



Protection & Advocacy System for Arizona

Understanding Your Child's Educational Rights

Serving students with special needs under the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation of 1973

A Self-Advocacy Guide For Parents of Children with Special Needs



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Federal and state law can change at any time. If there is any question about the continued validity of any information in the handbook, contact the Arizona Center for Disability Law or an attorney in your community.

The purpose of this guide is to provide general information to individuals regarding their rights and protections under the law. It is not intended as a substitute for legal advice. You may wish to contact the Arizona Center for Disability Law or consult with a lawyer in your community if you require further information.

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**Arizona Center for Disability Law
Protection & Advocacy System for Arizona**

Understanding Your Child's Educational Rights

CHAPTER 1

Introduction and Overview of Special Education Laws



**A Self-Advocacy Guide
For Parents of Children with Special Needs**

Chapter 1 - Introduction

CHAPTER 1

INTRODUCTION AND OVERVIEW OF SPECIAL EDUCATION LAWS

I. INTRODUCTION

Before 1975, public schools routinely excluded children with disabilities from the school system, or ignored the needs of children with disabilities who were enrolled in school. Since then, Congress has passed a series of laws to improve the education of children with disabilities culminating in the passage of the Individuals with Disabilities Education Improvement Act of 2004.¹ In the 2004 law, Congress found that over 30 years of research demonstrated that “education of children with disabilities can be made more effective by having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom to the maximum extent possible.”² Special education laws ensure that all children with disabilities are provided a free appropriate public education that “emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living.”³

This guide is for parents of children with disabilities. Although it is not a substitute for legal advice, it is intended to help parents understand Arizona special education laws and procedures so they can obtain the most appropriate special education services for their children. If you have a question about how the laws apply to your child, please contact the Arizona Center for Disability Law or consult a private lawyer.

The New Special Education Law – IDEA 2004

While all laws are potentially subject to change, the laws relating to special education are especially fluid at this time.

In 1975, the United States Congress enacted the first law providing special education rights to children with disabilities. In 1997, Congress substantially revised existing law and passed the “Individuals with Disabilities Education Act” (“IDEA”). In December, 2004, Congress amended and “re-authorized” the law by passing the “Individuals with Disabilities Education Improvement Act of 2004” (“IDEA 2004”).⁴ The new law did not change the core parts of old law - such as the right of children with disabilities to obtain a free appropriate public education - but it did make some important changes. The U.S. Department of Education is in the process of amending its administrative rules (or “regulations”) in light of the 2004 changes, and Arizona laws and rules may eventually change to conform to the new federal law as well.

¹ 20 U.S.C. §1400, *et. seq.*, Public Law 106-446 (108th Congress).

² 20 U.S.C. §1400(c)(5)(A).

³ 20 U.S.C. §1400(d)(1)(A).

⁴ 20 U.S.C. §1400, *et. seq.*, Public Law 106-446 (108th Congress).

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To stay updated on the current status of special education laws and rules in the meantime, please contact the Arizona Center for Disability Law, consult with a lawyer, or conduct your own research.

How This Guide Is Organized

The guide is divided into five chapters, plus an Appendix.

Chapter 1, “*Introduction and Overview of Special Education Laws,*” provides a general overview of what laws apply in special education and what types of programs are available for children with disabilities of different ages.

Chapter 2, “*Evaluations – Establishing Eligibility for Special Education,*” explains the process of establishing that your child is eligible for special education.

Chapter 3, “*Specific Issues Relating to Particular Populations,*” discusses unique matters affecting certain groups of children.

Chapter 4, “*The IEP Process – Obtaining a Free Appropriate Public Education for Your Child,*” explains how special education services are provided to children with disabilities.

Chapter 5, “***Resolving Special Education Disputes,***” explains procedures for resolving disputes between parents of children with disabilities and public schools.

The Appendix includes several sample letters, as well as additional information on selected topics such as eligibility disability categories, standardized tests for students with disabilities and key time frames under IDEA 2004.

We do not expect parents to read this guide from cover to cover, and have designed it so parents can find the information they need. Start by reviewing the Table of Contents, which indicates how the chapters are organized, what subjects are discussed and includes the specific questions that are answered. The Table of Contents also specifically describes the Appendix attachments. This guide includes cross-references throughout so the reader can refer to a different section of the guide for more information if necessary.

A Note About Terminology and Legal Citations

Because this guide is written for parents of children with disabilities and the subject of special education is complex to begin with, we have tried to make it as “user friendly” as possible.

We use the terms “school system,” “public school” and “school” to describe the entity responsible for providing special education to children with disabilities. Federal law uses

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the term “local educational agency” and Arizona law uses the term “public education agency.” In this guide, they mean the same thing.⁵

We refer to the Individuals with Disabilities Education Improvement Act of 2004 as “IDEA 2004” or as “the new law.” The 1997 special education law is called “IDEA 1997” or “the old law.” If the term “IDEA” is used without specifying a time frame, it refers to a principle that applies to both the 1997 and 2004 laws.

Rather than including citations to the law in the text, we have included the legal citations in footnotes. Feel free to skip the footnotes if you are reading this guide for general information. If you need to review a particular law or regulation, here is what the citations mean:

Type of Law	Citation Format Examples	What it Means	How to Get a Copy
Federal law (most commonly, IDEA 2004)	20 U.S.C. §1415 20 U.S.C. §1401	This refers to Title 20 of the United States Code, and then to the particular section of the statute.	The United States Code is available at www.gpoaccess.gov/uscode/ IDEA 2004 is available at the U.S. Department of Education website, www.ed.gov .
Federal regulation	34 C.F.R. §300.504 34 C.F.R. §300.347	This refers to Title 34 of the Code of Federal Regulations, Part 300.	The Code of Federal Regulations is available at www.gpoaccess.gov/cfr/index.html
Arizona law	A.R.S. §15-761 A.R.S. §15-766	This refers to Arizona Revised Statutes, Title 15, and then to the particular statute.	The Arizona Revised Statutes are available at www.azleg.state.az.us/ArizonaRevisedStatutes.asp
Arizona regulation	A.A.C. R7-2-401 A.A.C. R7-2-620	This refers to the Arizona Administrative Code. State Board of Education Rules are found at Title 7, Chapter 2.	Arizona regulations are available at the website of the Arizona Secretary of State, www.azsos.gov (click on “Arizona Administrative Code”).

⁵ 2006 IDEA regulations make it clear that for a charter school to be considered a “local educational agency” (LEA) it must be a nonprofit. 34 C.F.R. §300.28.

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II. OVERVIEW OF SPECIAL EDUCATION PROGRAMS AND LAWS

A. Overview of Programs and Services to Educate Children with Disabilities

Q.1-1 What is “special education”?

In general, “special education” means specially designed instruction, provided at no cost to the parents, to meet the unique needs of a child with a disability.⁶ “Special designed instruction” refers to adaptations in the content, methodology or delivery of instruction to ensure the child with a disability can access the general curriculum so the child can meet the educational standards that apply to all children.⁷ Special education includes instruction provided in the classroom, in the home and in other settings, as well as instruction in physical education.⁸ For more information on special education, [see Chapter 4, Q.4-31 through Q.4-33](#).

Q.1-2 What are “related services”?

“Related services” are support services that are required to assist children with disabilities to benefit from special education. Related services may include transportation, speech-language therapy, other types of therapies and some medical services. For more information on related services, [see Chapter 4, Q.4-34 through Q.4-35](#).

Q.1-3 In general, what educational programs and services are available for school age children with disabilities (ages 5 through 21)?

The Individuals with Disabilities Education Improvement Act of 2004 (“IDEA 2004”) requires public schools to provide a free appropriate public education to children with disabilities. Once a child is identified as a “child with a disability” as defined by IDEA 2004, the public school works with parents to develop an “Individualized Education Program” (“IEP”) for the child. The IEP describes the special education and related services the public school will provide to meet the child’s unique needs. Federal and state law also provide a sets of procedures that allow parents to obtain information about their children’s education and provide ways for parents to resolve special education disputes with the school system.

Students with disabilities are entitled to receive special education and related services until they graduate from high school with a “regular” diploma, or reach their 22nd birthday, whichever happens first.⁹

⁶ 20 U.S.C. §1401(29) (definition of special education).

⁷ 34 C.F.R. §300.39.

⁸ 20 U.S.C. §1401(29).

⁹ 20 U.S.C. §1412(a)(1)(A)(State must ensure that a free appropriate public education is available to children with disabilities between the ages of 3 and 21), 20 U.S.C. §1414(c)(5)(B)(i)(eligibility for special education terminates when a child with a disability graduates secondary school with a regular diploma).

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Q.1-4 Is IDEA 2004 the only federal law that requires public schools to provide special education to children with disabilities?

No. A federal law called Section 504 of the Rehabilitation Act of 1973 (“Section 504”) requires agencies that receive federal funds to provide a free appropriate public education to qualified children with disabilities.¹⁰ All Arizona public schools, including charter schools, receive federal funds and thus must comply with Section 504. As with IDEA 2004, a “free and appropriate public education” includes special education and related services.¹¹ Section 504 requires schools to evaluate children with disabilities, allows for private placement, and provides protections in the event parents have a dispute with a school. Section 504 does not provide as much detail as IDEA 2004 in terms of what procedures should be followed, but the rules allow schools to comply with Section 504 by following the same procedures they have in place for IDEA 2004.¹²

Q.1-5 Does Section 504 offer legal protections beyond those provided by IDEA 2004?

Yes. In addition to providing children with disabilities the right to special education as IDEA 2004 does, Section 504 also prohibits discrimination on the basis of disability.¹³ Under Section 504, public schools may not exclude children with disabilities from programs or activities or otherwise treat children with disabilities different from other students because of their disabilities. For instance, Section 504 would prohibit a school from locating a classroom for children with a developmental disability at a facility that is substandard compared to classrooms used for typical children.

Q.1-6 Are the eligibility requirements for IDEA 2004 and Section 504 the same?

No. Both laws provide rights to “children with disabilities” but the two laws define “child with a disability” differently. Under IDEA 2004, a “child with a disability” must have one of the listed types of impairments and also need special education because of the impairment. Under Section 504, a “child with a disability” must have a substantial physical or mental impairment in one or more major life activities.¹⁴

All children who meet IDEA 2004 definition of a “child with disability” are protected under Section 504, which means they are not only entitled to special education but also protected against discrimination on the basis of disability.

¹⁰ 29 U.S.C. §794; 34 C.F.R. §104.33(a).

¹¹ 34 C.F.R. §104.33(b).

¹² 34 C.F.R. §104.33(b), 104.35 and 104.36.

¹³ 34 C.F.R. §104.4 (describing prohibited disability discrimination).

¹⁴ 34 C.F.R. §104.3(j)(1)(i). Section 504 also defines a “child with a disability” as a child who has a “record” of a physical or mental impairment that substantially limits one or more life activities or is “regarded” as having such an impairment, even though the child does not actually have a current disability. 34 C.F.R. §104.3(j)(1)(ii)-(iii). Children who meet these definitions of disability are entitled to be free from discrimination, but since they do not currently have a disability they do not need special education services.

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Some children, however, will not meet the IDEA 2004 definition of a “child with a disability” but will be considered a “child with a disability” as defined by Section 504. For example, a child with diabetes may be limited in some life activities but may not need specialized education instruction because of the disability.

Q.1-7 What rights does my child have if she is a “child with a disability” as defined by Section 504 but is not eligible for special education under IDEA 2004?

Your child is still entitled to a Free and Appropriate Education. FAPE under Section 504 consists of the provision of regular or special education and related aids and services designed to meet the student's individual needs. Children who have disabilities as defined by Section 504 but do not need special education are entitled to receive “regular” education, together with related aids and services designed to meet their needs as adequately as the needs of students without disabilities are met.¹⁵ This may include additional time to complete homework assignments, or more frequent breaks during class if needed because of the disability. [Please refer to the “Comparison Chart of IDEA 2004 and Section 504,” included in the Appendix of this guide,](#) for further information.

Q.1-8 What special education programs and services are available for preschool children with disabilities (ages 3 – 5)?

Preschool children with disabilities – children ages 3 through 5 - have the same right to a free appropriate public education as school age children with disabilities do.¹⁶ Public schools must evaluate the child to determine eligibility for special education and develop and implement an IEP in light of the child’s individualized needs. Issues related to preschool children with disabilities are addressed further in [Chapter 3, Q.3-1 through Q.3-4.](#)

Q.1-9 What special education programs and services are available for infants and toddlers with disabilities (birth through age 2)?

The Arizona Early Intervention Program, which is part of the Arizona Department of Economic Security, coordinates services to infants and toddlers with disabilities.¹⁷ An “infant or toddler with a disability” means a child under age 3 who needs early intervention services because the child is experiencing developmental delays (in an area such as cognitive or communication development) or has a diagnosed physical or mental condition that has a high probability of developmental delay.¹⁸

Early intervention services are designed to address the particular area(s) of developmental delay. Services may include occupational, physical or speech therapy,

¹⁵ 34 C.F.R. §104.33(b).

¹⁶ 20 U.S.C. §1412(a)(1)(A).

¹⁷ A.R.S. §8-652(A).

¹⁸ A.R.S. §8-651. The Arizona Early Intervention Program is paid for by federal funds funded through Part “C” of IDEA 2004 (Part “B” of IDEA 2004 applies to children ages 3 – 21). The Part “C” laws for early intervention services are at 20 U.S.C. §1431, *et. seq.* of IDEA 2004 and the regulations are at 34 C.F.R. Part 303.

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psychological services, audiology, vision services, or home visits, depending on the needs of the child and family. Services are delivered in accordance with an “Individualized Family Service Plan,” which is similar to an IEP, in that it is developed with input from parents and designed to meet the child’s individual needs. The Arizona Department of Economic Security is the lead state agency that oversees and coordinates early intervention services, which are generally provided by state agencies rather than by public schools. For further information about early intervention services, please contact:

Department of Economic Security, Arizona Early Intervention Program
3839 North Third Street, Suite 304
Phoenix, Arizona 85012
(602) 532-9960, toll free in Arizona (888) 439-5609
<https://www.azdes.gov/aspnew/default.asp>

B. Commonly Asked Questions about Special Education Laws and Oversight

Q.1-10 What are the key federal and state laws governing special education for school age children (ages 5 – 21)?

The most important laws relating to the education of children with disabilities are:

The federal “Individuals with Disabilities Education Improvement Act of 2004” (“IDEA 2004”). This law provides most of the key protections for children with disabilities. IDEA 2004 was enacted as HR 1350, Public Law 108-446 (108th Congress) and is codified at 20 U.S.C. §1400, *et. seq.*. It is available at www.gpoaccess.gov/uscode/.

The U.S. Department of Education has issued administrative regulations providing more specific guidance about special education law. Those regulations can be found in the Code of Federal Regulations, 34 C.F.R. Part 300.

- (1) Most of the key Arizona state law provisions on special education are found at Arizona Revised Statutes, A.R.S. §15-761 through A.R.S. §15-765, but other education laws also impact children with disabilities.
- (2) The Arizona State Board of Education is responsible for enacting rules relating to state laws on education, including special education. The State Board rules on special education are mostly located in the Arizona Administrative Code at R7-2-401 through R7-2-408 (available on the Secretary of State’s website, www.azsos.gov) and on the Board’s website (www.ade.az.gov/stateboard/ - click on “State Board Rules Under Development”).
- (3) Section 504 of the federal Rehabilitation Act of 1973 prohibits any agency that receives federal funds (which includes all public schools) from discriminating on the basis of disability. 29 U.S.C. §794. Section 504 provides legal protections for children who have disabilities, but who do not meet IDEA 2004’s eligibility requirements for special education. The U.S. Department of Education has issued regulations on Section 504 as applied to public schools, which are found at 34 C.F.R. Part 104.

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- (4) The Federal Family Educational Rights and Privacy Act (20 U.S.C. §1232g, *et. seq.*) and the regulations issued by the Department of Education (34 C.F.R. Part 99) govern the privacy of educational records and provide parents with rights to review their children's records. This federal law (commonly referred to as "FERPA") is incorporated into state law at A.R.S. §15-121.¹⁹

Q.1-11 How can I find out if there have been changes in special education laws or regulations?

To stay updated on the status of federal regulations that are being revised in light of the new law, you may want to check the website of the Office of Special Education and Rehabilitative Services, which is part of the U.S. Department of Education. The Office of Special Education and Rehabilitative Services has an "IDEA 2004 resources" icon, accessible from <http://idea.ed.gov>. Also, the Federal Register is the publication that is designed to "officially" give the public notice of any possible changes to the rules that the U.S. Department of Education is considering. The Federal Register is available at www.gpoaccess.gov/fr/.

To find out if Arizona state laws on special education have changed, check Title 15 of the Arizona Revised Statutes. The Arizona Revised statutes are available on-line at www.azleg.state.az.us. This site is maintained by the Arizona Legislature, and it contains information on current laws as well as bills under consideration.

If you want to know if the State Board of Education has modified one of its rules relating to special education or is considering changes, check the State Board's website (www.ade.az.gov/stateboard/) and click on "State Board Rules Under Development." In addition, the Arizona Administrative Register contains "official" notices to the public about contemplated rule changes. The Secretary of State publishes the Arizona Administrative Register as well as the Arizona Administrative Code, which contains the final versions of adopted rules. Both publications are available from the Arizona Secretary of State's website at <http://azsos.gov/>.

¹⁹ Two other important laws that affect children with disabilities are the federal and Arizona laws prohibiting disability discrimination. Title II of the federal Americans with Disabilities Act of 1990 ("ADA"), (42 U.S.C. §12131, *et. seq.*), prohibits discrimination on the basis of disability by all public entities, whether or not they receive federal funds. The ADA includes detailed provisions about the physical accessibility of buildings for people with disabilities. The federal regulations for Title II of the ADA can be found at 28 C.F.R. Part 35. Arizona law also requires that buildings and facilities used by public entities such as school districts conform to Title II of the ADA. A.R.S. §41-1492.01. The state regulations implementing this Arizona law are found at Ariz. Admin. Code R10-3-401, *et. seq.*

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Q.1-12 Which agencies are responsible for overseeing how schools implement special education laws?

The Arizona Department of Education is responsible for ensuring that Arizona public schools comply with federal and state special education laws.²⁰ The Exceptional Student Services Division within the Arizona Department of Education has this specific responsibility (www.ade.az.gov/ess). The Arizona Department of Education provides a complaint process and other types of dispute resolution options for parents who disagree with schools about appropriate services for children with disabilities, as explained in Chapter 5 of this guide.

At the federal level, the U.S. Department of Education, Office of Special Education and Rehabilitative Services oversee how States are complying with IDEA 2004. This agency does not provide a complaint process for special education disputes since that is handled at the state level, but it is in charge of revising the federal regulations governing IDEA 2004. Their website is (www.ed.gov/about/offices/list/osers).

The federal agency responsible for enforcing Section 504 of the Rehabilitation Act in schools is the Civil Rights within the U.S. Department of Education. (www.ed.gov/about/offices/list/ocr). That office receives and investigates complaints of disability discrimination under Section 504.

The Bureau of Indian Affairs, which is part of the U.S. Department of Interior, funds and oversees elementary and secondary schools located on or near Indian reservations in Arizona. The Bureau of Indian Affairs is responsible for overseeing special education provided in its school system. For further information, contact the U.S. Department of Interior (www.doi.gov).

²⁰ 20 U.S.C. §1412(a)(11) (The State Educational Agency is responsible for ensuring that public schools comply with federal and state special education laws and standards); A.R.S. §15-761(37) (Arizona law defining “state educational agency” as the Arizona Department of Education).

**Arizona Center for Disability Law
Protection & Advocacy System for Arizona**

Understanding Your Child's Educational Rights

CHAPTER 2

**Evaluations – Establishing Eligibility for Special
Education**

**A Self-Advocacy Guide
For Parents of Children with Special Needs**



CHAPTER 2 EVALUATIONS – ESTABLISHING ELIGIBILITY FOR SPECIAL EDUCATION

How This Chapter Is Organized

This chapter discusses how children are evaluated and determined to be eligible for special education. Section I describes how parents can request an initial evaluation of their child from the public school system. Section II describes the process for re-evaluating children who have previously been found eligible for special education. Section III describes the responsibilities of the State and of public schools to identify and evaluate children with disabilities.

PLEASE REMEMBER:

- This guide is not intended as a substitute for legal advice. If you need legal advice about how special education laws apply to your child, please contact the Arizona Center for Disability Law or a private lawyer.
- Special education laws and rules are constantly changing, at both the state and federal level. Federal and Arizona state laws and rules are likely to change as well. To stay updated on the current status of special education laws and regulations, contact the Arizona Center for Disability Law or a private lawyer, or conduct your own research. (See [Chapter 1, Q.1-11](#) of this guide for research tips).

I. HOW TO ACCESS PROGRAMS AND SERVICES FOR CHILDREN WITH DISABILITIES – OBTAINING THE INITIAL EVALUATION.

Before your child can receive special education or related services, the first step is to establish that your child is eligible for the services. Public schools are required to conduct a “full and individual initial evaluation” before providing special education to a child with a disability.²¹ The purpose of an initial evaluation is to (1) determine if the child is a “child with a disability” who is entitled to receive special education services and (2) to determine the educational needs of the child.²² A parent of a child may request an evaluation to determine if the child is eligible for special education.²³ The evaluation is paid for by the school. The initial evaluations are important because they establish eligibility for services and provide the foundation for building the education program that will best meet the child’s needs. Once a child is determined to be eligible for special education, the next step is for the parents and school personnel to develop an Individualized Education Program (IEP). The IEP specifies what special education

²¹ 20 U.S.C. §1414(a)(1)(A).

²² 20 U.S.C. §1414(a)(1)(C)(i).

²³ 20 U.S.C. §1414(a)(1)(B).

services the public school will be provide to ensure the child with a disability receives a free and appropriate public education.

Q.2-1 How do I request an initial evaluation of my child?

Ask your local school district to complete a complete initial evaluation of your child to determine if your child is eligible for special education services under IDEA 2004 and/or Section 504 of the Rehabilitation Act of 1973. We highly recommend that you put your request in writing, date the letter, and keep a copy for yourself. Your letter should be sent to the Director of Special Education for the school district. The district will then contact you to obtain your consent for the evaluation and to make the necessary arrangements. A sample letter requesting an initial evaluation is included in the [Appendix](#) of this guide.

Q.2-2 How long does the initial evaluation process take?

IDEA 2004 requires the school system to complete an evaluation within 60 days of receiving parental consent for the evaluation, or within the time frame set forth in state law.²⁴ The Arizona administrative rule on initial evaluations requires the school to complete the evaluation “as soon as possible” but not to exceed 60 calendar days.²⁵ If you are interested in moving the process forward as quickly as possible, we recommend that your initial letter requesting an evaluation includes language such as: “This letter constitutes my consent to the evaluation.” This means that the 60 day period in which the district must complete the evaluation starts on the day it receives your written consent. If the district refuses to conduct the evaluation, the district must provide parents with written notice. [See Chapter 5](#) of this guide for more information about written notice.

Q.2-3 I requested an initial evaluation of my child from our local school district, but the district said it is not responsible for the evaluation because my child attends a private school located in another district. What are the rules governing which entity is responsible for initial evaluations?

In general, a school district is responsible for identifying, locating and evaluating children with disabilities that live within the geographic boundaries of the district.²⁶ So, if you live within the boundaries of District XYZ, District XYZ is the entity responsible for evaluating your child to determine eligibility for special education.

There are two exceptions to this general rule. First, if your child attends a **private school** located in the boundaries of another district (District ABC) although you live in the boundaries of District XYZ, then District ABC is responsible for evaluating your child.²⁷ Second, if your child attends a public school other than a traditional school district – such as a charter school – then the school your child attends (i.e., the charter school) is

²⁴ 20 U.S.C. §1414(a)(C)(i)(I); 34 C.F.R. §300.301(c). However, the parent and school system can mutually agree to extend the 60 day evaluation timeline. 34 C.F.R. §300.309(c).

