists, a written test may be appropriate.

No single assessment may be used as the sole reason for determining whether your child has a disability or for determining the appropriate educational program for her.

As part of the evaluation, professionals may observe your child in a variety of settings and interview individuals who know and/or work with her.

If you provide the Team any assessment information from private medical or mental health professionals who treat your child, this information must be considered in making eligibility decisions.

### **How long does the evaluation process take?**

Your child's school has 60 calendar days from the date you provide written consent to complete all necessary evaluations.

No more than 30 calendar days after the evaluations are completed, your child's IEP Team must meet and determine whether your child is eligible for services under the IDEA.

If your child is found eligible, then an IEP meeting must be held to write her IEP no more than 30 days after that. To save time, it's common for the eligibility decision and IEP planning to be done at the same meeting.

Your child's IEP must be implemented as soon as possible after that initial IEP planning meeting.

All these timelines run regardless of any interruptions in the school year, including summer vacation.

Let's say you refer your child for an evaluation on May 1st. In a timely manner, you and the rest of your child's IEP Team meet and decide that your child should be evaluated and you sign evaluation consent forms. School officials then tell you that they will begin the evaluation process at the start of the new school year in the fall.

Can it do that? No.



Your child may be eligible under the IDEA even though she has not been retained in a course or grade and is advancing from grade to grade.





<b>Day 1</b>	<b>No later than the 60th day</b>	<b>No later than the 90th day</b>	<b>No later than the 120th day</b>
Parent signs paperwork consenting to testing. Timeline starts.	All evaluations must be complete.	Team must meet to determine eligibility.	IEP must be written and implemented as soon as possible afterwards.

The IDEA requires that your child be reevaluated at least once every three years.

From the date you sign the consent forms, your child's school has, at the most, 120 calendar days to complete the evaluation process, determine eligibility, and write an IEP for her if she's eligible.

### Why is this timeline important?

If your child is eligible for services, every day that the eligibility determination is put off means one less day that your child is receiving the help she needs!

### How is my child's eligibility under the IDEA decided?

Your child's eligibility must be determined at a meeting attended by you and a group of qualified professionals (or your child's IEP Team). As you prepare for your child's eligibility meeting, familiarize yourself with the definitions, required evaluations, and eligibility criteria for the IDEA's 13 disability categories. (See the Appendix for the relevant sections of the Alabama Administrative Code.)

At the meeting, the Team must determine:

- if your child is a child with a disability,
- your child's educational needs,
- your child's present level of academic achievement and related developmental needs, and
- whether your child needs special education and related services.

The Team considers these four things by drawing upon the information gathered through the evaluation process.

The Team must carefully consider the information presented to it and document the information in a form called "Notice and Eligibility Decision Regarding Special Education Services." This form must include documentation of the eligibility determination. Is your child eligible or not? Under which disability category has she been found eligible? What information was used to make this determination? The form must include each Team member's signature indicating whether she agrees with the conclusions. The school must provide you a copy of the form.

If your child is found eligible to receive special education services, an IEP must be written and implemented for her within 30 calendar days. If she is not found eligible and you disagree with that decision, you may challenge the Team's finding by using the IDEA's conflict resolution mechanisms. (See Chapter 5 for more information.)

### A few points to remember about IDEA eligibility:

- To be eligible for special education and related services under the IDEA, your child must fit the eligibility criteria for at least one of the IDEA's 13 disability categories and, as a result of her disability, need specially designed instruction and related services in order to benefit from the school's educational program.
- Your child cannot be found eligible under the IDEA if she has lacked appropriate instruction in reading or math or has limited English proficiency.
- If your child has one of the identified IDEA disabilities, but only needs related services - and not specialized instruction - then she cannot be found eligible under the IDEA. However, she might be eligible for services under Section 504. (See Chapter 6.)
- Your child may be eligible under the IDEA even though she has not been retained in a course or grade and is advancing from grade to grade.



Reevaluations do not necessarily mean more testing for your child.