²⁵ A.A.C. R7-2-401(E)(3).

²⁶ A.A.C. R7-2-401(D)(4).

²⁷ 20 U.S.C. §1412(a)(10)(A); A.A.C. R7-2-401(D)(4)(b).

responsible for evaluating your child to determine if your child is eligible for special education.²⁸ See Chapter 3 of this guide for more information about private and charter schools.

Q.2-4 What does the evaluation have to show in order to establish that my child is a “child with a disability” as defined by IDEA 2004?

IDEA 2004 and Arizona law define a “child with a disability” as a child who:

- needs special education and related services
- because the child has a disability that falls into one of the disability categories recognized in the law.²⁹

Please note that there may be a difference between a child’s *diagnosis* and a child’s *disability category*. For instance, although there is no legal disability category for Down Syndrome, a child diagnosed with Down Syndrome may qualify for special education by meeting the criteria for “Mental Retardation.” If you do not see your child’s diagnosis in the list below, please refer to the chart included in the Appendix to this guide called “Eligibility Categories – Specific Types of Disabilities.” The chart describes how each disability category is defined in the law, what the initial evaluation for each category will include, and what types of diagnoses typically fall into certain disability categories.

The disability categories recognized under Arizona and federal law³⁰ are:

1. Autism
2. Emotional Disability
3. Hearing Impairment
4. Mental Retardation
5. Multiple Disabilities
6. Multiple Disabilities – Severe Sensory Impairment
7. Orthopedic Impairment
8. Other Health Impairment
9. Preschool Moderate Delay
10. Preschool Severe Delay
11. Preschool Speech/Language Delay
12. Specific Learning Disability
13. Speech Language Impairment
14. Traumatic Brain Injury
15. Visual Impairment

²⁸ A.A.C. R7-2-401(D)(4)(a).

²⁹ 20 U.S.C. §1401(3); A.R.S. §15-761(2) (defining child with a disability); A.R.S. §15-761(5) (eligibility for special education).

³⁰ Federal law lists thirteen types of disabilities that may qualify children for special education, and allows states to define additional categories for children ages 3 through 9. 20 U.S.C. §1401(3). In Arizona public schools, the categories of disabilities defined in Arizona law will apply. See A.R.S. §15-761, which includes definitions of the various types of disabilities throughout the statute listed in alphabetical order.

Children with the same diagnosis may not necessarily fall into the same disability category for IDEA purposes; much will depend on how the disability affects the particular child in the educational setting. While one child with a diagnosis of Pervasive Development Disorder may meet the criteria for “Autism,” another child with the same diagnosis may meet the criteria for the “Speech Language Impairment” disability category.

A child is not eligible for special education just because the child has a listed impairment. In order to be entitled to special education, the child must need specialized instruction. “Special education” means modifying the course of study, adapting teaching methods or other specially designed instruction to allow a child to receive education benefit.³¹

EXAMPLE:

A child who has average intelligence but also has emotional and behavioral problems may have an “emotional disability.” If the child’s emotional problems significantly affect his ability to learn in school and he needs specialized instruction as a result (such as more individualized attention), the child is a “child with a disability” under IDEA 2004 who is eligible for special education services.

Q.2-5 What does the evaluation have to show in order to establish that my child is a “child with a disability” as defined by Section 504?

The federal regulations for Section 504 of the Rehabilitation Act of 1973 define a child with a disability as:

- a child who has a physical or mental impairment that
- substantially limits one or more major life activities.³²

Learning is a major life activity. Other major life activities include caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking and breathing.³³

EXAMPLE:

A child with severe asthma has a physical impairment (asthma) that substantially limits the major life activity of breathing, even with medications. She is a “qualified individual with a disability” under Section 504. Because she can perform with her peers academically, she does not need special education and thus would not qualify as a child

³¹ 20 U.S.C. §1401(29); A.R.S. §15-761(33).

³² 34 C.F.R. §104.3(j)(1)(i). Section 504 also defines a “child with a disability” as a child who has a “record” of a physical or mental impairment that substantially limits one or more life activities or is “regarded” as having such an impairment, even though the child does not actually have a current disability. 34 C.F.R. §104.3(j)(1)(ii)-(iii). Children who meet these definitions of disability are entitled to be free from discrimination, but since they do not currently have a disability they do not need special education services. [See Chapter 1, Q.1-4 through Q.1-7](#) of this guide for information on the differences between IDEA and Section 504.

³³ 34 C.F.R. §104.3(j)(2)(ii).

with a disability under IDEA 2004. Section 504, however, would require a school to change her school routine if needed to prevent asthma attacks, so that she has an equal opportunity to benefit from school as do children without disabilities.

Q.2-6 Do all children with severely limited academic skills qualify for special education under IDEA 2004?

No. Children qualify for special education only if they need specialized instruction because of a listed disability. Children with limited academic skills do not qualify for special education if their problems are caused by environmental, cultural or economic disadvantage. Similarly, if a child's learning problems are the result of poor reading or math instruction, or because the child comes from a home in which English is not the primary language, that child is not eligible for special education.³⁴

This is not to say that schools do not have to do anything to improve a child's limited reading or speaking skills, however. Even if your child does not qualify for special education, your school probably offers other programs to help children succeed academically. If reading problems are your main concern, ask what programs your school or district provides under the "Arizona Reads" law, which is designed to strengthen reading instruction for students in kindergarten through third grade.³⁵ Your school or district may also employ a reading specialist, or may participate in federal grant programs designed to improve reading such as "Reading First." For further information about reading programs, contact the Arizona Department of Education (www.ade.az.gov - click on "Programs" then select "AZ Reads").

Q.2-7 What, exactly, is involved in an initial evaluation to determine if a child is eligible for special education?

The type of evaluation conducted and the qualifications of the examiner will depend on what type of disability your child has or may have. IDEA 2004 does provide some general guidelines, however. The school must use a variety of assessment tools and strategies to gather data about whether your child is a "child with a disability" and what kind of educational program may be appropriate. Schools may not use any single test (such as an I.Q. test) to decide whether a child has a disability. In addition, tests used in the evaluation process must be technically sound, administered so as not to be discriminatory on a racial or cultural basis, provided in the language used by the child and administered by trained personnel.³⁶

A few of the evaluation requirements are especially important. Parents have the right to provide input in the initial eligibility determination, and the school must document and "carefully" consider information provided by the parents.³⁷ The team deciding eligibility

³⁴ 20 U.S.C. §1414(b)(5); A.R.S. §15-761(33).

³⁵ A.R.S. §15-704. The Arizona Reads program is also discussed in [Chapter 4, Q.4-56](#) of this guide.

³⁶ 20 U.S.C. §1414(b)(2)-(3); 34 C.F.R. §300.304.

³⁷ 34 C.F.R. §300.306(c).

must also document and carefully consider information from a variety of sources, such as results of aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior. Also, the school must assess the child in all areas of suspected disability. The evaluation must be comprehensive enough to identify *all* of the child's educational needs, whether or not they are commonly linked to the child's disability category.³⁸

Further, IDEA 2004 explicitly recognizes that the child's *developmental needs* must be assessed as part of the initial evaluation, including the child's academic, social, and emotional needs. Evaluations must also be provided in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally.³⁹

Arizona state law also provides guidance on what should be included in the evaluation of certain disabilities. First, each category of disability is defined in statute.⁴⁰ Second, the administrative rules provide more specific guidance on how the existence of a disability should be assessed (i.e., a hearing impairment must be established by an audiological evaluation).⁴¹ To obtain more information about how each type of disability is defined and what the initial evaluation for each category will include, please refer to the chart included in the [Appendix](#) to this guide called "Eligibility Categories – Specific Types of Disabilities."

THE BIG PICTURE - EVALUATIONS LEAD TO SPECIAL EDUCATION SERVICES

Once your child is determined to be eligible for special education, the next step is for parents and school personnel to develop the IEP. The IEP will set out what special education and related services the school will provide to help your child learn. The initial evaluation serves two important purposes. First, the evaluation process is how you establish that your child is eligible for special education. Second, the evaluation provides information about your child's disability and what your child's educational needs are. Because that information forms the foundation of the IEP, a thorough initial evaluation will help you to obtain the most appropriate special education services for your child.

Q.2-8 Who decides whether my child has a disability that meets the eligibility requirements of IDEA 2004?

A team of people, including parents of the child and certain school personnel, determine whether a child is eligible for special education.⁴² In Arizona, this group of people may

³⁸ 20 U.S.C. §1414(b)(3)(B); 34 C.F.R. §300.304.

³⁹ 20 U.S.C. §1414(b)(2)-(3).

⁴⁰ See A.R.S. §15-761.

⁴¹ See A.A.C. R7-2-401(E)(6).

⁴² 20 U.S.C. §1414(b)(4)(A); A.R.S. §15-766(B); A.R.S. §15-761(13), (17).

be referred to as the IEP team, the “Multidisciplinary Evaluation team” (“MET”), or the “Child Study Team.”

Whatever the name of the group or team, the important thing is that parents have the right to participate.⁴³ The team that reviews the initial evaluation test results and determines whether the child is eligible for special education includes:

- a. The parents of the child
- b. At least one of the child’s regular education teachers
- c. One of the child’s special education teachers
- d. A representative from the school who has the authority to commit resources
- e. A person who can interpret the test results, and explain the educational implications of the tests
- f. At the discretion of the parent or the school, other people with knowledge or special expertise about the child, and
- g. The child, if appropriate.⁴⁴

Q.2-9 Who schedules the meeting to discuss my child’s eligibility for special education and what information will I receive beforehand?

The school system is responsible for scheduling the meeting to discuss your child’s eligibility for special education. Public schools must provide notice to ensure that parents have the opportunity to attend meetings concerning the identification, evaluation and educational placement of their child.⁴⁵ That means that the school must tell parents the purpose, time and location of the meeting, and who will be in attendance. The school must also tell parents that they have the right to bring someone to the meeting who has knowledge or special expertise about the child.⁴⁶

Please be aware that many schools plan to develop a child’s first IEP at the same meeting at which a child’s initial eligibility for special education is determined. Although theoretically this is a two step process – first, establish special education eligibility and second, develop the IEP – in practice it makes sense to discuss eligibility and the child’s IEP at once because the same people are required to participate in both discussions. Unless the school clearly states that a meeting held to discuss your child’s initial evaluation will only address eligibility issues and not the development of an IEP, you should be prepared to discuss your child’s IEP. Refer to [Chapter 4](#) of this guide for information about the IEP process.

When you receive a letter from the school scheduling the meeting, you may also receive a “Procedural Safeguards Notice.”⁴⁷ This is a standard document that must be given to parents at various stages in the special education process, and it is meant to explain, in

⁴³ Group is now defined as “qualified professionals and the parents” 34 C.F.R. §300.306.

⁴⁴ A.R.S. §15-761(13), (17); 20 U.S.C. §1414(d)(1)(B).

⁴⁵ 34 C.F.R. §300.322(b)(1).

⁴⁶ 34 C.F.R. §300.322(b)(1)(i) and (ii).

⁴⁷ 20 U.S.C. §1415d)(1)(A)(i); 34 C.F.R. §300.504(a)(1).

understandable language what your rights are if you disagree with the school about whether or not your child is eligible for special education. [See Chapter 5](#) of this guide for more information on procedural safeguard notices.

Q.2-10 Aside from requesting the initial evaluation, is there anything else I can do to help move the evaluation process forward?

Yes. First, you may want to request your school district’s written procedures regarding the initial evaluation of children with disabilities.⁴⁸ A sample letter requesting school policies under Arizona’s public records laws is included in the [Appendix](#) to this guide. Basic information about Arizona’s public records laws is also provided in the box immediately below.

Second, consider submitting private evaluation data to the school as part of the initial evaluation process. For instance, if your child has been seen by a developmental pediatrician, or has been receiving therapies such as speech or occupational therapy, the records of the individuals who have been working with your child could be helpful. Because the team of people deciding eligibility must carefully consider all information provided, you should make sure that relevant medical records are submitted to the school before the meeting. The school may ask for a release form and request the records from your child’s doctors directly. The other alternative is for you to obtain the records and provide them to the school (while keeping a copy for your own file).

ARIZONA’S PUBLIC RECORDS LAWS AT A GLANCE

Under Arizona law, public bodies must “promptly” respond to requests for public records.⁴⁹ Both traditional school districts and charter schools must comply with Arizona’s public records laws.⁵⁰ Any person can request a public record from a public school – the right to access is not limited to parents or school staff.⁵¹ . Schools may provide copies of public records or make them available for inspection. Public bodies that wrongfully deny access to public records are subject to lawsuits, which may include an award of damages, attorney’s fees and legal costs.⁵² The Arizona Attorney General’s Office provides further information about Arizona’s public records laws in its “Arizona Agency Handbook.” This document is available at www.azag.gov (select “Agency Handbook,” then Chapter 6 for information on public records laws).

Q.2-11 Can I obtain a copy of the results of the initial evaluation report before the meeting is held to determine my child’s eligibility for special education?

⁴⁸ A.A.C. R7-2-401(E)(1) requires public schools to establish written procedures for the initial evaluation of students suspected of having a disability, and for the re-evaluation of students previously identified as being eligible for special education. The rule also requires schools to make these written procedures available to parents served by the school district or charter school.

⁴⁹ A.R.S. §39-121.01(E).

⁵⁰ Ariz. Atty Gen. Op. I95-10

⁵¹ A.R.S. §39-121

⁵² A.R.S. §39-121.02.

Yes. The school must provide the parent with a copy of the evaluation report as well as documentation about the determination of whether a child is eligible for special education.⁵³

IDEA 2004 does not explicitly require schools to provide parents with the evaluation reports *before* eligibility meetings, but most school systems provide them as a matter of course. In order for parents to participate fully in the discussions about whether their child is eligible for special education, parents need to have the same information as school personnel do.⁵⁴ If your school does not provide you with the evaluation report before the meeting, write to the school and request it. A sample letter is included in the Appendix of this guide.

Q.2-12 What information about my child will be included in the initial evaluation report and considered by the team deciding if my child is eligible for special education?

Under IDEA 2004, the initial evaluation meeting should include consideration of:

- whether the child has a disability as defined in the law
- statement about the relevant behavior noted during the observations of the child and the relationship of that behavior to the child’s academic functioning
- the educational needs of the child
- written documentation that the child has a learning disability, See Q. 3-20 for more information
- effects of visual, hearing, or motor disability, mental retardation, emotional disturbance, cultural factors, environmental or economic disadvantage, or limited English proficiency and the child’s achievement level, and
- proof that the school used a scientific research-based intervention process to assist the child.⁵⁵

While some of these factors may overlap, a key aspect of the new law is that it explicitly recognizes that a child’s developmental needs and functional abilities affect education and should be considered in the evaluation process.

Arizona law also requires that the written report of the initial evaluation and the determination of the team deciding eligibility for special education include:

⁵³ 20 U.S.C. §1414(b)(4)(B); 34 C.F.R. §300.501(a).

⁵⁴ Under IDEA 2004 regulations, schools must permit parents to inspect any education records relating to their children and must comply with requests “without unnecessary delay” and before any IEP meeting. 34 C.F.R. §300.613(a). Further, federal and state laws regarding education records generally entitle parents to inspect their children’s education records, which would include evaluation reports. [See Chapter 5](#) of this guide for more information about parents’ rights regarding their children’s educational records.

⁵⁵ 20 U.S.C. §1414(b)(2)-(3), §1414(c)(1); 34 C.F.R. §300.311(a).

- a. A review of current evaluations, including types and results of tests given to the child.
- b. Information provided by parents, including medical and developmental information and history.
- c. Educational history, including the reason for the referral, current classroom based assessments and observations of teachers and related service providers (if any).
- d. Documentation of whether the child's educational problems result primarily from educational disadvantage.
- e. A determination of whether the child has one of the listed categories of disability (i.e., speech/language impairment).
- f. The child's present levels of academic performance and current educational needs.
- g. A determination of whether the child needs special education and related services.
- h. A determination of whether any additions or modifications are needed to allow the child to progress in the general curriculum.⁵⁶

The information described above not only indicates whether the child is eligible for special education, but also lays the groundwork for developing the child's first IEP.

Q.2-13 Can I bring an attorney or advocate to the initial evaluation meeting at which my child's eligibility for special education will be determined?

Yes. Parents may bring an attorney or advocate or other person who has "knowledge or specialized expertise" regarding the child to the meeting to discuss the child's eligibility for special education.⁵⁷ If a parent brings an attorney or advocate to an eligibility meeting, that person becomes a member of the team and is entitled to participate in the meeting just as any other member would.

If you are going to bring an attorney or advocate (or another person with specialized knowledge or expertise) to an initial eligibility meeting, we suggest notifying the school in advance as a matter of courtesy. If you have an attorney at the meeting, the school may invite its own attorney as well, but they must notify you that an attorney will attend in advance.

PARENT CHECKLIST FOR INITIAL ELIGIBILITY MEETINGS

Before the meeting is held to discuss your child's eligibility for special education, consider these issues:

- Do you know what the agenda is for the meeting is, and which school personnel will attend?
- Are you prepared to discuss the development of your child's first IEP, if that may be addressed in the meeting?
- Have you considered what information to provide about your child's academic, functional and developmental needs?
- Do you have a copy of the report(s) of the initial evaluation?
- Do you have copies of any other medical records that were submitted to the school

⁵⁶ A.R.S. §15-766(B).

⁵⁷ A.R.S. §15-761(13), (17); 20 U.S.C. §1414(d)(1)(B).

regarding your child's eligibility for special education?

- Have you requested copies of the school's written procedures for initial evaluations of children with disabilities?

Q.2-14 The initial evaluation has confirmed that my child is eligible for special education. What is the next step?

The next step is to meet with the appropriate school personnel and develop an IEP, as discussed in detail in Chapter 4 of this guide. As a practical matter, the school may hold the meeting to determine eligibility and the child's first IEP meeting at the same time. If the initial eligibility meeting is held at the same time as the IEP meeting, you will know that in advance. If eligibility is the only issue at the meeting, and your child is found eligible under IDEA 2004, then the school must hold an IEP meeting within 30 days of the date your child was determined to be eligible for special education.⁵⁸

Q.2-15 The school has completed an initial evaluation of my child and the team decided that my child is not eligible for special education under IDEA 2004. What are my options?

If the team determining initial eligibility for special education decides your child is not eligible for special education, the school must provide you with "written notice." This notice will explain why the school determined your child was not eligible for special education and what actions you can take if you disagree. Most commonly, parents challenging a school's decision about special education eligibility obtain an Independent Educational Evaluation (a second opinion by a neutral evaluator, paid for by the school) or request a due process hearing. See Chapter 5 of this guide for more detailed information on resolving special education disputes.

If your child is not eligible for special education, you should ask if the school has considered whether your child is eligible for services under Section 504 (See [Chapter 1, Q.1-4 through Q.1-7](#) of this guide for further information on Section 504). If your child meets the Section 504 definition of a child with a disability, the school will be required to provide appropriate services so that your child has an equal opportunity to learn.

Even if your child is not eligible for special education or protection under Section 504, you should discuss any concerns you have about your child's learning with school staff. Although federal law may not require schools to offer specialized services to students who do not have disabilities, your child's school district may offer programs that address your child's educational needs. As a parent, you can always request a meeting with your child's teacher or other school personnel to discuss what steps can be taken to improve your child's academic performance.

⁵⁸ 34 C.F.R. §300.323(b)(2).

II. RE-EVALUATIONS

Q.2-16 Once my child has been evaluated and determined to be a “child with a disability” who is eligible for special education, how often will my child be re-evaluated?

After a child has been evaluated and found eligible for special education, the child must be re-evaluated at least once every 3 years (unless the parent and the school both agree that a re-evaluation is not necessary).⁵⁹ A school must also re-evaluate a student:

- If the child’s parent or teacher requests a re-evaluation,
- If the school believes a re-evaluation is warranted because of changes in the child’s academic achievement or functional performance,⁶⁰ or
- Before the school determines that a child is no longer eligible for special education services under IDEA 2004 (with some exceptions).⁶¹

[A sample letter is included in the Appendix to this guide](#)

Q.2-17 What does a “re-evaluation” of a child with a disability involve?

A re-evaluation of a child with a disability is a three step process.

1. The IEP team (including the parents) begins by reviewing the existing evaluation data regarding the child to decide what additional testing or information is needed to determine:
 - whether the child has a disability as defined in the law
 - the educational needs of the child
 - the child’s functional performance and abilities
 - the child’s current level of academic performance
 - the developmental needs of the child (including social and emotional needs, especially as they relate to education), and
 - whether the child needs special education and related services.⁶²

If the school representatives of the IEP team believe that no additional testing is needed but the parents disagree, the school must conduct a re-evaluation if the parents request one.⁶³

2. The school then conducts any additional testing of the child, with parental consent. As with the initial evaluation, a variety of assessment tools must be used and the

⁵⁹ 20 U.S.C. §1414(a)(2)(B)(ii). 34 C.F.R. §300.303(b)(2).

⁶⁰ 20 U.S.C. §1414(a)(2)(A); Re-evaluations may not occur more than once a year, unless the parents and school agree otherwise 34 C.F.R. §300.303(b)(1).

⁶¹ 20 U.S.C. §1414(c)(5); 34 C.F.R. §300.303. The school does not have to re-evaluate a child if the child is exiting the special education program because the child has graduated from high school or has turned age 22.

⁶² 20 U.S.C. §1414(b)(2)-(3), §1414(c)(1).

⁶³ 20 U.S.C. §1414(c)(4)(A)(ii).

assessments must meet all the same requirements.⁶⁴ [See Chapter 2, Q.2-7](#) for more detailed information.

3. Finally, the IEP team meets to discuss the re-evaluation. Although the team will review the results of any new testing, the re-evaluation also involves consideration of parental input, observation of teachers and related service providers and any other information related to the child's disability and educational, functional and developmental needs.⁶⁵ Unless there is a real question about whether the child remains eligible for special education, the team will mostly focus on incorporating the re-evaluation data into the child's IEP. If the school decides a re-evaluation demonstrates that a child is no longer eligible for special education, parents can challenge the decision. [See Chapter 5](#) of this guide for further information on dispute resolution.

Q.2-18 The school district has recommended a re-evaluation but I do not want my child tested at this time. Can the school district conduct the re-evaluation without my consent?

No. A public school must obtain informed parental consent before conducting a re-evaluation of a child. The parent can refuse to provide consent.⁶⁶ If the parent refuses to consent, the public agency may seek reevaluation through the mediation and due process process, but the agency is not required to do so. Informed consent is not required if the public agency made reasonable efforts to obtain consent and the parent failed to respond. In this situation a public agency may proceed with the re-evaluation.⁶⁷

Another option is for the parent to consider whether there is a different type of test or evaluation that the parent would agree to. As a member of the IEP team, a parent can influence the decision as to what additional testing will be conducted as part of the re-evaluation process.

Q.2-19 My child was re-evaluated 16 months ago. Since then, he has had a lot of problems and has not made much progress. I requested a re-evaluation but the school district said that it only had to conduct the re-evaluation once every 3 years. Is that correct?

No. You may obtain a re-evaluation of your child even though the last one was 16 months ago. The 3 year time frame requires schools to re-evaluate children in special education *at least* once every 3 years, but it does not prevent more frequent re-evaluations. In general, IDEA 2004 limits re-evaluations to once a year. Even then, the

⁶⁴ 20 U.S.C. §1414(b)-(c).

⁶⁵ 20 U.S.C. §1414(c).

⁶⁶ 20 U.S.C. §1414(c)(3)..This requirement does not apply if a child is home schooled or voluntarily placed in a private school. 34 C.F.R. §300.300(d).

⁶⁷ 34 C.F.R. §300.300(c).

parents and the school may agree to conduct a re-evaluation more than once a year if necessary.⁶⁸

If the parent requests a re-evaluation of a child and the school system refuses, the school must provide the parents with written notice informing them of their options, including the option of requesting an independent educational evaluation. [See Chapter 5](#) of this guide for further information.

III. PUBLIC SCHOOLS' OBLIGATION TO IDENTIFY AND EVALUATE CHILDREN WITH DISABILITIES – CHILD FIND.

So far, this chapter has discussed the procedures parents should follow if they request an initial evaluation or re-evaluation of their child. School districts also have the ability to request an initial evaluation of a child to determine if the child is a “child with a disability” entitled to special education. This is part of a school district’s general duty – referred to as “Child Find” – to locate, identify and evaluate children with disabilities within the geographic boundaries of the district.⁶⁹ The State of Arizona must ultimately guarantee that children with disabilities in the state are identified and evaluated, and that a practical method is developed to determine which children are receiving needed special education and related services.⁷⁰

In Arizona, the main requirements relating to locating, identifying, and evaluating children with disabilities are found in the administrative rules adopted by the Arizona State Board of Education.⁷¹ Public schools must generally (1) inform the public about their policies for evaluating children with disabilities and providing special education and (2) identify (or “screen”) children that are enrolled in school to determine whether they may need special education.

Q.2-20 What information do public schools have to provide to the public concerning the identification of children with disabilities?

School districts must inform the general public within the school district’s boundaries – including all parents – of the availability of special education services and how to obtain them.⁷² Public schools must also establish, implement and disseminate their own written procedures for the identification and referral of all children with disabilities, aged birth through 21 to all parents within the district’s geographic boundaries. Schools must require their personnel to review these procedures annually.⁷³

⁶⁸ 20 U.S.C. §1414(a)(2)(B).

⁶⁹ 20 U.S.C. §1412(a)(3); 34 C.F.R. §104.32 (Section 504 regulation requiring public schools that receive federal funds to identify and locate children with disabilities).

⁷⁰ 20 U.S.C. §1412(a)(3); 34 C.F.R. §300.111.

⁷¹ A.A.C. R7-2-401.

⁷² A.A.C. R7-2-401(C)(1).

⁷³ A.A.C. R7-2-401(D)(1) and (2).

Q.2-21 What is a “screening”?

A screening is used to decide whether a child needs to have a full and individual evaluation to determine if the child has a disability and needs special education. The screening is not a substitute for a full evaluation, but an indicator as to whether or not one is needed.

Screening is defined as an “informal or formal process of determining the status of a child with respect to appropriate developmental and academic norms.”⁷⁴ Screening procedures must evaluate a child’s vision and hearing status, and also include consideration of the child’s cognitive or academic development, communication, motor, social or behavioral development as well as adaptive development.⁷⁵ A screening may include observations of the child, a family interview, review of records or the administration of specific tests.⁷⁶

Q.2-22 Do public schools have to screen all enrolled students for possible disabilities each year?

No. Public schools must screen preschool students, kindergarten students and students who have enrolled in school but who do not have appropriate records of screening, evaluation and progress in school. Public schools must also screen children whose parents have notified the school of their concerns regarding the developmental or educational progress of their child.⁷⁷

In addition, schools must screen a student who is “suspected” of having a disability, even if the student is advancing from grade to grade.⁷⁸ This may apply if a teacher notices behavior suggesting the student has a disability.

Q.2-23 How long do schools have to completing the screening process?

Public schools must complete the screening process within 45 calendar days after enrollment of the student or notification of a parent’s concerns.⁷⁹

Q.2-24 What happens if a school screens my child and believes a full evaluation is needed to determine if my child needs special education?

If a concern about your child is raised through the screening process, the school must notify you within ten (10) days and explain what their procedures are for following up on the student’s needs.⁸⁰

⁷⁴ A.A.C. R7-2-401(B)(23).

⁷⁵ A.A.C. R7-2-401(D)(6).

⁷⁶ A.A.C. R7-2-401(B)(23).

⁷⁷ A.A.C. R7-2-401(D)(1).

⁷⁸ 34 C.F.R. §300.111(c)(i).

⁷⁹ A.A.C. R7-2-401(D)(5).

⁸⁰ A.A.C. R2-7-401(D)(8).

If the school proposes going forward with a full initial evaluation of the student after screening, the school must provide you with “prior written notice.”⁸¹ The written notice will describe why the school proposes the evaluation, the evaluation procedures the school proposes to use, and what you can do if you disagree with the results of the evaluation. The school must also obtain parental consent for an initial evaluation before conducting it.⁸² For more information about initial evaluations, [see Chapter 2, Q.2-1 through Q.2-15](#) of this guide. For more information about written notice and dispute resolution, [see Chapter 5](#) of this guide.

Q.2-25 Does the school need parental consent before it conducts a screening?

No.⁸³ Public schools do not generally need to obtain parental consent before administering a test or evaluation that is given to all children.⁸⁴

Q.2-26 What happens if I ask the school to conduct an initial evaluation of my child, but the school says it must screen my child before conducting the full evaluation?

A school can conduct a screening of a child before completing a full initial evaluation, but the school cannot use the screening process to delay the time frame for completing an initial evaluation. If you provide the school with signed consent for an initial evaluation of your child, the school has 60 days to complete the evaluation.⁸⁵ If during that time period the school believes a screening would be helpful (perhaps to identify what problems your child may have and who is most qualified to evaluate them), the school may ask that your child undergo a screening. The school cannot, however, take 45 days to complete a screening and then another 60 days to conduct an initial evaluation.

Q.2-27 What happens if the parents refuse to provide permission to all a public school to conduct an initial evaluation of their child?

Public schools must obtain informed consent from the parent of a child before conducting a full and individual evaluation to determine if the child is eligible for special education.⁸⁶ Consenting to an initial evaluation does not mean consenting to special education services - services must be discussed and agreed upon by the parents through the IEP process.⁸⁷

If the parents refuse to allow a school to evaluate their child for special education eligibility, a public school may file a due process complaint and ask an

⁸¹ 20 U.S.C. §1414(b)(1).

⁸² Exceptions to the consent requirement are if the child is a ward of the state and the school cannot locate the parent(s) or the parent(s) rights have been terminated or a judge has appointed another person to make educational decisions for the child. 34 C.F.R. §300.300(a)(2).

⁸³ 20 U.S.C. §1414(a)(1)(e).

⁸⁴ 34 C.F.R. §300.300(a)(3)(i) and (ii).

⁸⁵ 20 U.S.C. §1414(a)(C)(i)(I); 34 C.F.R. §301(c)(1)(a); A.A.C. R7-2-401(E)(3).

⁸⁶ 20 U.S.C. §1414(a)(1)(D)(i)(I); 34 C.F.R. §301(a)(b)

⁸⁷ 20 U.S.C. §1414(a)(1)(D)(i).

administrative judge to order an evaluation.⁸⁸ A school is not required to use these procedures to obtain an initial evaluation if a parent refuses to consent, however. If the parent refuses to allow an evaluation of the child to determine eligibility for special education, the school’s obligation ends at that point.

Q.2-28 Although the screening conducted by our local school district suggests my child may have a disability, the school refuses to conduct a full initial evaluation. What are my options?

If after consulting with a parent, the school determines that a full initial evaluation for a child is not warranted, the school must explain why the school decided not to conduct a full evaluation of your child and what your legal options are if you want to pursue the issue.⁸⁹ Your options may include requesting a due process hearing or an Independent Educational Evaluation (an evaluation performed by someone not employed by the school district at public expense). [See Chapter 5](#) for further information on dispute resolution under IDEA 2004.

⁸⁸ 20 U.S.C. §1414(a)(1)(D)(ii).

⁸⁹ 20 U.S.C. §1415(b)(3); 34 C.F.R §300.503(a)(1)-(2); A.A.C. R7-2-401(D)(11) (schools must provide the parent with “prior written notice” and “procedural safeguards” in a “timely manner” if the school decides a full evaluation is not warranted).

**Arizona Center for Disability Law
Protection & Advocacy System for Arizona**

Understanding Your Child’s Educational Rights

CHAPTER 3

Specific Issues Relating To Particular Populations

**A Self-Advocacy Guide
For Parents of Children with Special Needs**



CHAPTER 3 SPECIFIC ISSUES RELATING TO PARTICULAR POPULATIONS

How this Chapter is Organized

This chapter answers questions relating to special education eligibility for specific groups of children, or for children attending non-traditional public schools. Section I discusses issues relating to preschool children with disabilities. Section II discusses concerns of children attending charter schools. Section III focuses on issues regarding private school and home schools. Section IV discusses a variety of issues, including children who do not have a parent, children who have turned 18, children of racial and ethnic minorities and children with specific learning disabilities.

PLEASE REMEMBER:

- This guide is not intended as a substitute for legal advice. If you need legal advice about how special education laws apply to your child, please contact the Arizona Center for Disability Law or a private lawyer.
- Special education laws and rules are constantly changing, at both the state and federal level. Federal and Arizona state laws and rules are likely to change as well. To stay updated on the current status of special education laws and regulations, contact the Arizona Center for Disability Law or a private lawyer, or conduct your own research. ([See Chapter 1, Q.1-11](#) of this guide for research tips).

I. PRESCHOOL CHILDREN WITH DISABILITIES

Public school districts are required to provide a free and appropriate public education to preschool children with disabilities, just as they are required to educate school age children with disabilities.⁹⁰ A “preschool” child means a child who is at least 3 years old but is not yet eligible for kindergarten (usually, until age 5).⁹¹

Q.3-1 How old does my child have to be before the district is obligated to conduct an initial evaluation to determine if my child is eligible for special education?

IDEA 2004 does not set a particular age for when young children are eligible for initial evaluations. School districts must provide special education services to all eligible children with disabilities who are “at least age 3.”⁹² In order to meet this obligation, it follows that school districts will have to start the process of determining eligibility for special education and developing an IEP before the child’s third birthday.

⁹⁰ A.R.S. §15-771.

⁹¹ A.R.S. §15-761(23).

⁹² A.R.S. §15-763.

The initial evaluation should occur early enough so that a child’s eligibility can be established and an IEP developed, but if the evaluation occurs at too young an age the evaluation will not describe the child’s “present” levels of functioning and may not be useful in planning appropriate special education services. We suggest that you contact your local school district sometime after your child turns 2 to discuss the appropriate timing of an initial evaluation for your child.

Q.3-2 How do I obtain special education services for my preschooler with disabilities?

First, you should request that your local school district conduct a full and initial evaluation of your child ([as discussed in Chapter 2](#) of this guide). If your child is eligible for special education, the next step will be to develop an IEP (as discussed in Chapter 4). Special education services will be provided to your child as set forth in the IEP.

Also, consider requesting a copy of your school district’s written procedures for serving preschool children with disabilities. Those procedures should address (1) the operation of the preschool program according to federal and state law (2) the smooth and effective transition of children from the Arizona Early Intervention Program to the public school system and (3) the provision of at least 360 minutes of instruction (6 hours) in a program that operates at least 3 days a week.⁹³ A sample letter requesting school policies is included in the [Appendix](#) of this guide.

Q.3-3 My toddler is receiving early intervention services through the Arizona Early Intervention Program. How do I transition my child into the public school system?

Begin by contacting the Arizona Early Intervention Program to discuss how your child will be transitioned into a public school preschool program as your child nears age three. Although your child has qualified for early intervention services, the eligibility criteria for the early intervention program and special education are not the same. Your local school district will oversee the process of obtaining an evaluation and convening a meeting to determine if your child is eligible for special education services.

The challenge here is that your child is moving from one bureaucracy (the Arizona Early Intervention Program, serving children birth – age 2, under Part C of IDEA 2004) to another (the public school system, serving children ages 3 – 21, under Part B of IDEA 2004). Recognizing the difficulties in this situation, Congress requires the early intervention agency to work with the school system to ensure there is a “smooth and effective transition” to preschool programs for children with disabilities.⁹⁴ By the child’s third birthday, an eligible child must be receiving special education services, either through an IEP or by continuing the Individualized Family Service Plan (which is the document that explains what early intervention services will be provided).⁹⁵ IDEA 2004

⁹³ A.A.C. R7-2-401(J).

⁹⁴ 20 U.S.C. §1412(a)(9). *See also* A.A.C. R7-2-401(J)(2).

⁹⁵ 20 U.S.C. §1412(a)(9).

also requires schools to invite the early intervention service coordinator (Part C coordinator) to the initial IEP meeting if the parents request it.⁹⁶

Q.3-4 Our local school district says that because our child has disabilities, he must attend a “developmental preschool” rather than a typical preschool program. Is that legal?

Probably not. Preschool children with disabilities, like older children with disabilities, must be provided a free appropriate education in the “least restrictive environment.” That means that preschool children must be educated with typical children in regular education classrooms to the maximum extent appropriate.⁹⁷

Public schools must offer a variety of educational settings for children with disabilities, so the IEP team – which includes the parents - can select the best option based on the child’s individualized needs. Children should not be removed from the age-appropriate regular classroom just because they need modifications or extra assistance. The strong preference in the law is that children with disabilities – including preschoolers- are educated in their local school, close to home and in the regular education classroom with other kids their age.⁹⁸ While developmental preschools may be appropriate for some children, school districts may not automatically place all children with disabilities into such programs without considering a child’s individual needs.

II. CHARTER SCHOOLS

Charter schools are public schools that are established by a charter contract between the school and a sponsoring entity.⁹⁹ The Arizona State Board of Charter Schools (www.asbcs.state.az.us/asbcs) sponsors and oversees most charter schools in the state. Some charter schools are sponsored by the Arizona State Board of Education or a local school district.

Children with disabilities attending charter schools have the same rights to special education as do children with disabilities attending traditional public schools.¹⁰⁰ If your child attends a charter school and may need special education, you should ask the charter school to conduct an initial evaluation as described in [Chapter 2](#) of this guide. If your child is found eligible for special education, the charter school will be responsible for developing and implementing an IEP just like a traditional school district.

⁹⁶ 20 U.S.C. §1414(d)(1)(D). Further information on transitioning from the early intervention program to the public school system is set forth in the Intergovernmental Agreement between the Arizona Department of Education and the Department of Economic Security (which operates the Arizona Early Intervention program). The Agreement is available on-line at www.ade.az.gov (go to “Programs,” “Special Education,” then “Preschool Unit,” then click on “Transition IGA agreement”) or by requesting a copy from the Arizona Department of Education or Department of Economic Security.

⁹⁷ 20 U.S.C. §1412(a)(5).

⁹⁸ 20 U.S.C. §1412(a)(5); 34 C.F.R. §300.116.

⁹⁹ A.R.S. §15-101(3). See generally A.R.S. §15-181, *et.seq.*

¹⁰⁰ A.R.S. §15-183(E)(7); 34 C.F.R. §300.309.

Q.3-5 Do charter schools have to comply with Section 504?

Yes.

Q.3-6 Are charter schools permitted to deny admission to children with disabilities?

No. Arizona law prohibits charter schools from denying admission to students because of a “disabling condition.”¹⁰¹ Charter schools may, however, limit the number of students served at a particular age or grade level, or refuse to admit children who have been or are in the process of being expelled from another school. Although charter schools often have a particular mission (such as focusing on the arts or serving at-risk students), they cannot deny admission to children with disabilities by claiming they “do not serve” such children.

Q.3-7 What should I do if I am considering sending my child with a disability to a charter school?

Parents of children with disabilities should investigate the special education services and programs offered by the charter school they are considering. One way of collecting this information is to ask the charter school questions about who is in charge of special education, what is that person’s qualifications and training, what special education services are provided by the school, how long has the charter school operated and about how much experience the school has in serving children with disabilities. Charter schools have only been in existence since 1995, and they vary greatly in the quality of special education services provided to children with disabilities.

Another excellent source of information is the sponsor of the charter school, which will probably be the Arizona State Board of Charter Schools. The Charter School Board maintains public files for each charter school it oversees, and parents are welcome to inspect them. You can also ask the sponsoring entity (or the charter school itself) whether the charter school has been sanctioned for violating special education laws and if so, what the violation was, how long it occurred, what sanctions were imposed and whether the school is currently in compliance with the law.

The Arizona Department of Education Exceptional Student Services Division monitors whether charter schools are complying with special education laws. The charter school’s public file may contain the results of the most recent monitoring, and if not, you can request that information from the Arizona Department of Education. (Information about specific students will be taken out of the records to protect their privacy).

Also, teachers in charter schools may not have to meet the same training requirements as teachers in traditional school districts, depending on the teacher’s position at the school. See [Chapter 4, Q.4-64](#) of this guide for information on how the “highly qualified” teacher

¹⁰¹ A.R.S. §15-184.

requirements as apply to charter school teachers, or ask the charter school for information about its teachers’ qualifications.

For further information about charter schools, contact:

Arizona State Board of Charter Schools
1700 West Washington Street, Suite 164
Phoenix, Arizona 85007
(602) 364-3080
(www.asbcs.state.az.us/asbcs)

III. PRIVATE SCHOOLS AND HOME SCHOOLS

This section discusses the laws applying to children with disabilities who attend private schools by parental choice. In some cases, the IEP team may decide a private school placement is necessary in order to provide the child with an appropriate public education. In that case, the school district or charter school ensures that the privately provided education meets all legal standards.¹⁰² This section, however, addresses students who voluntarily attend private schools.

In general, private school students have the same rights as public school students to be evaluated and identified as children with disabilities eligible for special education. If they chose to attend a private school, however, they can receive some special education services, but not “the full complement of services” that a public school student with a disability would receive.¹⁰³

Children who are home schooled have the same special education rights as private school students have.¹⁰⁴ ([See Chapter 3, Q.3-13 below](#)).

Q.3-8 Can I request an initial evaluation to determine if my child is eligible for special education, even though my child attends private school?

Yes. The State is ultimately responsible for ensuring that all children with disabilities in the State are identified and evaluated, whether they attend public or private (including religious) schools.¹⁰⁵

¹⁰² 20 U.S.C. §1412(a)(10)(B). *See also* A.A.C. R7-2-402 (Arizona regulation on the standards for approval of special education programs in private schools) and A.A.C. R7-2-403 (out-of-state private special education schools).

¹⁰³ *Greenland School Dist. v. Amy N.*, 358 F.3d 150, 157 (1st Cir. 2004).

¹⁰⁴ A.R.S. §15-763(B).

¹⁰⁵ 20 U.S.C. §1412(a)(3); 20 U.S.C. §1412(a)(10)(A)(ii). The way in which the State conducts “Child Find” activities differs somewhat for private school students as compared to public school students. The responsible school system must consult with private school officials, and then “conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private school” located in the school district boundaries. 20 U.S.C. §1412(a)(10)(A)(i)(II). The time frame for conducting child find for private school students shall be completed in a time period “comparable” to that for public school students. 20 U.S.C. §1412(a)(10)(A)(ii)(V) 34 CFR §300.131(a) .

To obtain an initial evaluation of your child, you should contact the school district and request an evaluation. The school will conduct the appropriate evaluation, provide you with the evaluation results, and then hold a meeting between parents and school personnel to decide if your child meets the criteria for a “child with a disability” as defined in IDEA 2004. If you disagree with the decision, you have the same rights as public school parents to file for a due process hearing or to try to resolve the disagreement through other procedures. For further information on the initial evaluation process [see Chapter 2, Q.2-1 through Q.2-15](#) and for more information on dispute resolution procedures please see Chapter 5 of this guide.

One issue that may arise for private school parents is *which* school district is responsible for the initial evaluation of your child. The school district in which the private school is located is responsible for the initial evaluation of your child, even if you live within the geographic boundaries of another school district.¹⁰⁶ If your home is in the same district as the private school your child attends, then your local school district is responsible for evaluating your child.

Q.3-9 Are children with disabilities who voluntarily attend private schools entitled to the full range of special education services at public expense?

No. Children who voluntarily attend private schools, also called “parentally placed private school children,” do not have the same rights as public school students.¹⁰⁷ As the federal regulations put it, “No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.”¹⁰⁸ While school districts must provide special education services to students with disabilities attending private schools located within the district boundaries, an individual private school student is not entitled to a particular level of service or program.

Q.3-10 How are special education services provided to children with disabilities who voluntarily attend private schools?

The school district in which the private school is located consults with private school officials and parent representatives to discuss how special education services will be provided to private school students with disabilities.¹⁰⁹ School districts must set aside a proportionate share of federal funds to serve private school students.

The school district will develop a “**Service Plan**” to decide what services will be provided to individual children with disabilities.¹¹⁰ A service plan is a document that describes the services the local education agency will provide a student that is parentally

¹⁰⁶ 20 U.S.C. §1412(a)(10)(A); A.A.C. R7-2-401(D)(4)(b); 34 C.F.R. §300.132.

¹⁰⁷ This voluntary placement of the child in a private school by its parents includes children who are placed in religious schools. 34 C.F.R. §300.130.

¹⁰⁸ 34 C.F.R. §300.137(a).

¹⁰⁹ 20 U.S.C. §1412(a)(10)(A)(iii).

¹¹⁰ A service plan must be developed for each student. 34 C.F.R. §300.132(b).

placed in a private school.¹¹¹ **It is not an IEP**, but it must be developed consistently with IEP procedures, including those requiring parent participation.¹¹² The personnel providing special education services to private school students with disabilities need not be “highly qualified.”¹¹³ The amount of special education services provided to private school students does not, however, have to be the same.¹¹⁴

Q.3-11 How do I request special education services for my child attending private school?

Contact your private school administrators to find out how you can obtain special education services for your child (assuming your child has already been determined to be eligible for special education).

Also, you may want to contact the appropriate school district and ask for a copy of the district’s policies for serving children with disabilities in private schools.¹¹⁵ A sample letter is included in the [Appendix](#) to this guide.

Q.3-12 My child is receiving special education at our local public school, but I don’t think he is making sufficient progress. Can I transfer my child to a private school but have the public school pay the tuition costs?

Possibly. In some cases, courts have ordered school districts to reimburse parents for the costs of private school tuition. Parents may be entitled to reimbursement for private school tuition if the public school has failed to offer their child a free and appropriate public education and the parents have clearly told the school that they intend to transfer their child to a private school.¹¹⁶ This issue is discussed in more detail in [Chapter 5, Q.5-44](#) of this guide.

Q.3-13 What are the special education rights of children with disabilities who are home-schooled?

Under Arizona law, students attending home schools are considered to be attending private schools for special education law purposes.¹¹⁷ Children attending home schools therefore have the same rights to special education services as private school students do. ([See Q.3-8 through 3.10](#) above for more information). You can ask your local school district to conduct a full initial evaluation of your child to determine if your child is

¹¹¹ 34 C.F.R. §300.37.

¹¹² 34 C.F.R. §300.138(b).

¹¹³ 34 C.F.R. §300.138(a).

¹¹⁴ 34 C.F.R. §300.138(a).

¹¹⁵ A.A.C. R7-2-401(K) (regulation requiring school systems to maintain policies for serving children with disabilities in private schools).

¹¹⁶ 20 U.S.C. §1412(a)(10)(C).

¹¹⁷ A.R.S. §15-763(C). If federal funds are received by a school district or charter school for special education for home schooled or private school pupils, the school system “shall provide the services to both the home schooled pupils and the private schooled pupils in the same manner. A.R.S. §15-763(D).

eligible for special education under IDEA 2004. If so, the school district will develop a “**Service Plan**” to describe what special education services will be provided.

Contact your local school district for specific information on how to obtain services for your home-schooled child. You may also want to request a copy of your school district’s written procedures for how the district identifies children with disabilities attending home schools.¹¹⁸ A sample letter requesting school policies is included in the [Appendix](#) to this guide.

IV. ISSUES RELATING TO EVALUATION OF SPECIFIC GROUPS OF CHILDREN

Q.3-14 What happens if the child does not have a parent who is able to consent to an initial evaluation or make other special education decisions for the child?