One of the IDEA's disability categories is called Emotional Disability (ED). ED is not a psychiatric diagnosis. Rather, it's an eligibility term used in the IDEA to describe children who may have a psychiatric disorder (like depression, bipolar disorder, anxiety disorder, etc.), or who may have other emotional problems. Sometimes, children with emotional and mental health challenges may be eligible for services because of those challenges under the category of ED or Other Health Impairment (OHI).

Eligibility Teams sometimes may focus on only your child's grades when it is deciding whether her educational performance is affected by her disability. This is illegal. Under Alabama law, educational performance includes your child's academic, social/emotional, and/or communication skills.

If you believe your child has emotional or behavioral issues that are affecting her educational performance, the school has to assess those issues as part of the eligibility and IEP planning process. This assessment may require your child's school to arrange and pay for psychological or psychiatric evaluations.

### What is a reevaluation?

Once an initial evaluation has been held and eligibility determined, any later evaluation is considered to be a reevaluation.

Reevaluations may be done to consider your child's continuing eligibility status - does she continue to be eligible for services and, if so, under which disability category?

Reevaluations may also be done to ensure that your child's IEP Team has up-to-date information on her educational needs so that it can plan better for her.



You have a right to an independent educational evaluation (IEE) at your school district's expense if you disagree with any of the district's individual evaluations of your child.

### When are reevaluations done?

The IDEA requires that your child be reevaluated at least once every three years.

A reevaluation is also required before your child can be determined no longer eligible for special education services and before her eligibility category is changed. However, no reevaluation is required before your child's eligibility for services under the IDEA terminates at age 21 or because she graduates from school with an Alabama High School Diploma.

A reevaluation may be conducted anytime your child's school determines that her educational needs warrant a reevaluation or if you or one of her teachers request one. However, a reevaluation cannot occur more than once a year, unless you and the school district agree otherwise.

### Why would I want to request a reevaluation?

If your child's current special education program is not working, a reevaluation may help identify the problem and what should be done about it by revealing changes to your child's academic, functional and developmental strengths and needs. (See the Appendix for a sample letter requesting a reevaluation.)

### What does the Team do with reevaluation results?

Depending on the reason for the reevaluation, the Team will review the collected information and:

- Consider your child's continuing eligibility for special education - does she continue to be eligible for services and, if so, under which disability category?

and/or

- Consider whether any additions or modifications to your child's special education program are needed to enable her to meet the measurable annual goals set out in her IEP and to participate, as appropriate, in the general education curriculum.

### Can a decision to reevaluate happen outside of a meeting?

No. Just like in an initial evaluation, the Team must decide to do a reevaluation at a meeting.

### If I ask to have my child reevaluated, can the school refuse?

Yes. But if your child's school refuses to conduct a reevaluation, it must explain in writing why it refuses to conduct the reevaluation and your rights to contest that decision.

### Does a reevaluation mean that my child will be tested?

Reevaluations do not necessarily mean more testing for your child. A reevaluation can be simply a review of presently existing data and information (classroom observations, local and state assessments, grade transcripts, special education testing, etc.).



However, after review, the IEP Team might decide additional data are needed to determine continued eligibility or to identify educational needs. In that case, testing will need to be conducted.

If the IEP Team decides that no additional data are needed to effectively program for your child or to continue her eligibility for services, then no testing will be required. A written record of this decision and the reasons for it must be made and added to your child's school records and provided to you.

### **Do I have to give written consent before my child undergoes further testing in a reevaluation?**

A school district must give you written notice before testing your child and must make reasonable efforts to obtain your written consent before it conducts reevaluation assessments on your child.

If you refuse further testing, the district may, but is not required to, pursue the reevaluation through mediation or due process.

If the district makes reasonable efforts (at least two attempts) to obtain your consent and you do not respond, it can go ahead and conduct any necessary reevaluation assessments.

### **How do schools document reasonable efforts to contact parents?**

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to you and any responses received; and
- Detailed records of visits made to your home or place of employment and the results of those visits.