Parent participation is a key component to the protections provided to children with disabilities under IDEA 2004. Because some children do not live with natural or adoptive parents, IDEA 2004 defines the term “parent” to clarify who acts as a parent for children in these circumstances and makes decisions on their behalf. Arizona law was amended in 2005 to address this situation consistently with IDEA 2004.¹¹⁹

Under current federal and Arizona law,¹²⁰ the term “parent” means:

- A biological or adoptive parent of a child.¹²¹
- A guardian, but not the State if the child is a ward of the State of Arizona.¹²²
- A person acting in the place of a natural or adoptive parent (including a grandparent, step-parent or other relative) who the child lives with, or a person who is legally responsible for the child’s welfare.
- A surrogate parent. In Arizona, a surrogate parent is appointed by the court to represent a child in special education decisions if the child is a ward of the state, if no parent can be identified, or if the school cannot locate a parent. A surrogate parent must have the appropriate knowledge to act as a child’s representative, may not work for a state agency involved in the child’s care, and may not have any interests in conflict with the best interests of the child.¹²³
- A foster parent. In Arizona, a foster parent means a person who has been designated by a court to serve as a parent of a child with a disability if that person has an ongoing long term parental relationship with the child.¹²⁴ Under the 2006 regulations, a foster parent can make educational decisions for the child unless

¹¹⁸ A.A.C. R7-2-410(D)(1) (public agencies must maintain and disseminate written procedures for identifying all children with disabilities within the district, including children attending private schools and home schools).

¹¹⁹ H.B. 2534, 47th Legislature, 1st Regular Session 2005, amending A.R.S. §15-761.

¹²⁰ 20 U.S.C. §1401(23); A.R.S. §15-761(23).

¹²¹ The biological or adoptive parent is presumed to be the parent. 34 C.F.R. §300.30(a)(2).

¹²² A ward of the State is a child who the State has determined is a foster child, a ward, or in the custody of a public welfare agency. 34 C.F.R. §300.45; 34 C.F.R. §300.519(c),(f) (criteria for determining who will act as a parent).

¹²³ A.R.S. §15-763.01; 34 C.F.R. §300.519(a) (criteria for determining for a homeless youth).

¹²⁴ A.R.S. §15-761(7).

both the biological parent and the foster parent are attempting to act as a parent. In this case, the biological or adoptive parent makes educational decisions regarding the child.¹²⁵

Q.3-15 Who acts as the “parent” of a child with a disability after the child turns 18?

Because a student with a disability may be eligible for special education under IDEA 2004 until age 22, the law addresses the issue of who makes decisions for the student once he or she has become an adult under State law (or “reached the age of majority”). In Arizona, the age of majority is 18 years old.¹²⁶

When a student with a disability turns 18, the student generally assumes the right to make educational decisions on her own behalf. In other words, the decision-making powers transfer from the parents to the child.¹²⁷

Some children with disabilities may not be legally competent to make decisions for themselves, in which case their legal guardian would make educational decisions on their behalf. Arizona law also allows children with disabilities to transfer their decision-making authority to another person once they turn 18. This procedure, called the “Delegation of Right to Make Educational Decisions,” may be appropriate for students who are legally competent, but would rather have someone else (i.e., a parent) make educational decisions for them.¹²⁸ The Delegations of Rights and other similar information is available on the Center’s website at www.azdisabilitylaw.org

Q.3-16 Does IDEA 2004 address issues relating to the evaluation of children of racial and ethnic minorities?

Yes. Here, the concern is that children of racial and ethnic minorities have too often been incorrectly labeled as needing special education. As Congress stated in the “Findings” section of the 2004 IDEA 2004:

- Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.
- More minority children continue to be served in special education that would be expected from the percentage of minority students in the general school population.
- African-American children are identified as having mental retardation and emotional disturbance at rates greater than their White counterparts.
- Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education.

¹²⁵ 34 C.F.R. §300.30(a)(2), (b).

¹²⁶ A.R.S. §1-215(3).

¹²⁷ 20 U.S.C. §1415(m), A.R.S. §15-773.

¹²⁸ A.R.S. §15-773(B) – (E).

- Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.¹²⁹

To address these problems, IDEA 2004 first expands the reporting requirements concerning minority children with disabilities. States must collect data to determine if “significant disproportionality” based on race and ethnicity is occurring in the State with respect to (1) the identification of children as children with disabilities (2) placement in particular educational settings of such children and (3) the incidence, duration and type of disciplinary actions, including suspensions and expulsions.¹³⁰

The State is not only required to collect data, however. If a State finds that a school district or charter school has “significant disproportionality” in the way it identifies, places or disciplines minority children, the State must provide for the review and revision of the district’s policies and require the district to publicly report on any revisions, and also require the district to reserve funds provided for early intervening services to serve children in those groups that were significantly over-identified.¹³¹ In addition, the State must adopt policies and procedures designed to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children as children with disabilities.¹³²

Q.3-17 What can I do if I am concerned that my child’s race and ethnicity played a role in the school’s decision to refer my child to special education or place him in a restrictive environment?

If you believe your child may have been inappropriately referred to special education because of race or ethnicity, your first step is to gather more information.

1. Begin by talking to your child’s teacher about why your child was referred for a special education evaluation (if applicable). What specific behaviors or characteristics did the teacher observe that made her suspect a possible disability? Also, ask the teacher what types of strategies or interventions were used before your child was referred for an evaluation.
2. If your child was referred to special education because of the school psychologist’s evaluation, you may want to ask the psychologist whether the tests used on your child have been proven to be valid for minority children. Also, consider asking the psychologist or other school personnel about their experience in working with diverse populations.
3. Consider asking the school district (1) how many children of the racial or ethnic minority are enrolled in the district and (2) what percentage of special education children are from the racial or ethnic minority. If you learn that the district has a

¹²⁹ 20 U.S.C. §1400(c)(11) – (12).

¹³⁰ 20 U.S.C. §1418(d)(1).

¹³¹ 20 U.S.C. §1418(d)(2).

¹³² 20 U.S.C. §1412(a)(24).

total of 3% African American children in its population but 15% of all special education children are African American, the district’s identification procedures are probably not in compliance with IDEA 2004. You can make a public records request for this information (a sample request letter is included in the [Appendix](#) of this guide), or check to see what data is available from the Arizona Department of Education’s website (www.ade.az.gov - select “Programs,” “Special Education,” then “Data Management”).

If your child needs special education but you are concerned that your child may be placed in an overly restrict environment because of racial or ethnic factors, you might begin by finding out why, exactly, school personnel believe that a restrictive or segregated environment is appropriate for your child. (For information on the least restrictive environment requirement, please see [Chapter 4, Q.4-37.](#)) If the information received from school staff does not alleviate your concern, you could ask the district or check the website of the Arizona Department of Education for further information. Here, the questions would include: (1) what percentage of the special education population are children of the racial or ethnic minority and (2) what percentage of special education students placed in restrictive environments (like alternative high schools) are children of the racial or ethnic minority? If the district has a total of, say, 10% Hispanic children in special education but 50% of the special education students attending the alternative high school are Hispanic, it would appear that the placement of minority children is “disproportionate.”

Once you have received additional information, you would then analyze it in light of your concerns. The public school may have made valid decisions about your child based on his individualized needs and not because of race or ethnicity. On the other hand, additional information might validate your initial concerns. In that case, one option is to consider filing a complaint of race discrimination with the Office for Civil Rights of the U.S. Department of Education.¹³³ Another option is to notify the Arizona Department of Education, since the State has the overall obligation to determine and correct significant disproportionality in the way public schools identify and place minority children in special education. You may also contact the Arizona Center for Disability Law to discuss your specific situation.

Q.3-18 What are the new requirements for determining special education eligibility for children with specific learning disabilities?

¹³³ For information on filing race discrimination complaints, contact:
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-1100
1-800-421-3481
FAX: (202) 245-6840; TDD: (877) 521-2172
E-mail: OCR@ed.gov
Web: www.ed.gov/about/offices/list/ocr/index.html

Before IDEA 2004 was passed in 2004, Arizona and most other states used a “severe discrepancy” formula to determine whether a child had learning disabilities and was eligible for special education.¹³⁴ A “severe discrepancy” formula compared the student’s intellectual ability with the student’s performance. The idea was that if the student had average or higher intelligence but performed poorly on tests, a learning disability may be affecting how the child processed and communicated information.

Under IDEA 2004, public schools are not required to use a severe discrepancy formula to determine if a child has a specific learning disability. Instead, schools may use “a process that determines if the child **responds to scientific, research-based intervention**” as part of the procedures used to evaluate whether the child has a learning disability.

The Arizona Department of Education has established procedures for School district that utilizes the Response to Intervention (RTI) as part of the evaluation for Specific Learning Disabilities. If school district choose to use RTI, the state requires that they use a set of specific scientifically based components and that the school district submit a plan for approval by ADOE prior to using the process to directly identify students for special education. For ongoing information regarding RTI, go to www.ade.az.gov/rti

Q.3-19 My child has been identified as a child with learning disabilities according to the “severe discrepancy” standard, and has received special education for several years. Does the change in the law mean my child is no longer eligible for special education?

Not necessarily. A public school must conduct a re-evaluation before deciding that a student is no longer a “child with a disability” eligible for special education.¹³⁵ If new requirements for evaluating specific learning disabilities are put in place by the time of your child’s next re-evaluation, those new criteria may apply.

Q. 3-20 What is the new criteria the school must use to evaluate for a specific learning disability?

The new criteria sets out several steps that must be taken before a child will be identified as having a specific learning disability. First, the child is identified if he or she is not achieving adequately for his or her grade-level in one or more of several categories (oral expression, mathematics) and the child was provided with an appropriate learning experience and instruction for the child’s age or grade-level.¹³⁶ In addition, the school must use scientific, research-based intervention and the child does not make sufficient progress to meet age or grade-level standards or the school, in using appropriate assessments, sees that the child exhibits a pattern of either strengths or weakness that is

¹³⁴ A.A.C. R2-7-404(E)(5)(d).

¹³⁵ 20 U.S.C. §1414(c)(5)(A).

¹³⁶ 34 C.F.R. §300.309(a)(1).

determined to relevant to the identification of learning disability.¹³⁷ The school's determination that the child has a specific learning disability cannot be the result of a vision, hearing, motor disability, mental retardation, emotional disability, cultural factors, environmental or economic disadvantage, or limited English proficiency.¹³⁸ Finally, the school must consider: (1) data that shows that child was provided instruction in a regular education setting by highly qualified personnel, and (2) documentation of repeated assessments done over a period of time that reflects a formal assessment of the child's progress. You, as the child's parent, must be provided with this data¹³⁹. Therefore it is important that you obtain a copy of your school district's learning disability criteria that it uses to make its determination.

¹³⁷ 34 C.F.R. §300.309(a)(2)(i),(ii)

¹³⁸ 34 C.F.R. §300.309(a)(3)(i)

¹³⁹ 34 C.F.R. §300.309(a)(3)(ii)

**Arizona Center for Disability Law
Protection & Advocacy System for Arizona**

Understanding Your Child’s Educational Rights

CHAPTER 4

The IEP Process - Obtaining A Free And Appropriate Public Education For Your Child

**A Self-Advocacy Guide
For Parents of Children with Special Needs**



CHAPTER 4 THE IEP PROCESS - OBTAINING A FREE AND APPROPRIATE PUBLIC EDUCATION FOR YOUR CHILD

How This Chapter Is Organized

This chapter discusses the laws relating to the Individualized Education Program (“IEP”). The IEP is a written document that specifies what special education and related services each child with a disability needs. With parents’ participation, public schools provide a free and appropriate public education to children with disabilities by developing and implementing IEPs as required by law.

Section I of this chapter provides a basic overview of what an IEP is and how it is developed. **Section II** advises parents on how to prepare for an IEP meeting, and discusses the decision-making process in more depth. **Section III** reviews the eight components required in all IEPs and answers common questions. A “parent checklist” is provided at the end of Section III. **Section IV** discusses how schools must implement IEPs and the laws for reviewing IEPs that have been put in place.

Section V addresses IEP issues that may arise for specific groups of children or in special circumstances. Section VI discusses qualifications for special education teachers under IDEA 2004.

PLEASE REMEMBER:

- This guide is not intended as a substitute for legal advice. If you need legal advice about how special education laws apply to your child, please contact the Arizona Center for Disability Law or a private lawyer.
- Special education laws and rules are constantly changing, at both the state and federal level. Arizona state law and rules are likely to change as well. To stay updated on the current status of special education laws and regulations, contact the Arizona Center for Disability Law or a private lawyer, or conduct your own research. (See Chapter 1, Q.1-11 of this guide for research tips).

I. THE BASICS OF AN IEP

Q.4-1 What is an IEP?

An Individualized Education Program (“IEP”) is the document that explains what special education and other services a public school will provide to ensure that a child with a disability receives a free and appropriate public education. In general, the IEP is an individualized written statement for a child with a disability that describes the child’s current abilities, the educational goals to be achieved, and what special education and related services will be provided so that the child can achieve those goals. Parents and school staff work together to develop the IEP. The IEP must also include a statement of

the child’s current level of academic achievement and functional performance as well as statement of goals for the child.¹⁴⁰ Once developed, the IEP represents the public school’s written commitment of the resources the school will allocate to provide special education to the student with a disability.¹⁴¹

Q.4-2 Who develops the IEP?

The IEP is developed by an “IEP team.” In Arizona, the IEP team is sometimes called the multidisciplinary evaluation team or “MET” team. The team includes:

- The parents of the child with a disability¹⁴²
- Regular education teacher(s)
- Special education teacher(s)
- A school system representative who has the authority to commit resources.
- A person who can interpret evaluation results, and explain the implication of the results for the child’s special education
- At the discretion of the parent or school, other people with knowledge or special expertise about the child, and
- The child, if appropriate.¹⁴³

Parents are not included in the IEP team just as a courtesy.¹⁴⁴ As the U.S. Supreme Court has recognized, “Congress sought to protect individual children by providing for parental involvement in ... the formulation of the child’s individual education program.”¹⁴⁵ Because parents “will not lack ardor” in advocating for their children’s special education rights, their involvement is a critical part of developing an appropriate IEP for a child with a disability.¹⁴⁶

More information about IEP team members is provided in [Chapter 4, Q.4-13 through Q.4-17](#).

Q.4-3 When must the IEP be developed?

The IEP team must meet to develop an IEP for a child with a disability within 30 days after the child has first been determined eligible for special education.¹⁴⁷ The first IEP

¹⁴⁰ 34 C.F.R. §300.320(a)(1),(2).

¹⁴¹ The precise legal definition of an IEP is far more complex and are discussed more in depth below. The federal IDEIA 2004 statutory definition is found at 20 U.S.C. §1414(d). Federal regulations concerning IEPs – some of which may be changed in light of the 2004 amendments to IDEA – are found at 34 C.F.R. §300.320 through 300.324. Arizona state law defines IEPs at A.R.S. §15-761(11), and Arizona administrative regulations concerning IEPs are at A.A.C. R7-2-401(F).

¹⁴² Schools are required to include parents in the IEP meeting. 34 C.F.R. §300.322. This requirement is not met when parents are included in informal or unscheduled conversations about their child’s IEP. 34 C.F.R. §300.501(a).

¹⁴³ 20 U.S.C. §1414(d)(1)(B); A.R.S. §15-761(13).

¹⁴⁴ “Schools must ensure that parents have the opportunity to be involved in placement decisions for their child.” 34 C.F.R. §300.501(c).

¹⁴⁵ *Board of Education v. Rowley*, 458 U.S. 176, 209 (1982).

¹⁴⁶ *Id.*

¹⁴⁷ 34 C.F.R. §300.323(c)(1).

team meeting may be held at the same time the team meets to decide if the student is eligible for special education, or at a later point as long as the time frames are met. Once an IEP is in place, it must be reviewed at least once a year.¹⁴⁸ See Q.4.45 through Q.4.47 in this chapter for information about reviewing and revising IEPs.

Q.4-4 How is an IEP developed?

To develop the IEP, the law requires that the IEP team consider, at a minimum:

- The child’s strengths
- The parents’ concerns for enhancing the education of their child
- The results of the initial or most recent evaluation, and
- The academic, developmental and functional needs of the child.¹⁴⁹

After considering these factors, the IEP team then decides, by **consensus**, what the student’s annual goals will be and what special education and related services will be provided for the student (among other things). See Section III of this chapter ([Q.4-22 through Q.4-43](#)) for a complete discussion of the components included in an IEP.

Q.4-5 What happens if the parents and the school staff do not agree on what should be included in the IEP of a student with a disability?

IEP team decisions must be made by consensus of the team members, including parents. The team may not make decisions by majority “vote.”¹⁵⁰ If consensus is not possible, parents have a variety of ways of resolving their disagreements with the school about what should be included in their child’s IEP. Such disputes may be resolved through mediation, a due process hearing or other methods. Please see Chapter 5 of this guide for a description of the different ways of resolving special education disputes, including disputes about IEPs.

II. PREPARING FOR THE IEP MEETING

This section of the chapter addresses issues that may arise as parents prepare for an upcoming IEP meeting. Part A discusses scheduling issues, Part B discusses what records you may need to review beforehand, Part C discusses who is on the IEP team in more depth and Part D answers common IEP meeting questions. Section III of this chapter ([Q.4-22 through Q.4-43](#)) discusses the legal components of an IEP, and is followed by a parent checklist. If you are familiar with the IEP process, you may want to skip to the checklist and refer back to a particular section if needed.

¹⁴⁸ 20 U.S.C. §1414(d)(4)(A)(i).

¹⁴⁹ 20 U.S.C. §1414(d)(3)(A).

¹⁵⁰ Appendix A to Part 300, 34 C.F.R. §– Notice of Interpretation, Question 9.

A. Scheduling the IEP meeting

Q.4-6 What are the requirements for scheduling IEP meetings so that the parents of a child with a disability can attend?

The public school system is responsible for scheduling meetings necessary to develop, review or revise an IEP for a child with a disability. Federal regulations require public schools to “take steps to ensure that one or both parents are present at each IEP meeting.”¹⁵¹ Schools must notify parents of the meeting early enough to ensure they have an opportunity to attend and schedule the meeting at a mutually agreed on time and place. IDEA 2004 also allows parents to participate in IEP meetings by “alternative means,” such as through videoconference or telephone conference calls.¹⁵²

From a practical standpoint, if you are a parent and cannot attend a scheduled IEP meeting, you should notify the school as soon as possible and provide several other times when you can attend. Another option is to initiate the scheduling of the meeting, by writing to the school approximately two months before your child’s IEP meetings are typically held and suggesting dates and times for an IEP meeting that are convenient for you. We recommend scheduling IEP meetings in the spring to plan for the next school year, especially if your child may be eligible for extended school year services provided during the summer.¹⁵³ A sample letter proposing dates for IEP meetings is included in the Appendix of this guide.

Q.4-7 If the parents of a child with a disability cannot attend an IEP meeting, can the school hold the meeting anyway?

Yes, but only if the school cannot convince a parent to attend the IEP meeting and has documented its efforts to persuade the parent to participate.¹⁵⁴ This rarely occurs.

Q.4-8 What information can I expect to receive from the school before the IEP meeting?

When the school schedules an IEP meeting, the school must send the child’s parents a notice stating the purpose, time and location of the meeting. The school must also indicate which school personnel will be attending the meeting. Schools must inform parents that they have the right to bring someone to the meeting who has knowledge or special expertise about the child.¹⁵⁵

¹⁵¹ 34 C.F.R. §300.322(a)(1) – (2).

¹⁵² 20 U.S.C. §1414(f).

¹⁵³ The IEP team decides if a child is eligible for extended school year services at least 45 days before the last day of the school year. A.A.C. R7-2-408(C). Please refer to Chapter 4, Q.4-51 for more information about extended school year services.

¹⁵⁴ 34 C.F.R. §300.322(d).

¹⁵⁵ 34 C.F.R. §300.322(b)(1)(i).

B. Getting the Appropriate Records Before the IEP Meeting

In general, the better informed you are before an IEP meeting, the more effective you can be in obtaining appropriate special education services for your child at the IEP meeting.

Q.4-9 What records should I review in order to prepare for an IEP meeting?

The records that parents may want to review before an IEP meeting will depend on the student and the parent's concerns. Over time, you have probably accumulated many records regarding your child such as past IEPs. We suggest you review your files, and consider if you have (or want) the following types of records before an IEP meeting:

a. *Your child's educational records.* In general, parents have the right to inspect their children's education records that are collected, maintained or used by the school system in connection with its responsibilities under IDEA 2004. Schools must comply with a parent's request for education records "without unnecessary delay" and before any IEP meeting.¹⁵⁶

b. *Evaluation reports.* Your child's educational records may include reports of evaluations conducted by school staff or requested by the school. Be sure to ask the school for copies of any new or recent evaluation reports, or even older evaluation reports if helpful for comparison. This will allow you to have the same information as school staff before the IEP meeting, formulate any questions and to consider how the evaluation(s) may impact your child's special education.

c. *Current and prior IEPs.* If your child already has an IEP in place, reviewing the current IEP will help you prepare the next IEP meeting. If you need a copy of your child's IEP you should request it from the school, along with prior IEPs, if you believe that reviewing them will help you review your child's progress or formulate goals for the upcoming school year.

d. *School system policies and procedures for IEPs.* Arizona regulations require school districts and charter schools to establish written procedures for the development and implementation of IEPs and to make them available to parents.¹⁵⁷ While school procedures cannot conflict with federal or state law, they may describe how decisions are made or provide other helpful information.

A sample letter requesting records before an IEP meeting is included in the [Appendix](#) of this guide.

¹⁵⁶ 34 C.F.R. §300.613(a). Educational records are discussed further in [Chapter 5, Q.5-15 through Q.5-17](#).

¹⁵⁷ A.A.C. R7-2-401(F)(1).

Q.4-10 Is there a fee for requesting copies of my child’s educational records?

It depends on what is being requested. Schools may not charge parents for providing copies of their children’s IEPs.¹⁵⁸ If you have requested other records concerning your child, the school may charge a copying fee in some circumstances, although this rarely occurs. Schools may not charge for searching for or retrieving information requested under IDEA 2004.¹⁵⁹

Q.4-11 What records should I provide to the school before the IEP meeting?

Because the IEP team will be discussing what special education services are appropriate for your child, consider providing records from private doctors or therapists to the school before the meeting. For instance, if your child is receiving occupational therapy outside of school, the therapist’s records may help the team decide what services should be provided at school. A recent private evaluation may similarly assist the team in understanding your child’s educational needs and in selecting appropriate special education services.

Q.4-12 How can I keep track of all these records and paperwork from the school?

There is no “right” way of organizing records relating to your child’s special education – any system that allows you to find what you need is fine. We suggest that parents keep folders or binders to contain paperwork regarding their children’s special education issues. Parents should keep evaluation reports, notices from the school system, current and prior IEPs, progress reports, as well as other information from the classroom, such as daily behavior charts or a notebook that goes back and forth from the parents to the child’s teacher(s).

We recommend that parents do not write on the original copies of their children’s IEPs or other records. Handwriting on records makes it difficult for you to provide copies of those records to another person or agency, should you need to do so. Keep your notes separately, or make a “working copy” of the report you want to comment on so there is a “clean copy” available if you ever need it.

C. Getting the Right People to the Meeting

Q.4-13 What is each member of the IEP team supposed to contribute to the meeting?

Parents are equal participants in the IEP process and play a critical role in ensuring their children receive appropriate special education services.

¹⁵⁸ 34 C.F.R. §300.322.

¹⁵⁹ 34 C.F.R. §300.617(a)–(b).

Regular education teachers advise the IEP team on how a student with a disability can be included in the regular education classroom.¹⁶⁰ Among other things, regular education teachers help the IEP team decide on any needed positive behavioral interventions and supports for the student, what program modifications are needed, as well as any supports needed by school personnel (such as additional training).¹⁶¹

Special education teachers (or related service providers if appropriate) help discuss what special education and related services may meet the child’s unique needs.