The school is not required to do all of these things to have made a reasonable effort. Some combination of them is enough to say a reasonable effort was made. Make sure your child's school always has up-to-date contact information for you (phone numbers, email, physical and mailing address, etc.).

### **When is my consent not required for an evaluation or reevaluation?**

Your consent is not required for the IEP Team to simply review existing data as part of an evaluation or a reevaluation. Your consent is also not required before the school administers a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

### **What if my child is found ineligible for special education services as a result of a reevaluation?**

If you disagree with the Team's decision, you may challenge its finding by using the IDEA's conflict resolution mechanisms.

Regardless, the evaluation Team should consider if your child could be eligible for services under Section 504.



Once a year, your child's school must provide you a copy of the IDEA's procedural safeguards.



Students not eligible under IDEA or Section 504 should be referred to your school's Problem Solving Team (PST) for additional assistance and monitoring.

**Do I have to give written consent before my child receives special education and related services?**

Yes. You must provide written consent before your child's school can provide her with services.

If your child has been found eligible for services under the IDEA and you do not agree to have her receive services, or if you do not respond to a request for consent to provide services, the school may not use the IDEA's mediation or due process procedures to try to compel you to provide consent.

**Can I withdraw my consent for special education services at any time?**

Yes. If you decide to withdraw consent, you will need to do so in writing. Your child's school must then provide you with prior written notice (see Chapter 5), advising you that it will be terminating services to your child.

If you later want your child to receive special education again, your child's school will treat your request for services as a request for an initial evaluation, as described previously. Depending on the data available, new testing might not be required for an IEP Team to determine whether your child qualifies again for services.

**Does my child's school have to provide me information about my child's rights under the IDEA?**

Once a year, your child's school must provide you a copy of the procedural safeguards available to you as a parent of a child with a disability under the IDEA.

A copy must also be given to you:

- upon your child's initial referral for special education evaluation or your request for evaluation;
- upon receipt of the first state administrative complaint and due process complaint in a school year that you may file;
- upon a decision to change the placement of your child because of a violation of code of conduct; and
- upon your request.

**What is an independent educational evaluation?**

An independent educational evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by the school district responsible for your child's education.

You have a right to an IEE at your school district's expense if you disagree with any of the district's individual evaluations of your child.

If you request an IEE, your child's school must provide you with information about where an IEE may be obtained. It must also provide you

with the school district's evaluation criteria. While the district may provide you a list of suggested evaluators, you are not required to use any proposed by the district for the IEE.

### **Does my child automatically get an IEE if I ask for one?**

Not necessarily. If you request an IEE, your child's school district must, without unnecessary delay, provide the IEE at its expense or file a due process hearing request to show that its evaluation was appropriate and adequate.

If the final decision in the due process hearing is that the school's evaluation is appropriate, you still have a right to an IEE but not at the school's expense. Also, if you obtain an IEE that does not meet school district criteria, you, not the school, will have to pay for it.

### **How many IEEs can I request?**

You have a right to one IEE at public expense each time your child's school conducts an evaluation with which you disagree.

### **How do I request an IEE?**

Like any communication between you and your child's school, it's a good idea to note that you are seeking an IEE in a dated letter. Send the letter to your school district's special education coordinator. (See the Appendix for a sample letter requesting an IEE.)

### **When I request an IEE, do I have to explain why I disagree with the school's evaluation and why I want the IEE?**

No. The school district may ask for an explanation, but you are not required to give one. If you choose not to give an explanation, the school district may not delay providing the IEE at public expense or initiating a hearing.

### **Are there any conditions or timelines I have to meet in order to get an IEE?**

Aside from meeting the school criteria (noted above) the district may not impose any other conditions or timelines related to obtaining an IEE.

### **Who else can request an IEE?**

A due process hearing officer may request an IEE as part of a due process hearing. If so, the cost of the evaluation must be at public expense.

### **How are the results of an IEE used?**

The results of an IEE must be considered by the school in any decision made with respect to the provision of FAPE for your child whether the IEE was paid for by you or the public school.