School representatives must be knowledgeable about the resources of the school system and have the authority to commit school resources to ensure that the promised services or modifications are in fact provided to the child. The district’s director of special education, or another person from the special education director’s office, often fulfills this role.

An individual who can interpret the instructional implications of evaluation results helps the team decide what services are appropriate for the child in light of the child’s evaluation(s). The person who performs this function can be a regular education teacher, special education teacher or school representative if that person is qualified to interpret evaluation results. Often, school psychologists fulfill this role.

Other individuals who have knowledge or special expertise about the child may be invited to the IEP meeting by the parents or the school. This may include speech, occupational or other therapists who have been working with the child, or an attorney or advocate.¹⁶² The role this individual plays depends on who the person is and why they were invited to the meeting. The parent or public school that invited the person to the IEP meeting decides whether that individual has the necessary “knowledge or special expertise.”¹⁶³

The child with a disability may participate on the IEP team “if appropriate.” At a minimum, a child with a disability should participate in IEP team discussions regarding “transition services,” meaning what services will allow the student to transition from high school to further education, employment or independent living. Beyond that situation, there is little legal guidance on when it is appropriate for a student to participate in the IEP team meeting. The decision should be based on the student’s interest and ability to participate.

Transition Services representative may participate on the IEP “if appropriate.” If the school district believes that an outside agency will be responsible for providing or paying

¹⁶⁰ As one court recently stated, “[t]he input provided by a regular education teacher is vitally important in considering the extent to which a disabled student may be integrated into a regular education classroom and how the student’s individual needs might be met within that classroom.” *Zachary Deal v. Hamilton County Board of Education*, 392 F.3d 840, 860 (6th Cir. 2004).

¹⁶¹ 20 U.S.C. §1414(d)(3)(C).

¹⁶² 34 C.F.R. §300.321(a)(6).

¹⁶³ 34 C.F.R. §300.321(c).

for transition services, the district is required to invite the representative to the IEP meeting. However, this requires the parent’s consent.¹⁶⁴

Q.4-14 Does a regular education teacher have to be part of an IEP team for every student, including students with severe disabilities?

Yes, in almost all cases. The IEP team includes “not less than 1 regular education teacher of the child if the child is, or may be participating in the regular education environment.”¹⁶⁵ IDEA 2004 assumes that children with disabilities will be educated in the regular education environment with children who do not have disabilities. Separate classes or removal from the regular classroom “occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”¹⁶⁶ This is called the “least restrictive environment” requirement. Because IDEA 2004 assumes that children with disabilities “may be” educated in the regular education environment – even if for only part of the day or for certain activities – IEP teams must include a regular education teacher.¹⁶⁷

Q.4-15 Can I bring an attorney or advocate to an IEP meeting?

Yes. IDEA 2004 permits you – as the parent – to bring individuals with “knowledge or special expertise” to an IEP meeting, which may include an attorney or advocate. If you are planning on bringing an attorney to an IEP meeting, the school system may choose to bring their attorney as well. Although it is not required, we suggest you tell the school that you are bringing an attorney or advocate before the IEP meeting as a matter of courtesy. If the school brings an attorney to an IEP meeting, they must notify the parent in advance.

Q.4-16 I have heard that not all IEP team members have to be at every IEP meeting under IDEA 2004. What does the new law say?

IDEA 2004 contains new provisions relaxing the requirements that IEP team members attend every IEP meeting.¹⁶⁸ However, no one can be excused from an IEP meeting unless the parents agree to it.¹⁶⁹ IDEA 2004 permits excusals when:

¹⁶⁴ 34 C.F.R. §300.321(b).

¹⁶⁵ 20 U.S.C. §1414(d)(1)(B)(ii).

¹⁶⁶ 20 U.S.C. §1412(a)(5).

¹⁶⁷ A recent court case from the Ninth Circuit Court of Appeals – the federal court whose decisions cover Arizona, California and other western states – illustrates the importance of this requirement. In *M.L. v. Federal Way School Dist.*, 2004 WL 2480943 (9th Cir. 2004), the court held that a school district violated the IDEA when it held an IEP team meeting without the regular education of a child with autism and mental retardation. The district argued that it did not have to have a regular education teacher in the IEP meeting because the child would likely be placed in a self-contained classroom. Rejecting the district’s argument, the Court held that “the requirement that at least one regular education teacher be included on an IEP team, if the student may be participating in a regular classroom, is mandatory – not discretionary.” [2004 WL 2480943 at p.8, Section II-A of the Opinion].

¹⁶⁸ 20 U.S.C. §1414(d)(1)(C); 34 C.F.R. §300.321(e).

¹⁶⁹ This consent must be informed written consent. 34 C.F.R. §300.321(e)(2).

- (a) The IEP team member’s area of the curriculum or related services will *not* be modified or discussed in the meeting (and the parents and school agree), or
- (b) The IEP team member’s area of curriculum or related services *will* be modified or discussed, but
 - a. The individual submits written input to the parents and the IEP team prior to the meeting, and
 - b. The parents and school consent to the excusal.

(a) IEP team member’s area will <i>not</i> be discussed.	(b) IEP team member’s area <i>will</i> be discussed.
An IEP meeting is being scheduled for a student with a disability who was thoroughly evaluated last school year. The parents and school staff feel they have a good understanding of the nature and extent of the child’s disability and how it impacts the child’s education. Because there are no new evaluations to interpret or discuss, the school psychologist whose role on the IEP team is to “interpret the instructional implications of evaluation results” may be excused from the meeting.	An IEP team meeting is convened to discuss behavioral problems of a student who primarily acts out in resource class, but not in the regular education classroom. The regular education teacher has provided a written report clearly describing the student’s regular classroom behavior and the teacher’s response. The parents have had time to review the report and have no questions. This may be a situation where the regular education teacher could be excused from the IEP team meeting.

Q.4-17 What if I agree to excuse an IEP team member but later realize it was a mistake?

A parent can ask the school to hold another IEP meeting to include the person who was excused from the first IEP meeting by mistake. A meeting to review the IEP must generally occur within 15 school days of the date the school receives the written request or at a mutually agreed upon time but not to exceed 30 school days.¹⁷⁰ (A sample letter requesting an IEP review meeting is included in the Appendix to this guide). Because multiple IEP meetings are inconvenient for everyone, parents should carefully consider whether or not to excuse an IEP team member from an IEP meeting.

D. IEP Team Meeting Commonly Asked Questions

Q.4-18 Can I tape the IEP meeting? If so, is this a good idea?

Federal and state laws do not address the issue of whether parents of students with disabilities may tape record IEP meetings. The school system may have a policy about tape-recording meetings, which is allowed so long as it is applied uniformly. Schools

¹⁷⁰ A.A.C. R2-7-401(F)(7).

must, however, permit tape-recording if it is necessary to ensure that a parent can understand and participate in process of developing their child’s IEP.¹⁷¹

The decision about whether or not to tape an IEP team meeting will depend on what might be gained from it. A tape may allow a parent who attended the meeting to “digest” or better understand what was said, or may allow a parent who could not attend the meeting to follow the discussion. When the school sends a written draft of the IEP following the meeting, having a tape may help a parent check to see if the written IEP accurately reflects what was discussed and agreed to at the meeting. On the other hand, school personnel may view the taping of an IEP meeting as an adversarial gesture and the quality of the tape may make it difficult to understand who was speaking or what exactly was said.

Q.4-19 What should I do if I am asked to sign the IEP at the end of the meeting but I don’t agree with everything that is in it?

This depends on what you are being asked to sign. Sometimes “signing the IEP” just means – as stated on the form itself - “I was present at the IEP meeting.” If the IEP form just has a line for a parent’s signature without any description of what the signature means, signing the IEP could be interpreted as agreeing to whatever is in the document. If in doubt, ask for time to review the written IEP and do not agree to sign it on the spot. If the IEP accurately reflects what was discussed, when “signing” the IEP you should indicate what portions of the IEP you disagree with (if any) so that your signature is not wrongly interpreted as agreement on an issue that you dispute.

Q.4-20 During the last IEP meeting, school officials denied my request for a service because “the law doesn’t allow it.” I’m not a lawyer, but I thought my request was reasonable and legal. How should I handle situations where school officials refer to “the law”?

If school officials explain their actions or refusals by stating that “the law doesn’t allow it” (or making some other reference to “the law”), the first step is for a parent to ask the official to identify the specific “law” at issue. Special education is governed by federal statute, federal regulations, state statute, state regulations, court cases and administrative guidance. A school official’s reference to “the law” could mean one or more of these things.

It is important to ask the school official for a citation to the *specific* provision of the law the official is relying on. If the person says her position is supported by “the IDEA,” you have not learned much because IDEA 2004 is a lengthy federal law and without a specific citation you will not be able to review the law yourself. A better answer would be a reference to a specific provision, i.e., 20 U.S.C. §1414(a)(1)(C), if, for example, the question was about how long initial evaluations should take.

¹⁷¹ 34 C.F.R. §300.322(a) (public schools shall take steps to ensure that one or both parents are afforded the opportunity to participate at IEP meetings).

Sometimes school officials cannot provide a legal citation when pressed, because they are relying on a school system policy rather than statute or regulation. If that is the case, ask the school for a copy of the applicable policy. School districts are required to develop their own policies in some areas, so relying on district policy may be perfectly permissible. On the other hand, it may be that the school official is not relying on a law, regulation or valid school policy when she refers to “the law” but instead is following school custom or her supervisor’s direction. By asking about “the law” and finding out there isn’t one, you may prompt the school to reconsider its position.

Q.4-21 What records should parents keep during an IEP meeting, especially if they anticipate a possible disagreement with the school?

During an IEP meeting, parents should make note of (1) what services the parents requested, (2) whether or not the school agreed to provide them, (3) if the request was denied, the school’s reasons for the denial, and (4) if the request was granted, when the school will start providing the service and who is responsible for it.

There are two main reasons to keep notes during an IEP meeting. First, when the school provides you with a written IEP reflecting what was discussed in the meeting, you can check the accuracy of the written IEP against your own notes. Second, if parents disagree with the school about what should be in the IEP, parents will want to request “written notice” regarding the issue of disagreement. As explained more in [Chapter 5](#), “written notice” is a document the school must provide when it refuses to provide a service the parent believes is needed for a child’s appropriate education. The “written notice” will explain the school’s reasons for refusing the request. Once a parent receives the written notice, the parent can decide how to resolve the dispute (i.e., through a due process hearing or mediation). By keeping good notes during the meeting, you can identify what issue(s) should be the subject of written notice from the school.

EXAMPLE:

During an IEP meeting, you asked that your child with attention deficit disorder be included in the regular education classroom for math, rather than learning math in the resource room as in the previous year. The school special education director says your child will be too disruptive in the regular education classroom. Although you suggest additional supports (such as an aide in the math classroom, or additional training for the teacher), the school still refuses. After the IEP meeting, you can refer to your notes from the meeting and then write a letter to the school that says: “Please provide me with written notice regarding the school system’s refusal to include my child in the regular math classroom.” (A sample letter requesting written notice is included in the Appendix of this guide). The school must then explain why it refused your request, what options were considered and what steps you can take if you continue to disagree with the school’s decision.

A sample letter for requesting written notice on issues that are in dispute after an IEP meeting is included in the [Appendix](#) of this guide.

III. The Components of an IEP

The previous section addressed some of the “logistical” or procedural issues that may arise in connection with IEP meetings. This section discusses the content of an IEP, with separate sections for each of the eight main components of an IEP.

Under federal and Arizona law, an Individualized Education Program for a child with a disability must include statements or descriptions of:

- A. The child’s present levels of academic achievement and functional performance¹⁷²;
- B. Measurable annual goals;
- C. How the child’s progress will be measured;
- D. What special education and related services will be provided;
- E. Participation of the child with non-disabled children;
- F. Accommodations for state or district wide assessments;
- G. Projected date for beginning services, anticipated frequency, location and duration of services; and
- H. For children who are 16 and older, goals relating to transitioning to further education or employment.¹⁷³

A. Present Levels of Academic Achievement and Functional Performance

Q.4-22 What should be addressed in the IEP section concerning the child’s present levels of academic achievement and functional performance?

An IEP must include “a statement of the child’s present levels of academic achievement and functional performance, including how the child’s disability affects the child’s involvement and progress in the general education curriculum.”¹⁷⁴ The “general educational curriculum” means the curriculum studied by children who do not have disabilities. For preschool children, this portion of the IEP may address how the child’s disability affects the child’s participation in “appropriate activities.”¹⁷⁵

In Arizona, public schools must have procedures for incorporating the Arizona Academic Standards into the development of each IEP.¹⁷⁶ In 2003, the State Board of Education adopted Arizona Academic Standards for reading, writing and math for each grade level

¹⁷² 2006 regulations do not require consideration of the child’s performance on state or district-wide assessments, but the comments to the regulations make it clear that the consideration of these types of assessment would be required to fully consider the child’s academic, developmental, and functional needs. 34 C.F.R. §300.324(a)(1).

¹⁷³ 20 U.S.C. §1414(d)(1)(A) (definition of IEP from IDEIA 2004); 34 C.F.R. §300.320 (federal regulation definition of content of IEP); A.R.S. §15-761(11) (Arizona state law definition of IEP); A.A.C. R7-2-401(F)(Arizona administrative regulation on IEPs).

¹⁷⁴ 20 U.S.C. §1414(d)(1)(A) (I).

¹⁷⁵ 20 U.S.C. §1414(d)(1)(A) (I).

¹⁷⁶ A.A.C. R7-2-401(F)(3).

from kindergarten through 12th grade. (The standards are available at the Arizona Department of Education website, www.ade.az.gov, click on “Standards,” or on request from the Arizona Department of Education). To address the child’s present levels of academic achievement consistent with Arizona law, the IEP should specify the standard at which the child is currently functioning. For instance, the IEP might say something like “Michael, a seventh grader, demonstrates competency in all 5th grade level standards for Writing.”

In general, it is important to specifically describe how a disability affects the child’s academic and functional performance, because this portion of the IEP provides the foundation for setting annual goals and deciding what special education services the child needs in order to meet them.

Q.4-23 I thought the first section of the IEP concerned the child’s present level of educational performance (“PLEP”). Has the law changed?

Yes. In IDEA 1997, the first IEP component described the “present level of educational performance” (“PLEP”) of the child with a disability. The 2004 IDEA 2004 changes the requirement to describe the child’s “**academic achievement and functional performance.**”¹⁷⁷ The difference is that the new law emphasizes that the IEP should be based not only on an understanding of the student’s academic skills, but also on how the student relates to other people, how the student communicates, whether the student has any sensory or motor difficulties that affect the student’s performance and other aspects of how the student functions in the education environment.

Q.4-24 What should I do if I don’t have a good understanding about my child’s present levels of academic achievement and functional performance before an IEP meeting?

First, you may want to request copies of your child’s educational records from the school. Do you have progress reports relating to last year’s IEP? Do you have reports of how your child performed on recent standardized tests? If you have that information but still feel that additional data is needed, consider requesting a re-evaluation of your child. In your request (a sample letter is included in the Appendix to this guide), you should specify what areas of academic or functional performance you feel need to be evaluated. Schools must re-evaluate children with disabilities when requested by a parent, but re-evaluations cannot occur more frequently than once a year unless the school and parent both agree.¹⁷⁸

¹⁷⁷ 20 U.S.C. §1414(d)(1)(A) (I).

¹⁷⁸ 20 U.S.C. §1414(a)(2)(B).

B. Measurable Annual Goals

Q.4-25 What should be addressed in the IEP section concerning measurable annual goals for a child with a disability?

Under IDEA 2004, an IEP must include:

“A statement of measurable annual goals, including academic and functional goals, designed to –

- i. meet the child’s needs that result from the child’s disability to enable the child to be involved in and make progress in the general education curriculum; and
- ii. meet each of the child’s other educational needs that result from the child’s disability.”¹⁷⁹

An “annual goal” is what you want your child to accomplish by the end of the school year.

For children with the most severe cognitive disabilities - children “who take alternate assessments aligned to alternate achievement standards” – the annual goal component of the IEP must also include benchmarks or short-term objectives.¹⁸⁰ (See [Q.4-26](#) immediately below for definitions of benchmarks and short term objectives and [Q.4-38](#) for an explanation of the term “alternate assessments aligned to alternate achievement standards.”)

Q.4-26 I thought benchmarks and short-term objectives were required in all IEPs. Has the law changed?

Yes. The old law required that all IEPs include short-term objectives (measurable, intermediate steps) or benchmarks (milestones), in addition to annual goals, to enable parents and educators to monitor the child’s progress towards meeting the annual goals.

Now, IDEA 2004 only requires short-term objectives and benchmarks for children with the most severe cognitive disabilities – children who take alternate assessments (standardized tests) aligned to alternate achievement standards.¹⁸¹

The IEP team decides whether a child will take alternate assessments aligned to alternate achievement standards. However, it is expected that a very small percentage of children with disabilities (probably less than 5%) will fall into this category. For further information about statewide assessments for students with disabilities, see Chapter 4, [Q.4-38 through Q.4-40](#) and the Appendix to this guide.

¹⁷⁹ 20 U.S.C. §1414(d)(1)(A)(II).

¹⁸⁰ 20 U.S.C. §1414(d)(1)(A)(I)(cc).

¹⁸¹ 20 U.S.C. §1414(d)(1)(A)(I)(cc).

Even if your child’s IEP is not required to include benchmarks or short-term objectives, nothing prevents the IEP team from including benchmarks and objectives in a student’s IEP. If you believe that objectives and benchmarks will help define your child’s annual goals, as a member of the IEP team you should advocate for objectives and benchmarks to be included in the IEP.

Q.4-27 How can I write effective measurable annual goals?

The measurable annual goals component of an IEP for a child with a disability should:

Include goals that are measurable. “Ted will improve in reading” is not an effective annual goal, because the team will have no way of knowing by how much. A better goal would be “Ted will meet the 5th grade standards for acquiring and using new vocabulary in relevant contexts by the fourth quarter of the school year, as demonstrated by his performance on the AIMS/Dual purpose assessment test given in April.” If the behavior of a student is an issue, the goals should specify how the child’s improved behavior will be measured (i.e.. “Hannah listens to the classroom teacher and follows instructions, and interrupts the teacher less than 5 times per week”).

Include academic and functional goals. In the first part of the IEP, the team analyzed how the child is doing academically and how the child is functioning. In this section of the IEP, the team sets annual goals for each area – academic and functional – affected by the child’s disability. For example, a student whose disability affects math skills as well as physical development should have annual goals in both areas.

Align the annual goals to the Arizona academic standards. Annual goals included in an IEP must be aligned to the Arizona Academic standards and identify the specific level within the standard that is being addressed.¹⁸² Once the IEP team understands how the student is currently performing on the standards for the child’s grade, the IEP team should set challenging goals for how much progress should be made over the year and in what areas. Arizona elementary schools are expected to show that they have made at least one year’s academic progress with all students.¹⁸³ If your school proposes a goal that is less than one year progress on the academic standards, you should question if that is appropriate.

To help formulate your child’s annual IEP goals, consider speaking with your child’s regular and/or special education teachers before an IEP meeting to gain their perspective. If your child will be attending the IEP meeting or is otherwise able to provide input, speak with your child as well.

¹⁸² A.A.C. R7-2-401(F)(3).

¹⁸³ A.R.S. §15-241(D)(1) (Arizona school accountability formula for elementary schools must include the Arizona measure of academic progress, showing the percentage of students who have achieved one year of progress during the academic year).

Q.4-28 Does the law require that annual IEP goals include percentages so that the goals are “measurable”?

No. Expressing progress in terms of percentages can be useful, but only if it is clear how the progress will be measured. If you do not understand exactly what the school proposes for your child’s measurable annual goals, you should ask for clarification and if appropriate, insist on more specific, measurable goals.

EXAMPLE:

“Connor’s speech will be understandable 60% of the time” is not an effective annual goal, because it does not specify how the 60% of the time will be measured. Unless Connor will be taped 24 hours a day at school and home over a period of time and someone then analyzes his speech, the team would not know if that goal is being met. A better goal would be “Connor’s speech will be understandable 60% of the time by the beginning of the fourth quarter, as measured by X score on Y test and/or by speech therapist observation of speech in 5 minute conversation periods given once a week.”

C. Measuring and Reporting on Student Progress

Q.4-29 What should be addressed in the IEP section concerning how the child’s progress toward meeting annual goals will be measured?

Once the IEP team has identified the student’s current academic and functional abilities and set goals for the student’s progress in each area for the year, the IEP team next determines *how* the student’s progress towards meeting those goals will be measured and *when* progress reports will be provided to the parents.¹⁸⁴

To determine how much progress a student is making towards his annual goals, the IEP team may elect – but is not required to – use benchmarks and short-term objectives. Progress reports for children in special education programs must state whether the child has made enough progress to allow the child to meet his annual IEP goals by the end of the school year.¹⁸⁵ Parents should consider what kinds of objective tests or other assessments can be administered during the school year to provide information on whether their child is progressing towards annual IEP goals.

Q.4-30 How often should parents of students with disabilities receive written reports on their children’s progress in school?

IDEA 2004 requires public schools to provide parents with “periodic” reports on the progress a child with a disability is making toward meeting annual goals, “such as

¹⁸⁴ IDEA 2004 requires each IEP to include:

(1) a description of how the child’s progress toward meeting the annual goals will be measured, and
 (2) when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. 20 U.S.C. §1414(d)(1)(A) (III).

¹⁸⁵ A.R.S. §15-767.

through the use of quarterly or other periodic reports, concurrent with the issuance of report cards.” Although the IEP team has flexibility in deciding when progress reports will be issued, parents should receive them at least as often as report cards are sent out for students without disabilities.¹⁸⁶ The IEP team may also decide that more frequent progress reports are necessary to allow parents and school staff to work together to monitor the student’s progress and assist him in achieving his annual goals. Also, parents may request informal reports about their child’s progress by speaking with teachers or, if appropriate, by sending a notebook back and forth to school staff on a daily or weekly basis.

D. Special Education and Related Services

Q.4-31 What should be addressed in IEP section concerning special education and related services to be provided to a child with a disability?

This component of the IEP addresses what special education and related services will be provided to allow a child with a disability to meet her annual IEP goals. With one important addition regarding peer-reviewed research, the language of this section of the IEP statute was not changed in 2004. IEPs must include:

- 1) a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to (or on behalf of) the child, and
- 2) a statement of the program modifications or supports for school personnel that will be provided for the child –
 - (a) to advance appropriately toward attaining the annual goals;
 - (b) to be involved in and make progress in the general education curriculum and to participate in extra-curricular and other nonacademic activities; and
 - (c) to be educated and participate with other children with disabilities and non-disabled children.¹⁸⁷

Q.4-32 What is “peer reviewed research” and how does this relate to special education services?

IDEA 2004 now requires that special education and related services must be based on “peer reviewed research to the extent practicable.”¹⁸⁸ “Peer reviewed research” means that a program or technique for children with disabilities has been subject to scientific research and reviewed by peers – i.e., other psychologists or child developmental experts

¹⁸⁶ 20 U.S.C. §1414(d)(1)(A)(III). Under Arizona law, parents of children with disabilities shall receive reports of their child’s progress “at least as often as progress reports are given to parents of children who are not placed in special education programs” under Arizona law. A.R.S. §15-767. While IDEA 2004 changed some language about progress reports, Section 504 and other disability discrimination laws would prohibit schools from providing less frequent progress reports to parents of children with disabilities than provided to other parents.

¹⁸⁷ 20 U.S.C. §1414(d)(1)(A)(IV).

¹⁸⁸ 20 U.S.C. §1414(d)(1)(A)(IV).

in the field of research. This change in IDEA 2004 mirrors the No Child Left Behind Act, which stresses that children must be taught with methods and techniques that have been scientifically proven to work. Children with disabilities are entitled to the same quality of educational methodologies in special education.

This part of the law does not require schools to offer *only* peer-reviewed special education services, however; services should be based on peer-reviewed research “to the extent practicable.” But if you know of a technique or methodology that is backed by scientific research and the school is offering a different methodology that is not supported by peer reviewed research, you can rely on this provision of IDEA 2004 to advocate for your preferred methodology or program. A sample letter requesting information about whether the school’s special education programs are supported by peer-reviewed research is included in the Appendix to this guide.

Q.4-33 At the last IEP meeting I attended, the school suggested that all children with my son’s type of disability receive a certain amount of time in resource class and a certain amount of therapy per week. I believe my son needs different services. Do I have to accept what the school is offering?

No. While schools sometimes propose “cookie cutter” IEPs for children with relatively common types of disabilities, IDEA 2004 demands just the opposite; special education is “specially designed instruction” that meets the “*unique needs*” of a child with a disability.¹⁸⁹ An IEP is, by definition, an “*individualized*” education program and must provide appropriate services based on your child’s specific needs.¹⁹⁰

Q.4-34 What exactly are “related services” and how do I know which “related services” may be appropriate for my child?

Related services are services that are required to assist a child with a disability to benefit from special education.¹⁹¹ The IEP team decides what related services the child needs, and may provide a service that is not explicitly mentioned in the law. Related services may include:

- Transportation
- Developmental and corrective services
- Speech-language pathology and audiology services
- Interpreting services

¹⁸⁹ 20 U.S.C. §1401(29) (definition of special education).

¹⁹⁰ 20 U.S.C. §1401(14) (definition of an individualized education program). In *Zachary Deal v. Hamilton County Board of Education*, 392 F.3d 840, 860 (6th Cir. 2004), a federal appellate court held that a school district violated the IDEA because the district had an unofficial policy of refusing to provide the type of therapy (one-on-one Applied Behavioral Analysis therapy) the parents sought for their autistic son. The district had invested in a different program for children with autism, and the Court held that the school district acted illegally because it had pre-determined that it would not offer ABA therapy for Zachary, no matter how strong the evidence presented by the parents about the effectiveness of the program for their son. As the court summed up, “A ‘one size fits all’ approach to special education will not be countenanced by the IDEA.” 392 F.3d at 859.

¹⁹¹ 20 U.S.C. §1401(26).

Psychological services
Physical and occupational therapy,
Recreation, including therapeutic recreation
Social work services
School nurse services
Counseling services including rehabilitation counseling
Orientation and mobility services and
Medical services (with some limitations), and/or
Assistive technology (see Q.4-36 below).

Q.4-35 Are public schools required to provide transportation as a related service to every child with a disability receiving special education?

No, but many children with disabilities need it. A child with a disability cannot benefit from special education if the child cannot get to school in the first place. To determine whether transportation should be provided as a related service, the IEP team considers whether the child’s disability prevents the child from using the same transportation provided to non-disabled children, or from getting to school in the same manner as non-disabled children. If, for example, a child with mental retardation could not safely find the school bus or wait for it, transportation should be provided as a related service for the child.¹⁹²

Q.4-36 What is “assistive technology” and how is this incorporated into the IEP?

“Assistive technology” refers to equipment or other technological devices that improve a child’s ability to function. For example, a computer with software that allows a child to press a picture button and hear a word or a sound may assist a child with autism to communicate with others. “Assistive technology services” may include training provided by the school to the child and/or the child’s family so they can learn how to operate the technology.¹⁹³

Depending on the child’s needs, assistive technology and assistive technology services may be considered part of the child’s “special education” or a “related service” or both. IEP teams must consider whether a child with a disability needs assistive technology or services to receive an appropriate education. If so, the public school must provide them.¹⁹⁴

The issue of whether a child with a disability needs assistive technology should be considered by the IEP team each year regardless of the nature of the child’s disability, since new technologies may emerge that may assist the child in meeting the child’s goal and receive an appropriate education.

¹⁹² 20 U.S.C. §1401(26)(A) (related services includes transportation).

¹⁹³ 20 U.S.C. §1401(1) (definition of assistive technology); 20 U.S.C. §1401(2) (definition of assistive technology service).

¹⁹⁴ 20 U.S.C. §1412(a)(12)(B)(i), §1414(d)(3)(B)(v).

E. Participation with Children without Disabilities – Least Restrictive Environment

Q.4-37 What should be addressed in the IEP section concerning participation with non-disabled children?

IDEA 2004 assumes that children with disabilities will be educated in the regular classroom with children of their own age and at the school they would attend if not disabled.¹⁹⁵ Separate classes or removal from the regular classroom “occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”¹⁹⁶ This is called the “least restrictive environment” requirement.¹⁹⁷

To ensure that children with disabilities are educated in the “least restrictive environment,” a child’s IEP must include “an explanation of the extent, if any, to which the child will not participate with non-disabled children in the regular class and in extra-curricular and nonacademic activities.”¹⁹⁸ Even if a child with a disability cannot take academic classes like English and science with children their age, the IEP team should consider whether the student can participate with typical children in art, physical education, music or other similar activities.¹⁹⁹

F. Standardized Tests – Accommodations for State and District-wide Assessments

Q.4-38 What are “assessments,” “accommodations” and “alternate achievement standards”?

Children with disabilities are expected to participate in statewide tests given each year, so parents need to understand the terminology used.

- “Assessment” is the legal term for a standardized test, like the AIMS test (Arizona Instrument to Measure Standards test). An assessment may be given to all students in the State, or may be given by a school district to all students in the district to see how students are performing.
- An “alternate assessment” is a standardized test that may include a performance evaluation, a parent interview, an activity-based assessment or other measures in lieu of or in addition to a “fill in the bubble” pencil and paper test.
- An “accommodation” is changing something about how the test is given so the test measures what the student knows and not the effects of the student’s disability.

¹⁹⁵ 20 U.S.C. §1412(a)(5); 34 C.F.R. §300.116.

¹⁹⁶ 20 U.S.C. §1412(a)(5); 34 C.F.R. §300.114(a)(1), (a)(2), and (b)(2).

¹⁹⁷ The comments to the 2006 regulations state the following about the least restrictive environment requirement: “placement decisions must be individually determined on the basis of each child’s abilities and needs and each child’s IEP, and not solely on factors such as category of disability, severity of disability, availability of special education and related services...availability of space, or administrative convenience.”

¹⁹⁸ 20 U.S.C. §1414(d)(1)(A)(V).

¹⁹⁹ 34 C.F.R. §300.114(a)(2) (children with disabilities participate with non-disabled children in nonacademic and extracurricular activities to the maximum extent appropriate for the child).

EXAMPLE:

Sally is a child with a disability who has reading problems. She is taking the math section of the Terra Nova assessment, a statewide standardized test. As an accommodation, a teacher’s aide reads the math problems out loud to Sally while the test is given. This accommodation gives Sally the chance to demonstrate that she can solve the math problems. Without the accommodation, Sally would spend most of the testing time trying to read and understand the math problems instead of solving them. In that case, the test would merely show that Sally has reading problems (which was known already) but would not demonstrate whether or not she knows math.

- “Achievement standards” are standards set by the State that articulate what students are expected to know at a particular grade level in a given subject (i.e., kindergarteners should know the sounds of letters to meet the reading standard). In Arizona, these are called the “Arizona Academic Standards.”²⁰⁰
- “Alternate” achievement standards” are achievement standards that typically focus on functional abilities or life skills, or on attaining a kindergarten through 3rd grade level of academic achievement.
- Standardized tests are often “aligned” to academic standards, so the results of the test will tell you if the child knows what is expected. For example, the 3rd grade AIMS test in writing is aligned to the Arizona academic writing standards, so the test results should tell you whether the student has the writing skills expected of a 3rd grader in Arizona.
- “Alternate assessments aligned to alternate achievement standards” means a standardized test that may be administered in a manner other through pencil and paper, and is designed to assess whether a student has achieved functional or life skills, or non-grade level academic abilities. Only children with the most severe cognitive disabilities are eligible to take alternate assessments aligned to alternate achievement standards.²⁰¹

Q.4-39 What should be addressed in IEP section concerning assessments (standardized tests) for children with disabilities?

In this section of the IEP, the IEP team – including the parents - should consider these issues:²⁰²

²⁰⁰ The Arizona Academic Standards are available by grade level and/or subject matter from the Arizona Department of Education’s website, www.ade.az.gov.

²⁰¹ 34 C.F.R. §200.6. *See also* “Alternate Assessment FAQ,” prepared by the Arizona Department of Education, at pp.13 -16, available at <http://www.ade.state.az.us/AIMS/FAQs/AlternateAssessments.asp>

²⁰² IDEA 2004 requires IEPs to include:

A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with Section 612(a)(16)(A); and

If the IEP team determines that the child shall take an alternate assessment on a particular State or district-wide assessment of student achievement, a statement of why --

- (a) the child cannot participate in the regular assessment; and

- (1) What standardized tests or assessments will your child be taking during the next school year?
- (2) What accommodations will be provided to your child?
- (3) Will your child be tested on grade-level academic standards or alternate achievement standards?
- (4) If your child is not taking a pencil and paper “fill in the bubble” test, how will your child’s performance on standardized tests be measured?
- (5) Will your child be taking an alternate assessment aligned to alternate achievement standards?

IDEA 2004 gives the IEP team the power to decide how the student will participate in standardized assessments, not whether the student will do so. Consistent with the No Child Left Behind Act, IDEA 2004 requires that “All children with disabilities are included in all general State and district wide assessment programs.”²⁰³ Arizona law also provides that standardized tests must be given at least at the level at which the student is being instructed, and not at a lower level.²⁰⁴

For further information on the Arizona testing system and how it impacts students with disabilities, please see the Appendix to this guide.

Q.4-40 If my child is making progress towards his annual IEP goals and IEP meetings mainly focus on updating those goals, why should I be concerned about standardized tests or whether my child meets State standards?

Standardized test results help parents formulate annual IEP goals for their children with disabilities and provide objective information about their children’s progress in school.

For example, if you are the parent of a 5th grader with learning disabilities, the 5th grade standards for reading, writing and math should provide the basis for formulating your child’s annual goals. The results of standardized tests given at the 5th grade level will provide you with information on whether or not your child knows what 5th grade students are expected to know in Arizona. If the test shows that your child met 5th grade standards in some areas but not in others – although the annual goal was to meet 5th grade standards in all areas – the test results provide reliable information telling you whether the special education services were successful or not. The standardized test results also tell you how your child is performing this year, which provides a basis for developing annual goals for next year.

If your child does not have the ability to perform at grade level, the standards can still provide an “anchor” for establishing your child’s annual IEP goals. Over the course of a year, it may be reasonable to expect your 10th grade student to advance from the 1st to

(b) the particular alternate assessment selected is appropriate for the child. 20 U.S.C. §1414(d)(1)(A) (VI).

²⁰³ 20 U.S.C. §1412(a)(16)(A) (emphasis added).

²⁰⁴ A.A.C. R7-2-401(F)(5).

the 2nd grade level in math. The results of standardized tests help tell you whether that goal has been met.

In addition, the testing system provides incentives for schools to improve the performance of students with disabilities. Standardized test scores are used by the federal and state governments to determine whether a public school is teaching its students what it should. Under the Arizona system, standardized test results and other information are analyzed to develop a “school achievement profile” for each public school. One of the components of the school achievement profile for elementary schools is the “measure of academic progress,” which is based on the number of students in the school that have learned at least one year’s worth of material. Because schools want to obtain the highest achievement profile possible, it is in a school’s interest to be able to demonstrate – through results of standardized tests such as the AIMS test – that its students have made at least one year of academic progress.²⁰⁵

G. Delivering Special Education and Related Services

Q.4-41 What should be addressed in IEP section concerning dates for providing services and other details?

Once the IEP team decides what the child with a disability’s annual goals will be and what special education and related services will be provided, the team then addresses the “logistics.” The IEP must include:

- The projected date for the beginning of the special education and related services
- The anticipated frequency, location and duration of the services and
- Who will provide the instructional or support services – i.e., a special education teacher, a certified therapist, or other appropriate service providers.²⁰⁶

EXAMPLE:

It is not enough for a school to simply list the special education or related services to be provided (i.e., “Tom will be provided individualized instruction in math”). Instead, the IEP should specify the *amount* of services that will be provided, so it is clear what resources the public school has committed. Specifying the amount of services also helps parents, because it will be much easier for a parent to make sure a child is receiving the special education services required by the IEP. So, a better way of meeting this legal requirement would be for an IEP to use language like: “Tom will receive one to one instruction in math 5 days a week for 30 minutes, provided by a special education teacher in the special education classroom.”

²⁰⁵ Further information about Arizona’s school achievement profile system is available from the Arizona Department of Education (www.ade.az.gov - click on “AZ Learns”). See also A.R.S. §15-241.

²⁰⁶ 20 U.S.C. §1414(d)(1)(A)(VII); A.A.C. R2-7-401(F)(4). For a discussion of how the “highly qualified special education teacher” requirement of IDEA 2004 might be incorporated into this section of an IEP, see Chapter 4, Q.4-61 through Q.4-67.

Q.4-42 Our school district says my child’s special education program is no longer being offered at our local public school, and that he must attend a different school in the district to receive the special education services he needs. Who decides which school my child attends?

The IEP team, including the parents, decides the “educational placement” for a child with a disability.²⁰⁷ “Educational placement” refers to the types of services or programs that will be provided – such as a regular classroom with supports or a self-contained classroom – but it generally does not refer to the physical site at which services will be delivered.²⁰⁸ Parents should, however, have input into the discussion of where their child will attend school since “location of services” is one of the topics addressed in the IEP.²⁰⁹

In cases where schools and parents have disagreed about which school a child should attend, courts have generally held that school district officials have significant authority to determine the physical site for providing special education services to a child with a disability. Consequently, school districts have been permitted to transfer children with disabilities from their home school to another school in the district if the district can provide all of the services required by the IEP at the other school.²¹⁰

If you are faced with this situation, keep in mind that the physical location for providing services must still be “appropriate” for your child. If attending a different school than the neighborhood school would force your child to take a long bus ride which would negatively impact your child’s ability to learn, for instance, the different school may not be appropriate for your child.²¹¹ Also, the district’s authority to select the school site does not permit the district to place a child with a disability in a more restrictive environment than stated in the IEP or to otherwise provide less or lower quality services to the child.²¹² Even if the district may chose which school a child with a disability attends, the decision should not be based on factors such as category of disability, configuration of the service delivery system or the availability of staff, according to the U.S. Department of Education.²¹³

²⁰⁷ 20 U.S.C. §1414(e).

²⁰⁸ *White v. Ascension Parish School Bd.*, 343 F.3d 373, 379 (5th Cir. 2003).

²⁰⁹ 20 U.S.C. §1414(d)(1)(A)(VII).

²¹⁰ *White v. Ascension Parish School Bd.*, 343 F.3d 373, 379 (5th Cir. 2003).

²¹¹ *A.W. v. Fairfax County School Bd.*, 372 F.3d 674, 682 n.9 (4th Cir. 2004).

²¹² *A.W. v. Fairfax County School Bd.*, 372 F.3d 674, 682 (4th Cir. 2004) (“[W]here a change in location results in a dilution of the quality of a student’s education or a departure from the student’s LRE-compliant setting, a change in ‘educational placement’ occurs.”)

²¹³ Letter from U.S. Department of Education Office of Special Education Programs to Paul Veazey (November 26, 2001), available at www.ed.gov.

H. Transition Services

Q.4-43 What should be addressed in the IEP section concerning transition services?

Transition services help students with disabilities as they plan to graduate from high school or exit the special education system. Special education services end when the student graduates from high school with a “regular” diploma or when the student turns 22 years old.²¹⁴ However, the IEP may address special education type services if they are required to assist the child with a disability to benefit from special education through his or her transition period.²¹⁵

For students who are 16 years old (or will turn 16 when the IEP is in effect), the IEP must include:

- Appropriate measurable postsecondary goals. These goals should be based upon an age appropriate transition assessment related to training, education, employment, and, where appropriate, independent living skills; and
- The transition services (including courses of study) needed to assist the student in reaching those goals.²¹⁶

Like other components of the IEP, the section relating to a student’s transition goals and services must be updated annually. For students who are 17 years old, the IEP must also include a statement that the student has been informed of the rights he will have when he turns 18, including the right to make his own IEP decisions (in lieu of a parent). Students with disabilities should be invited to attend IEP meetings at which transition services will be discussed so they can participate as much as possible in developing their post-secondary goals.

PARENT CHECKLIST FOR IEP MEETINGS:

Before an upcoming IEP meeting relating to your child with a disability, consider these issues:

- Is the IEP meeting scheduled at a time when you can attend?
- Do you know which school personnel will be attending the meeting, and what their roles will be?
- Have you requested and reviewed records that may help you during the meeting, such as your child’s educational records, prior IEPs, any new evaluation reports or school procedures?
- Have you provided records from any private doctors or therapists that support your request for services to the school?
- Have you considered whether to bring an attorney, advocate or other person with specialized knowledge to the IEP meeting?
- Do you have a way of keeping notes during the meeting?
- Do you feel that you have enough information about your child’s current academic and

²¹⁴ 20 U.S.C. §1412(a)(1)(A) (The State must ensure that a free appropriate public education is available to children with disabilities between the age of 3 and 21), 20 U.S.C. §1414(c)(5)(B)(i)(eligibility for special education terminates when a child with a disability graduates secondary school with a regular diploma).

²¹⁵ 34 C.F.R. §300.43.

²¹⁶ 20 U.S.C. §1414(d)(1)(A)(VIII).

functional abilities, or should you request a re-evaluation before the IEP meeting?

- Have you considered what your child’s annual goals should be, and what information will allow you to understand if they are being met?
- Have you spoken with your child and/or your child’s teachers to find out what they think should be included in the IEP?
- What type of special education and related services do you want to include in the IEP?
- Would your child benefit from assistive technology?
- Do you have any peer-reviewed research to support the services or programs are requesting? Are you prepared to ask the school what research supports the methodology or program they are proposing for your child?
- Have you considered how your child can be educated in the regular classroom and with children of the same age?
- Do you know what types of standardized tests (“assessments”) may be given to your child and have you considered what type of testing accommodations to discuss with the IEP team?

IV. IMPLEMENTING AND REVISING THE IEP

Previous sections of this chapter reviewed how to prepare for an IEP meeting for your child with a disability, and what should be included in the IEP. This section discusses issues that arise after an IEP has been developed and agreed to by the parents and the school. For information on what to do if you and the school do not agree on your child’s IEP, please see Chapter 5 of this guide.

Q.4-44 What must a public school do to implement an IEP that has been developed?

After an IEP is developed, the public school must correctly implement the IEP so that the child with a disability receives a free and appropriate public education.²¹⁷ Special education and related services must be made available to the child as soon as possible after an IEP meeting.²¹⁸ The public school should take whatever steps are necessary to ensure that the IEP is “in effect” for each child with a disability at the beginning of the school year, such as informing teachers of their responsibilities under the IEP and making sure that classrooms or assistive technology required by a child’s IEP are available.²¹⁹ The child’s IEP must also be accessible to each teacher or related service provider who is responsible for implementing it throughout the school year.²²⁰

Q.4-45 Can you revise an IEP in the middle of the school year if necessary?

Yes. An IEP must be reviewed periodically - but at least once a year - to determine whether the child is achieving the annual goals set forth in the IEP.²²¹ The IEP must be

²¹⁷ 20 U.S.C. §1401(9) (a free appropriate public education is provided in conformity with the child’s IEP).

²¹⁸ 34 C.F.R. §300.323(c).

²¹⁹ 20 U.S.C. §1414(d)(2)(A).

²²⁰ 34 C.F. R. 300.323.(d). *See also* 20 U.S.C. §1414(d)(2)(A) (IEP must be “in effect” for each child with a disability at the beginning of each school year).

²²¹ 20 U.S.C. §1414(d)(4)(A)(i).

revised, as appropriate, to address any lack of expected progress toward the annual goals and in the general education curriculum.²²² The IEP should also be reviewed and revised as appropriate to address the results of any re-evaluations, information provided by or to the parents as part of the evaluation or re-evaluation process, or to address the child's anticipated needs. An IEP can be amended at anytime during the school year as long as the parent(s) and school are in agreement as to the amendments.²²³

Under Arizona's administrative regulations, a parent may submit a written request to review the child's IEP. A meeting to review the IEP must take place within 15 school days of the date the school receives the written request. The review meeting can take place more than 15 days from the date of the request if the parent agrees, so long as the meeting occurs within 30 school days after the request was received.²²⁴

A sample letter is included in the [Appendix](#) to this guide

Q.4-46 Do you have to hold an IEP meeting whenever you want to change the IEP, even if the change is minor?

No. IDEA 2004 now permits parents and school personnel to change an IEP by developing a written document that says what the changes are, without holding a meeting.²²⁵ This process may be appropriate for a minor change, such as to correct a typographical error that occurred when the IEP was typed up after a meeting. If parents want to change a part of the child's special education program that has already been agreed to, it will probably be better to request a full IEP team meeting.

Q.4-47 My child with a disability is not making progress towards his annual goals, although I believe we have a good IEP in place and school personnel are following it. What should I do?

You have several options if you feel your child is not making progress. Initially, raise your concerns with your child's teacher(s) and/or related service providers. If those discussions do not lead to a resolution, consider requesting an IEP review meeting - perhaps the IEP needs to be revised so that your child receives different or more special education services than what is being provided.²²⁶ Another option is to consider obtaining a re-evaluation of your child, if you suspect that the nature of your child's disability is not fully understood. [See Chapter 2](#) of this guide for information about re-evaluations.

²²² 20 U.S.C. §1414(d)(4)(A)(ii); 34 C.F.R. §300.323(a)(4)(i); A.A.C. R2-7-401(F)(6).

²²³ 34 C.F.R. §300.324(a)(6).

²²⁴ A.A.C. R2-7-401(F)(7).

²²⁵ 20 U.S.C. §1414(d)(3)(D), (F); 34 C.F.R. §300.324(a)(4).

²²⁶ 20 U.S.C. §1414(d)(4)(A)(ii) (public school must ensure that the IEP team revises the IEP as appropriate to address any lack of expected progress toward the annual goals and in the general education curriculum, where appropriate).

V. SPECIFIC ISSUES THAT ARISE REGARDING IEPs AND SPECIAL EDUCATION SERVICES

This chapter so far has focused on IEP issues that arise for most children in special education. This section of the chapter focuses on specific issues or provisions of the law that relates to certain types of disabilities, or under certain circumstances, including:

- Children with behavioral issues
- Children who are blind or visually impaired
- English language learners
- Extended school year services
- High school graduation requirements
- Medications
- Private school children
- Children with reading difficulties
- Public school choice options under the No Child Left Behind Act
- Section 504 plans
- Transferring from one public school to another
- Tutoring services

Q.4-48 What should the IEP team consider when developing an IEP for a child with behavioral issues?

The IEP team must consider using positive behavioral interventions and supports, and other strategies, to address the behavior of a child with a disability, if the child’s behavior interferes with his learning or the learning of other students.²²⁷ If the child needs positive behavioral interventions and strategies, those must be included in the IEP and provided to the child. For a child with a history of behavioral issues, it may be helpful to obtain a “functional behavioral assessment” before the IEP meeting, as that analysis will suggest what strategies or interventions may be appropriate for the child.

Q.4-49 What should the IEP team consider when developing an IEP for a child who is blind or visually impaired?

The IEP team should provide for instruction in Braille or the use of Braille for children who are blind or have visual impairments, unless the team determines that Braille is not appropriate for the child.²²⁸

²²⁷ 20 U.S.C. §1414(d)(3)(B)(i); 34 C.F.R. §300.324(a)(2)(i).

²²⁸ 20 U.S.C. §1414(d)(3)(B)(iii); 34 C.F.R. §300.324(a)(2)(iii); A.R.S. §15-214 (IEP team shall presume that Braille is appropriate for blind students). Additional requirements related to IEPs for students receiving instruction in Braille are found in Arizona law (A.R.S. §15-214) and Arizona regulations, A.A.C. R7-2-407 (standards for providing services and materials for visually impaired students) and A.A.C. R7-2-610(K) (qualifications for teachers specializing in visual impairments).

Q.4-50 What should the IEP team consider when developing an IEP for a child who is learning English or whose parents do not speak English?

For children with disabilities who are not proficient in English, the IEP team must consider the language needs of the child, and how the child’s language needs relate to the IEP.²²⁹ Each IEP team determines the level of interpreter skill necessary in order to provide a child with a disability a free and appropriate public education.²³⁰ Under Arizona regulations, students with disabilities who are learning English will receive instruction both to improve their English language development and in academic subjects.²³¹ IEP teams will need to consider what special education and related services will allow a child to succeed in both types of instruction.

Arizona state rules also require schools to re-assess the English proficiency of students each year to determine if the student can succeed in the English language curricula and “exit” from the English language learner program. Although the rules set out general procedures for these re-assessments, if the IEP team determines the procedures are inappropriate for a particular special education student, the school district must employ alternate procedures for reassessing the student’s English language ability. In these cases, the IEP team must include “the person conducting the English language reassessment,” at least for the purpose of determining the student’s English language proficiency designation.²³²

Also, English learners may be entitled to receive compensatory instruction if they are not progressing towards meeting the Arizona academic standards. The determination of whether an English learner is entitled to compensatory instruction will be made on a case-by-case basis, but it may be appropriate to consider this issue in the context of an IEP meeting for a child with a disability.²³³

If the parents of a child with a disability do not speak English, public schools must ensure the parents understand IEP meetings so they can participate in decision-making regarding their child’s special education.²³⁴ This may require schools to provide an interpreter at IEP meetings for parents who speak a language other than English or who are deaf. Written communications to parents, including notices regarding legal rights, should be provided in the parents’ native language in almost all cases.²³⁵ This ensures that parents

²²⁹ 20 U.S.C. §1414(d)(3)(B)(ii); 34 C.F.R. §300.324(a)(2)(ii).

²³⁰ A.A.C. R7-2-401(B)(14).

²³¹ A.A.C. R7-2-306.

²³² A.A.C. R2-7-306(G), (H).

²³³ A.A.C. R7-2-306(F)(4), -306(I)(1). Compensatory instruction for English language learner students is provided in accordance with a Written Individualized Compensatory Plan that documents the scope and type of services provided to an English learner to overcome the identified language and academic deficiencies. A.A.C. R2-7-306(A)(14).

²³⁴ 34 C.F.R. §300.322(e).

²³⁵ 20 U.S.C. §1415(d)(2); 34 C.F.R. §300.322(e).

who do not speak English may participate as fully in their children’s special education as English speaking parents do.²³⁶

Q.4-51 Does the IEP team decide whether a child with a disability is eligible for extended school year services?

Yes. The IEP team must determine whether a child with a disability is eligible for extended school year services no later than 45 days before the last day of the school year.²³⁷

Extended school year (ESY) services are provided by public schools during the summer or beyond the normal school year to children with disabilities who need the extra services in order to receive an appropriate education.²³⁸

In 2005, the Arizona Legislature changed the criteria for establishing eligibility for extended school year services, effective for services beginning in the summer of 2006.²³⁹ Now, public schools must provide extended school year services if:

- (1) The benefits that the pupil gained during the regular school year would be significantly jeopardized if the pupil is not provided educational services; or
- (2) The pupil would experience severe or substantial regression if the pupil is not provided educational services during recesses or the summer months and the regression would result in substantial skill loss of a degree and duration that would seriously impede the pupil’s progress toward educational goals.²⁴⁰

In determining whether a student with disabilities is eligible for extended school year services, the IEP team should consider the least restrictive environment for the child. The IEP team should also consider retrospective data (how has the student performed in years past, with or without ESY services?) and predictive data (what will likely happen to the student in the future if ESY services are not provided?).²⁴¹ The “predictive data” question, or how the student will fare without ESY, may be provided by expert opinion. In practical terms, parents may consider asking a private evaluator to provide a written report on whether their child qualifies for extended school year services under the new Arizona criteria.

The law also states what factors should *not* come into play when the IEP team considers a student’s eligibility for extended school year services. ESY programs are not intended as

²³⁶ Title VI of the Civil Rights Act, and its implementing regulations, prohibits public schools and other recipients of federal funds from discriminating on the basis of national origin. *See, e.g.*, 34 C.F.R.100.3. It requires schools to communicate with national origin minority group parents in their native language if necessary to provide them with notice of activities that are called to the attention of other parents. [U.S. Department of Education Letter to Tucson Unified School District dated June 18, 2002].

²³⁷ A.A.C. R7-2-408(C).

²³⁸ 34 C.F.R. §300.106(a)(2); A.R.S. §15-881; A.A.C. R7-2-408(D).

²³⁹ A.R.S. §15-881.

²⁴⁰ A.R.S. §15-881(A).

²⁴¹ A.R.S. §15-881(B).

day care or respite services for student with disabilities, as summer recreation or to provide a program to maximize the student’s academic potential.²⁴²

Like standard school year services, however, the IEP team decides what extended school year special education and related services should be provided based on the child’s individualized needs. ESY services are provided in accordance with the IEP at no cost to the parents. Public schools may not limit ESY services to students with particular categories of disability or unilaterally limit the type, amount or duration of extended school year services.²⁴³

Q.4-52 What is the IEP team’s role in determining the high school graduation requirements for a student with a disability?

In 2005, the Arizona Legislature passed a new law affecting high school graduation requirements for students with disabilities.²⁴⁴ At the time, other Arizona laws required high school students in the class of 2006 to pass the reading, writing and math sections of the Arizona Instrument to Measure Standards (“AIMS”) test in order to graduate.

Under the new law, the IEP team considers (1) whether the student with a disability must pass some or the entire AIMS test to graduate from high school and (2) if so, what accommodations will be provided to the student.

The law also provides that students with IEPs or Section 504 plans shall not be required to pass a competency test (i.e., the AIMS test) in order to graduate from high school unless:

- The student is learning at grade level in a specific academic area (i.e., reading, writing or math) and
- The IEP or Section 504 plan specifically requires the student to pass the test in a specific academic area to graduate.²⁴⁵

Public schools must make “specific and appropriate accommodations” for students with disabilities when administering competency tests. A student with an IEP or Section 504 plan who is not required to pass a competency test in order to graduate shall receive the “standard diploma” issued by the school district or charter school.²⁴⁶

Under IDEA 2004, public schools must continue to serve children with disabilities until they either graduate with a “regular diploma” or turn age 22.²⁴⁷

²⁴² A.R.S. §15-881(D), A.A.C. R7-2-408(D)-(E).

²⁴³ 34 C.F.R. §300.106.

²⁴⁴ Senate Bill 1352 (47th Legislature, 1st Regular Session 2005), amending A.R.S. §15-761(11) and A.R.S. §15-701.01.

²⁴⁵ A.R.S. §15-701.01(A)(3).

²⁴⁶ A.R.S. §15-701.01(A)(3).

²⁴⁷ 20 U.S.C. §1412(a)(1)(A)(State must ensure that a free appropriate public education is available to children with disabilities between the age of 3 and 21), 20 U.S.C. §1414(c)(5)(B)(i)(eligibility for special education terminates when a child with a disability graduates secondary school with a regular diploma).

Because the rules for high school graduation requirements are evolving and likely to change – for students with and without disabilities - we urge you to consult an attorney or conduct your own research if you have questions about how these requirements apply to your child.

Q.4-53 What should the IEP team consider when developing an IEP for a child who is deaf or hearing impaired?

For a child who is deaf or hearing impaired, the IEP team must consider the student’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level and full range of needs, including opportunities for direct instruction in the child’s language and communication mode.²⁴⁸ Another IEP related issue for students with hearing impairments may involve the qualifications of the sign language interpreters provided by the school. As of January 1, 2005, educational interpreters must meet the professional and training requirements established by the Arizona State Board of Education.²⁴⁹

Q.4-54 Can a public school require a child with attention deficit disorder (or other condition) to take medication while at school?

No. Under IDEA 2004, public schools may not require children to obtain a prescription for medication as a condition of attending school, receiving an evaluation or receiving special education and related services.²⁵⁰

Q.4-55 Are IEPs developed for children with disabilities attending private schools?

No. The school district will develop a “Service Plan” to decide what services will be provided to a private school child with a disability. ²⁵¹ A service plan is a document that describes the services the local education agency will provide a student that is parentally placed in a private school.²⁵² It is not an IEP, but it must be developed consistently with IEP procedures, including those requiring parent participation.²⁵³ The personnel providing special education services to private school students with disabilities need not be “highly qualified.”²⁵⁴ The amount of special education services provided to private school students does not, however, have to be the same.²⁵⁵ [See Chapter 3](#) of this guide for further information about children with disabilities attending private schools.

²⁴⁸ 20 U.S.C. §1414(d)(3)(B)(vi); 34 C.F.R. §300.324(a)(2)(iv).

²⁴⁹ A.A.C. R7-2-620(B).

²⁵⁰ 20 U.S.C. §1412(a)(25).

²⁵¹ A service plan must be developed for each student. 34 C.F.R. §300.132(b).

²⁵² 34 C.F.R. §300.37.

²⁵³ 34 C.F.R. §300.325(b).

²⁵⁴ 34 C.F.R. §300.138(a).

²⁵⁵ 20 U.S.C. §1412(a)(10)(A); 34 C.F.R. §300.325.

Q.4-56 My child’s disability interferes with his or her ability to read. Are there any special programs for children with reading difficulties that may be incorporated into an IEP?

Probably. Special education and related services provided by the public school must be “based on peer-reviewed research to the extent practicable” and documented in the IEP.²⁵⁶ If your child is receiving special education instruction in reading, ask school personnel what research supports the reading program used by the school (either at the IEP team meeting or better yet, beforehand).

Moreover, Arizona law requires public schools to monitor the reading progress of all students - with or without disabilities – in grades kindergarten through grade three under a law called “Arizona Reads.”²⁵⁷ The Arizona State Board of Education requires all public schools to have an Arizona Reads program in effect by the 2005-2006 school year.²⁵⁸ Based in part on the No Child Left Behind Act, the Arizona Reads law requires public schools to:

- adopt a scientifically-based reading curriculum
- provide ongoing teacher training in reading
- select a reading assessment program approved by the State Board of Education
- use the reading assessment program to monitor student progress
- use the diagnostic information from reading assessments to plan appropriate and effective intervention for the student
- provide “intensive reading instruction” to students who do not meet the Arizona academic standards in reading by the third grade.²⁵⁹

Your school or district may also employ a reading specialist, or may participate in federal grant programs to improve reading skills, such as “Reading First.”

For students with disabilities, the IEP team meeting may be an appropriate time to discuss the public school’s reading assessment program. Ask how often your child’s reading progress will be assessed and how those results will be used “to plan appropriate and effective intervention” in order to improve your child’s reading skills. If your third grader does not meet the 3rd grade Arizona academic reading standards, consider requesting “intensive reading instruction.”

For further information about reading programs, contact the Arizona Department of Education (www.ade.az.gov – select “Programs,” then “AZ Reads”).

²⁵⁶ 20 U.S.C. §1414(d)(1)(i)(IV).

²⁵⁷ A.R.S. §15-704.

²⁵⁸ The Arizona State Board of Education’s policy implementing Arizona Reads is available at the Arizona Department of Education’s website, www.ade.az.gov (select Programs, then AZ Reads, then Assessment, then State Board Policy).

²⁵⁹ A.R.S. §15-704(A)-(D).

Q.4-57 I received a notice that my child’s school is “low performing” under the No Child Left Behind Act and that I may be able to exercise the “public school choice” option. How does that work?

School districts must allow students in any low performing school to transfer to another school within the district under the No Child Left Behind Act.²⁶⁰ This right to transfer is available to parents of children attending schools identified for school improvement, corrective action or restructuring. The district must not only provide the right to transfer to another school within the district, but also provide or pay for transportation to the new school. The district pays to transport a student who has switched schools within the district until the student’s home school is no longer identified for school improvement, corrective action or restructuring. However, even if the district’s obligation to transport the student ends, the district must permit the student to remain in the new school until the student has completed the highest grade in the school.²⁶¹

Students with disabilities must be provided with a free and appropriate public education if they exercise the public school choice option.²⁶² For further information about public school choice options for your child, please contact your school district or the Arizona Department of Education (www.ade.az.gov – select “No Child Left Behind”).

Q.4-58 Are IEPs developed for children with disabilities who are eligible for services under Section 504 but not under IDEA 2004?

No really. Children with disabilities who are not eligible for services under IDEA 2004 but who are eligible under Section 504 of the Rehabilitation Act of 1973 typically receive “Section 504 plans” or “504 accommodation plans” rather than IEPs.²⁶³ However, under the federal regulations Section 504 plans may also include special education services.

Most Arizona public schools convene “Section 504 teams” (including parents) to develop Section 504 plans for children with disabilities.²⁶⁴ Generally, Section 504 plans will describes what type of supports or accommodations the public school will provide to meet the individual needs of a child with a disability. Among other things, the Section 504 team assures that the child participates in statewide assessments (standardized tests) and decides what accommodations are necessary to measure the child’s academic achievement.²⁶⁵ To find out what procedures your public school uses for Section 504 students, request the school system’s Section 504 policies. A sample letter is attached to the Appendix of this guide.

²⁶⁰ 34 C.F.R. §200.44.

²⁶¹ 34 C.F.R. §200.44(g).

²⁶² 34 C.F.R. §200.44(j).

²⁶³ See A.A.C. R7-2-620(A)(2) for a definition of a “504 accommodation plan.”

²⁶⁴ The federal regulations on Section 504 generally require public schools to provide a free and appropriate public education to children with disabilities. 34 C.F.R. §104.33. One means of complying with this requirement is for schools to develop an IEP for a child eligible for services under Section 504, but schools do not have to develop IEPs for Section 504 students and most do not. 34 C.F.R. §104.33(b)(2).

²⁶⁵ 34 C.F.R. §200.6(a)(1)(ii).

Q.4-59 If a child with a disability transfers from one public school to another within Arizona or out of state, does the IEP “follow” the child?

In large part, when a child with a disability transfers from one school district to another or to a charter school, the new school must initially provide comparable services as required by the child’s old IEP.²⁶⁶ The new school can then either adopt the old IEP or conduct a new evaluation to determine eligibility. In any case, the new school must ensure that the IEP process is followed and that the child is provided with a free and appropriate public education at all times.²⁶⁷

If a child transfers from out of state to Arizona, the new school district in which the child enrolls must take reasonable steps to promptly obtain the child’s records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous out of state school district.²⁶⁸ The out of state school district in which the child was enrolled must take reasonable steps to promptly respond to the request from the Arizona School District.

If a child with a disability (who had an IEP that was in effect in a previous school district in another State) transfers to a public agency in Arizona, and enrolls in a new school within the same school year, the new school district (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child’s IEP from the out of state school district), until the new school district: Conducts an evaluation if determined to be necessary by the new public agency; and develops, adopts, and implements a new IEP, if appropriate.²⁶⁹

Q.4-60 Can I obtain tutoring services for my child with a disability, beyond the services provided for in the IEP?

Possibly. Both federal and state law create school accountability systems that may provide students in poorly performing schools an opportunity to receive tutoring or additional academic assistance.

A. Tutoring funds – Arizona law

Under the Arizona school accountability system, students attending schools that have been designated as “under-performing” or “failing to meet academic standards” may be eligible to receive tutoring services under the “Failing Schools Tutoring Fund.”²⁷⁰ Parents may request tutoring services from the school system or choose to receive services from an alternative tutoring program provider approved by the State. School districts may receive grants to supply tutoring services at the under-performing or failing school. To find out if your child’s school is under-performing or failing, contact the

²⁶⁶ 34 C.F.R. §300.323(e),(f).

²⁶⁷ 20 U.S.C. §1414(d)(2)(C)(i)(I); 34 C.F.R. §300.323(g).

²⁶⁸ 34 C.F.R. §99.31(a)(2)

²⁶⁹ 34 C.F.R. §300.323(f)

²⁷⁰ A.R.S. §15-241(Q).

school or the Arizona Department of Education (www.ade.az.gov, select “School Report Cards”). For information on whether your child may be eligible to receive tutoring and how to apply, contact your child’s school or the Arizona Department of Education.

B. Supplemental educational services – federal law

Under the federal No Child Left Behind Act, school districts may be required to provide supplemental educational services to eligible students in some low performing schools.²⁷¹ “Supplemental education services” are tutoring services provided by an approved entity in order to increase the academic achievement of students. Only students from low income families are eligible for supplemental educational services.²⁷² School districts must offer these services to eligible students in schools identified for school improvement for a second year in a row, corrective action, or restructuring. Both the school district and the State must ensure that students with disabilities (under IDEA 2004 or Section 504) receive appropriate supplemental educational services and accommodations in the provision of those services.²⁷³ When a parent of a child with a disability selects a tutoring provider, the district then drafts an agreement with the provider outlining the expectations for the tutoring consistent with the child’s IEP.²⁷⁴ To find out if your child may be eligible for supplemental education services, contact your child’s school or the Arizona Department of Education (www.ade.az.gov).

VI. The Requirements for “Highly Qualified” Special Education Teachers.

One of the key provisions of the federal No Child Left Behind Act of 2001 is that public school teachers of core academic subjects must demonstrate that they are “highly qualified.”²⁷⁵

When Congress amended the IDEA in 2004, Congress clearly announced that the “highly qualified” requirement also applies to special education teachers. IDEA 2004 requires States to ensure that special education teachers in public schools are “highly qualified” by the deadlines set forth in the No Child Left Behind Act.²⁷⁶

Q.4-61 What qualifications do special education teachers need in order to be considered “highly qualified” under IDEA 2004?

Under IDEA 2004 and the No Child Left Behind Act, special education teachers-like regular education teachers – must demonstrate that they are “highly qualified” by the applicable deadlines. The basic idea is that public school teachers must have an

²⁷¹ 34 C.F.R. §200.45.

²⁷² 34 C.F.R. §200.45(b).

²⁷³ 34 C.F.R. §200.46 (a)(4); 34 C.F.R. §200.47(a)(5) (State obligations).

²⁷⁴ 34 C.F.R. §200.46(b)(3).

²⁷⁵ Please note, teachers in private school are not required to meet the highly qualified requirement. 34 C.F.R. §300.138(a).

²⁷⁶ 20 U.S.C. §1412(a)(14)(C).

appropriate combination of academic training, teaching experience and/or demonstrated knowledge to meet the “highly qualified” standard. IDEA 2004 borrows the No Child Left Behind Act definition of a “highly qualified teacher” and modifies it to fit the special education context.²⁷⁷

In general, to be highly qualified, special education teachers in Arizona must meet these requirements:²⁷⁸

1. Full State Certification. Special education teachers must hold an teaching certificate in special education, which under Arizona’s current regulations²⁷⁹ require the following:
 - Bachelor’s degree
 - Completion of a special education teacher preparation program, or sufficient coursework in special education (or in the particular type of disability if seeking a specialized special education certificate), and
 - A passing score on the relevant section of the Arizona Teacher Proficiency Assessment.
2. No Waiver of Certification or Licensing Requirements. Teachers who have an “emergency teaching certificate” or otherwise had certification or licensing requirements waived on an emergency, temporary or provisional basis are not highly qualified.²⁸⁰
3. Bachelor’s Degree. This is already required in order to obtain a teaching certificate in Arizona.
4. Demonstrated Competence in Academic Area. Special education and regular education teachers who teach “core academic subjects” must demonstrate that they know their subject matter. “Core academic subjects” means English, reading or language arts, math, science, foreign languages, civics and government, economics, arts (visual arts and music) history and geography.²⁸¹ While it is not yet clear how special education teachers will demonstrate competence in academic area as required by IDEA 2004, under the No Child Left Behind Act teachers may demonstrate their knowledge of an academic area by passing a State test, taking graduate coursework or

²⁷⁷ For the specific statutory language, please refer to 20 U.S.C. §1401(10) (IDEIA definition of highly qualified special education teachers), 20 U.S.C. §7801(23) and 34 C.F.R. §200.56 (No Child Left Behind Act definition of highly qualified teachers).

²⁷⁸ States must establish and maintain qualifications to ensure that personnel are appropriately and adequately prepared and trained., including personal, paraprofessionals (like a teacher’s aide), and special education teachers. In addition, if there are early childhood programs included as apart of an elementary or secondary school system, then the early childhood teachers must also be “highly qualified.” 34 C.F.R. §300.18.

²⁷⁹ A.A.C. R7-2-610. IDEA 2004 allows special education teachers to obtain a full State certification through “alternative routes of certification.” 20 U.S.C. §1401(10)(B)(i). While Arizona does not currently have rules defining what alternative routes of certification are permitted, this issue is under discussion and the Arizona State Board of Education may adopt such rules in the future.

²⁸⁰ 20 U.S.C. §1401(10)(B)(ii).

²⁸¹ 34 C.F.R. §200.55(c).

obtaining advanced degrees, work experience and/or taking professional development courses.

Under IDEA 2004, the specific requirements for meeting the “highly qualified special education teacher” standard may vary depending on whether an individual teacher (1) exclusively teaches children with the most severe cognitive disabilities (2) teaches 2 or more core academic subjects (3) is new to the teaching profession or is a veteran teacher, or (4) whether the teacher works at the elementary, middle or high school level. Once the U.S. Department of Education finalizes the new rules under IDEA 2004 and the State of Arizona provides additional guidance, we will know more precisely what the specific “highly qualified” requirements are for different types of special education teachers and will update this guide accordingly. To stay updated on this issue, check the websites of the U.S. Department of Education (www.ed.gov) and the Arizona Department of Education and the Arizona State Board of Education (www.ade.az.gov).

Q.4-62 What practical difference does the “highly qualified special education teacher” requirement make?

By prohibiting the waiver of State special education teacher certification requirements, IDEA 2004 will stop the practice of issuing emergency teaching certificates to special education teachers in Arizona. This is important because many school districts hire special education teachers on “emergency certificates,” which allows teachers with little or no training in special education to teach children with disabilities. By the end of 2005-2006 school year at the latest, public schools may only hire “highly qualified special education teachers” who have met the training and professional qualifications for special education teachers under Arizona law.²⁸²

Second, the requirement that special education teachers “demonstrate competence in their academic area” is new in IDEA 2004. A special education teacher teaching math in a self-contained classroom will have to show that she knows math (in addition to special education), just as a regular education math teacher must demonstrate knowledge of math under the No Child Left Behind Act. It appears, however, that special education teachers who consult with regular education teachers will not be required to show competence in a specific academic area if their role is to assist the primary teacher.

Q.4-63 When do public school special education teachers have to be “highly qualified”?

According to the No Child Left Behind Act deadlines, which are incorporated into IDEA 2004, all public school teachers – including special education teachers – must be “highly qualified” by the end of the 2005-2006 school year.²⁸³

²⁸² Compare A.A.C. R7-2-610 (special education teacher certificate holders must have a college degree in special education or college level coursework in special education or the specific area of disability, plus pass a teacher’s exam) to A.A.C. R7-2-612(D) (emergency teacher certificate holders do not need any specialized training in special education or the particular area of instruction and do not need to pass a teacher’s exam; certificate may be re-issued if teacher completes 6 semester hours of coursework).

²⁸³ 20 U.S.C. §1412(a)(14)(C) (IDEIA provision incorporating No Child Left Behind Act deadlines), 34 C.F.R. §200.55(b) (NCLB deadline).

In addition, schools receiving funds under Title I of the No Child Left Behind Act (which are provided to schools with a high percentage of children from low income families) were required to hire only “highly qualified” teachers after the beginning of the 2002-2003 school year.²⁸⁴ Because IDEA 2004 provisions concerning “highly qualified” special education teachers became effective immediately when the law was passed in December, 2004, Title I schools may only hire new special education teachers if those teachers meet the highly qualified requirements. To find out if your child attends a Title I school, go to the Arizona Department of Education website (www.ade.az.gov), click on the No Child Left Behind icon, then you will see a “Title I schools list.”

On the other hand, special education teachers in eligible rural schools may have more time to meet the highly qualified requirement. Because rural school teachers often teach more than one subject because of teacher shortages, the U.S. Department of Education will allow teachers in rural schools 3 additional years (or until 2008-2009) to become highly qualified in all subjects they teach to comply with No Child Left Behind, so long as they are highly qualified in at least one core academic area by the end of the 2005-2006 school year.²⁸⁵ We expect that rural special education teachers will be permitted similar flexibility in complying with IDEA 2004 highly qualified teacher requirements.

Q.4-64 Do charter school special education teachers have to be “highly qualified”?

Yes. In Arizona, charter schools must comply with all federal and state special education laws “in the same manner as a school district.”²⁸⁶ Because special education teachers employed by traditional school districts must be “highly qualified” - which includes obtaining a teaching certificate in special education - charter school special education teachers must meet the same standards.²⁸⁷

The rules are different for regular education teachers in charter schools. Those teachers must also be “highly qualified,” but the standards are not the same as for school district teachers. The difference is that charter school teachers do not have to meet the “full state certification” part of the highly qualified definition, because Arizona does not require charter school teachers to have teaching certificates issued by the State.²⁸⁸ Consequently, the requirement that a teacher have “full State certification” in order to be highly qualified would not apply to charter school regular education teachers.²⁸⁹ Those teachers

²⁸⁴ 34 C.F.R. §200.55(a).

²⁸⁵ More information about No Child Left Behind Act is available from the U.S. Department of Education, (www.ed.gov) and the Arizona Department of Education (www.ade.az.gov - click on the “No Child Left Behind” icon).

²⁸⁶ A.R.S. §15-183(E)(7).

²⁸⁷ 20 U.S.C. §1412(a)(14)(C) (Each person employed as a public school special education teacher must be “highly qualified” by the applicable deadlines); 20 U.S.C. §1401(10)(definition of “highly qualified”); A.R.S. §15-502(B)(school districts may only employ teachers who have certificates for teaching granted by the proper authorities); A.A.C. R7-2-610 (requirements for special education teaching certificates).

²⁸⁸ A.R.S. §15-183(E)(5) (Except as provided in the charter school statutes or the school’s charter contract, charter schools are exempt from all statutes and rules relating to schools, governing board and school districts).

²⁸⁹ 20 U.S.C. §1401(10)(B)(i).

would, however, have to meet all the other “highly qualified” requirements that would apply to them depending on their job responsibilities and experience level.²⁹⁰

Q.4-65 Do private school special education teachers have to be “highly qualified”?

No. The No Child Left Behind Act regulations, which are incorporated into IDEA 2004, clarify that the “highly qualified” teacher requirements apply only to public school teachers, not private school teachers.²⁹¹

Q.4-66 How can I find out if my child’s regular and/or special education teachers are “highly qualified”?

The school principal should have the necessary information about the qualifications of the teachers working at the building the principal supervises.²⁹² You can request information about the professional qualifications of your child’s teacher either from the teacher directly, or by writing to the school. A sample letter is attached to the Appendix of this guide.

In addition, under the No Child Left Behind Act, Title I schools must notify parents at the beginning of each school year that the schools will provide information about the professional qualifications of the student’s classroom teachers if requested by a parent.²⁹³ The information may include:

- Whether the teacher has met State qualifications for the grade levels and subject areas the teacher instructs in
- Whether the teacher is teaching under an emergency teaching certificate
- The bachelor’s degree major of the teacher, and other information about graduate certification or degrees, and
- Whether the child is provided services by paraprofessionals and, if so, their qualifications.

Rather than waiting for a parental request for information, Title I schools must provide “timely notice” to parents if their children have been taught an academic subject for 4 or more weeks by a teacher who is not highly qualified.²⁹⁴

²⁹⁰ 34 C.F.R. §200.56.

²⁹¹ 34 C.F.R. §300.138(a).

²⁹² To demonstrate compliance with the No Child Left Behind Act, the Arizona Department of Education requires teachers to complete a form setting forth their qualifications, and then to provide it to the school principal or “building administrator.” The principal then submits a certification to the State indicating how many teachers at that school site are highly qualified. We expect a similar process to be followed to verify special education teacher qualifications under IDEA 2004.

²⁹³ 34 C.F.R. §200.61(a).

²⁹⁴ 34 C.F.R. §200.61(b)(2). To find out if your child attends a Title I school, go to the Arizona Department of Education website (www.ade.az.gov), click on the No Child Left Behind icon, then you will see a “Title I schools list.”

Q.4-67 What can I do if I learn that my child’s teacher is not “highly qualified”?

Special education teachers

Although IDEA 2004 says you cannot file a lawsuit against a public school if your child’s teacher is not “highly qualified,” parents can file a State Complaint against a public school that is not in compliance with IDEA 2004.²⁹⁵ If your child’s teacher special education teacher is not “highly qualified” as required by IDEA 2004, you may want to file a complaint with the Arizona Department of Education. (See Chapter 5 of this guide for more information on state complaints).

Regular education teachers

The Arizona Department of Education has recently adopted a procedure allowing parents (and others) to file a complaint alleging a violation of the No Child Left Behind Act. The procedure is outlined in the document called “Arizona Department of Education NCLB Complaint Procedures” (available at www.ade.az.gov – select “No Child Left Behind,” “NCLB Updates” then “NCLB Complaint Procedures.”) If you learn that your child’s teacher is not “highly qualified” as required by the No Child Left Behind Act, you may want to consider filing a complaint against the public school system according to the Arizona Department of Education’s procedure.

Other options besides filing a complaint

If you learn that your child’s teacher is not “highly qualified” as required by IDEA 2004 or the No Child Left Behind Act, consider asking school personnel if they can provide a teacher for your child who is highly qualified.

Also, IDEA 2004 requires states to adopt policies requiring school districts and charter schools to “take measurable steps to recruit, hire, train and retain highly qualified personnel to provide special education and related services” to children with disabilities.²⁹⁶ The No Child Left Behind Act similarly requires the State and school systems to improve teacher quality.²⁹⁷ You could ask school personnel, and/or the governing board of your school district, what steps the school system is taking to recruit and retain highly qualified personnel.

In considering what course of action to take, you may want to find out what the teacher’s professional qualifications are, and how far away that person is from being “highly qualified.” An experienced teacher who is highly qualified in English yet is teaching history may be less of a concern than a new teacher who cannot demonstrate competence in math.

To increase the likelihood of your child being taught by a highly qualified teacher in the first place, raise the issue of teacher qualifications at your next IEP meeting. Consider asking the school to specify in the IEP that the personnel providing special education services to your child will be “highly qualified” in accordance with IDEA 2004.

²⁹⁵ 20 U.S.C. §1412(a)(14)(E) (IDEA 2004 does not create a “private cause of action” for an individual student for the failure of a particular staff person to be highly qualified as required). 34 C.F.R. §300.660 – 300.662 (rules on state complaint procedures).

²⁹⁶ 20 U.S.C. §1412(a)(14)(D).

²⁹⁷ 34 C.F.R. §200.57.

**Arizona Center for Disability Law
Protection & Advocacy System for Arizona**

Understanding Your Child’s Educational Rights

CHAPTER 5

Resolving Special Education Disputes

**A Self-Advocacy Guide
For Parents of Children with Special Needs**



CHAPTER 5 RESOLVING SPECIAL EDUCATION DISPUTES

How This Chapter Is Organized

This chapter discusses the legal protections provided to children with disabilities and their parents under IDEA 2004, including procedures for obtaining information and for resolving disputes. These legal protections are called “procedural safeguards.” **Section I** of this chapter briefly defines the key terms. **Section II** discusses how to resolve special education disputes, and provides examples of common situations. **Section III** discusses the procedures for obtaining information and resolving disputes in more detail, including written notices, the State Complaint Procedure and due process hearings. Section III also includes a side- by side comparison of the State complaint procedure and due process hearings. **Section IV** of this Chapter answers specific questions that may arise regarding special education disputes.

PLEASE REMEMBER:

- This guide is not intended as a substitute for legal advice. If you need legal advice about how special education laws apply to your child, please contact the Arizona Center for Disability Law or a private lawyer.
- Special education laws and rules are constantly changing, at both the state and federal level. Arizona state law and rules are likely to change as well. To stay updated on the current status of special education laws and regulations, contact the Arizona Center for Disability Law or a private lawyer, or conduct your own research. ([See Chapter 1, Q.1-11](#) of this guide for research tips).

I. OVERVIEW OF PROCEDURES FOR PROTECTING RIGHTS OF CHILDREN WITH DISABILITIES.

IDEA 2004 includes procedures for ensuring that parents of children with disabilities have information they need to make decisions about their child’s education and procedures for resolving disputes with the school system. Depending on the circumstances, parents of children with disabilities have the right to:

1. Receive written notice of their rights,
2. Inspect their child’s educational records,
3. Obtain an independent educational evaluation,
4. Mediate the dispute with the school,
5. File a State Complaint with the Arizona Department of Education,
6. Request a due process hearing,
7. File a lawsuit,
8. Obtain compensatory education for their child with a disability,

9. Transfer their child to a private school, and seek reimbursement of tuition costs from their local school system,²⁹⁸ or
10. Legal protections if their child is being disciplined for conduct that may be related to the child’s disability.²⁹⁹

In legal terms, these rights are called “procedural safeguards.”³⁰⁰ This section begins with brief definitions of the special education terms. Parents can then either read [Section II](#) of this chapter to help decide what procedures may apply to their situation, or go directly to [Section III](#) for a more detailed discussion of procedures for obtaining information and resolving disputes.

Q.5-1 What are “procedural safeguards”?

The term “procedural safeguards” refers to a collection of different kinds of rights designed to ensure that children with disabilities receive an appropriate public education.³⁰¹ Some of the procedural safeguards allow parents of children with disabilities to obtain information, such as the right to inspect their children’s educational records. Other procedural safeguards provide ways for parents to resolve special education disputes with the public school, such as due process hearings. Some procedures both provide information and assist in dispute resolution, such as the requirement that schools provide “prior written notice” to explain the school’s decision about a child and tell parents what they can do if they disagree. Overall, these safeguards provide procedures for parents to use to ensure that their children receive appropriate special education services.

Q.5-2 What written information must public schools provide to parents of students with disabilities?

There are two types of written notices that public schools provide to parents of students with disabilities. First, the “procedural safeguards” notice is provided to generally inform parents of their rights under IDEA 2004. Second, public schools must provide “prior written notice” to explain their reasons for making certain decisions about a child’s special education.³⁰² Notice must be provided in the parent’s native language when feasible.³⁰³

²⁹⁸ Tuition reimbursement is discussed in [Section IV](#) of this chapter.

²⁹⁹ Protections for children with disability who are subject to school discipline are discussed in Section IV of this chapter.

³⁰⁰ 20 U.S.C. § 1415(a). States receiving federal IDEIA funds must “establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free and appropriate public education.” *Id.* The procedural safeguards are listed in 20 U.S.C. §1415(b). This guide re-organizes the list and includes other IDEIA rights related to dispute resolution to make it easier for parents to understand these procedures.

³⁰¹ 20 U.S.C. § 1415(a) - (b)..

³⁰² See 20 U.S.C. §1415(d)(procedurals safeguards notice), §1415(b)(3) and §1415(c)(1) (prior written notice), and [Q.5-9 through Q.5-14](#). in this guide.

³⁰³ 20 U.S.C §1415(d)(2)

Q.5-3 What rules apply to the educational records of children with disabilities?

Schools must allow parents to inspect their child’s educational records, including test results. If parents have questions about their children’s records, they can ask for reasonable explanations and interpretations of the records. Educational records are otherwise kept confidential, unless the parent consents to the release of their child’s records or the law allows the school to release the records to someone else without the parent’s consent.³⁰⁴

Q.5-4 What is an independent educational evaluation?

Whenever a parent disagrees with the school’s evaluation of a child, the parent may request a second opinion at public expense. Although the school pays for the independent educational evaluation (“IEE”), it is conducted by someone who is not employed by the school system and is therefore “independent.”³⁰⁵

Q.5-5 What is mediation?

Mediation is a process where a neutral third party – the mediator – assists parents of a child with a disability and school personnel to resolve the issue in dispute. The mediator does not decide who is right or wrong, but helps the parties communicate with each other. The Arizona Department of Education runs the mediation program.³⁰⁶

Q.5-6 What is the State Complaint Procedure?

A parent of a child with a disability or another interested person may file a complaint with the Arizona Department of Education if they believe a public school has violated a special education law. The Arizona Department of Education investigates the complaint, and within 60 days issues findings. If the complaint is found to be justified, the school may be directed to fix the problem and/or to provide compensatory special education services to the child.³⁰⁷

Q.5-7 What is a due process hearing?

Parents may request a due process hearing if they believe the school has not offered an appropriate special education program for their child, or when the parents and school disagree on other issues such as whether a child is eligible for special education. The hearing itself is an administrative proceeding that is overseen by a hearing officer, who listens to witnesses’ testimony, reviews written documents and issues a written decision.

³⁰⁴ See 20 U.S.C. §1415(b)(1), 34 C.F.R. §300.613 and [Q.5-15 through Q.5-17](#) in this guide.

³⁰⁵ See 20 U.S.C. §1415(b)(1) and [Q.5-18 through Q.5-20](#) in this guide.

³⁰⁶ See 20 U.S.C. §1415(b)(5) and (e), and [Q.5-21 through Q.5-24](#) in this guide.

³⁰⁷ See 20 U.S.C. §1412(11)(A), 34 C.F.R. §300.151 through 300.153, and [Q.5-25 through Q.5-29](#) in this guide.

The proceeding is very much like a trial but without a jury. A due process hearing officer’s decision may be appealed to state or federal court.³⁰⁸

Q.5-8 What is compensatory education?

Compensatory education is special education services provided to make up for a public school’s failure to provide an appropriate education to a child with a disability.³⁰⁹ For example, compensatory education is appropriate when there is a gap in services (i.e., no speech therapy was provided for 3 months because of a personnel shortage) or when no services were provided at all (i.e., a school’s failure to timely evaluate a child and develop an IEP denied a child special education services for 1 year). Compensatory education may also include reimbursing parents for expenses they incurred by paying for services that the school should have provided.³¹⁰

II. WHEN PARENTS DISAGREE WITH THE SCHOOL SYSTEM – HOW TO RESOLVE SPECIAL EDUCATION DISPUTES

If a special education dispute arises between the parents of a student with a disability and the public school, the dispute may be resolved through one of the formal procedures provided for in IDEA 2004 (such as mediation or due process) or informally. Depending on the situation, the options may include:

1. Resolving the matter informally. Sometimes an issue can be resolved by talking or meeting with another person at the school system (perhaps someone at a level above the person you have been dealing with). Some school systems have procedures for resolving parent complaints, which may be used by parents of children with disabilities to resolve special education disputes. Typically, schools follow a “chain of command” approach: the parent is first asked to speak with the teacher, then the school principal, then someone at the school administration level.
2. Holding another IEP meeting. Some disputes may arise because the IEP team has not addressed a particular issue, or the IEP is not clear about a particular subject. Discussing the issue in an IEP meeting and making sure the written IEP accurately reflects the discussions may resolve the problem.
3. Obtaining an independent educational evaluation followed by a team meeting. If the dispute turns on a disagreement about how your child’s disability affects his education, an independent educational evaluation can provide a second opinion.

³⁰⁸ See 20 U.S.C. §1415(f) and [Q.5-30 through Q.5-38](#) in this guide. Arizona due process hearing procedures are also discussed in the Appendix to this guide.

³⁰⁹ *Reid v. District of Columbia*, 401 F.3d 516, 524 (D.C. Cir. 2005) (compensatory education awards should be “reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place”); *Parents of Student W. v. Puyallup School Dist.*, 31 F.3d 1489, 1497 (9th Cir. 1994) (compensatory education is an equitable remedy used to provide appropriate relief when a child with a disability has been wrongfully denied special education services).

³¹⁰ Compensatory education may be awarded as a result of a complaint filed with the Arizona Department of Education or in a due process hearing, as discussed in [Q.5-29](#) and [Q.5-35](#) of this chapter.

Once the independent evaluation is completed, the IEP team can then meet to discuss the evaluation results, which may resolve the dispute.³¹¹

4. Mediation.
5. Filing an administrative complaint with the Arizona Department of Education
6. A due process hearing, possibly followed by a lawsuit.

The chart below discusses some common situations, and offers issues for parents to consider as they decide how to best resolve a dispute. Because each situation is different and depends on specific facts, this chart does not offer hard and fast “rules.” For further information on a particular dispute resolution procedure, please see [Section III](#) of this Chapter or consult an attorney for legal advice.

Situation	Dispute Resolution Issues to Consider
After a multidisciplinary evaluation team meeting, the school system decided my child is not eligible for special education. I disagree.	You may want to consider an independent educational evaluation if the team’s decision was based on an evaluation you disagree with. If you agreed with the evaluation but feel the school’s decision was wrong for other reasons, requesting a due process hearing may be appropriate.
I want my child to spend most of his time in the regular education classroom, but the school says he is disruptive and needs to be in the resource room with other children with disabilities.	First, has the issue been discussed in an IEP team meeting with a regular education teacher present? The IEP team should place your child in the least restrictive environment and should consider what supports are available in the regular classroom. If that discussion has already occurred, consider requesting written notice from the school regarding its refusal to include your child in the regular classroom. The written notice will explain the reasons for the school’s decision. If you still disagree, the next step would be to request a due process hearing.
The school isn’t following my child’s IEP. My child is supposed to receive occupational therapy 3 times a week according to the IEP, but the district’s therapist only comes to my child’s school once a week.	This matter could be resolved by filing a complaint with the Arizona Department of Education, and requesting compensatory education to make up for the occupational therapy the school was supposed to provide but did not. Another approach would be to meet with school personnel and see if they will voluntarily agree to fix the situation and provide compensatory services before you file a state complaint.
At the last parent-teacher conference with my child’s regular education math teacher, I asked if my child with learning disabilities could sit in the front of the	Discussing concerns with your child’s classroom teacher is always a good idea. To make sure that modifications in the classroom will be followed, however, they need to be written in the IEP.

³¹¹ 2006 Regulations limits the parent’s right to an IEE at the public expense to one at a time. 34 C.F.R. §300.502(b).

Situation	Dispute Resolution Issues to Consider
<p>class. The teacher agreed and that worked for a while, but the teacher has apparently changed her mind and won't place my child in front anymore.</p>	<p>Consider reconvening the IEP team and revising the IEP so it requires the school to allow your child to sit in front of math class (or other classes) so your child can benefit from the instruction provided.</p>
<p>The school personnel and I have been at odds for years. At our last IEP team meeting, they denied many of the services I requested but didn't seem to have good reasons for their position. I think they are more concerned about getting even with me than providing my child with necessary services.</p>	<p>Mediation may be a good option here. When communications have broken down, a neutral third party can help keep the parties focused on the issues – services for your child – and less on the personalities involved. If you haven't yet received written notice from the school explaining why they refused to provide the services you requested, request written notice. Sometimes seeing an explanation in “black and white” can help you decide if the school's reasons are legitimate. If you do not believe the school is offering an appropriate education for your child, you can request a due process hearing.</p>
<p>My child's teacher doesn't seem to like my child. The teacher follows the IEP, but acts like the extra work is a real burden.</p>	<p>This matter is probably best resolved informally. First, consider speaking with your child's teacher - there may be more to the situation than you know. If that doesn't resolve the problem, meeting with the school principal may help. The principal may be able to provide extra resources or training that will help your child's teacher implement the IEP. The principal may also provide guidance to the teacher if the teacher's attitude is the primary problem.</p>

III. PROCEDURES FOR OBTAINING INFORMATION AND RESOLVING DISPUTES IN MORE DETAIL

This section discusses the procedural safeguards summarized in Section I in more detail. The topics covered include:

- A. Written Notices (procedural safeguards notice and prior written notice)
- B. Inspecting Educational Records
- C. Independent Educational Evaluations
- D. Mediation
- E. State Complaint Procedure (administrative complaints filed with the Arizona Department of Education)
- F. Due Process Hearings (including a side by side comparison of the state complaint system and due process hearing procedures)
- G. Lawsuits

A. Written Notices – Procedural Safeguards Notice and Prior Written Notice

IDEA 2004 requires public schools to provide parents of students with disabilities information about their rights under the law. There are two types of documents – or “notices” – that parents of children with disabilities may receive: the “procedural safeguards notice” and “written notice” (or “prior written notice”).³¹² The procedural safeguards notice is designed to provide general information to parents about special education rights even if no dispute has occurred with the school. When a specific decision is made regarding a student, schools may be required to provide a “written notice” to explain the decision and what parents may do if they disagree with it.

Q.5-9 What is a “procedural safeguards notice” and what is “prior written notice”?

IDEA 2004 provides a series of rights – or “procedural safeguards” – designed to ensure that children with disabilities receive an appropriate education. The **procedural safeguards notice** explains what those rights are. The procedural safeguards notice is important because parents of children with disabilities cannot properly obtain the most appropriate services for their child unless they understand their rights. It is provided at certain times – not necessarily when there is a dispute between the parents and the school – so that parents generally understand the rights and protections provided by IDEA 2004 and related laws.

A public school must provide parents with **prior written notice** to explain certain decisions they have made relating to a student’s special education rights. The notice must be provided in the parent’s native language when feasible. In contrast to a procedural safeguards notice – which explains to all parents of children with disabilities their general rights – prior written notice (or “written notice”) must address the particular decision made about your child, and explain the reasons for it.

Q.5-10 When must the “procedural safeguards notice” be provided to parents and what information must the notice include?

Public schools must provide a procedural safeguards notice to parents at least once a year.³¹³ The procedural safeguards notice must also be provided (1) when a parent requests an initial evaluation or the school refers the child for an evaluation to determine special education eligibility, (2) when a parent requests a due process hearing, and (3) whenever a parent requests a copy of the procedural safeguards notice. Schools may also post their procedural safeguards notice on their website.

Because the procedural safeguards notice is designed to inform parents of their rights, it must be written in an “easily understandable manner” and provided in the parent’s native

³¹² The school can send these documents in the mail or by e-mail, if the parent chooses to receiving notice by email. 34 C.F.R. §505.

³¹³ 20 U.S.C. §1415(d)(1); 34 C.F.R. §300.504(a).

language in almost all cases.³¹⁴ The procedural safeguards notice must contain a “full explanation” of the special education laws relating to:

- Independent educational evaluations
- Prior written notice
- Parental consent³¹⁵
- Access to educational records of the student
- The opportunity to file due process and state complaints, including
 - The time period in which to make a complaint
 - The opportunity for the school to resolve it
 - The availability of mediation
- The child’s placement during a due process hearing
- Procedures for students placed in interim alternative settings
- Requirements for unilateral placement by parents of children in private schools at public expense
- Due process hearings
- Civil lawsuits, including the time period to file a suit
- Attorneys’ fees.³¹⁶

If a school system has its own procedures for resolving parent complaints, the procedural safeguards notice must also include information about the school’s dispute resolution options.³¹⁷

Q.5-11 What should I do if the public school does not provide the “procedural safeguards notice” when it is supposed to?

If you believe a public school has not provided you with a procedural safeguards notice when required (for instance, after you requested an initial evaluation of your child), we recommend that you request a copy of the notice. A sample letter is included in the Appendix of this guide. It is always best to request documents from a school in writing (in this context, an e-mail request would be fine). In your letter or e-mail, explain why you believe you should have received a procedural safeguards notice earlier, and request that the school provide you with a copy by a certain date (i.e., within 3 days of the date of your request). If the school does not provide you with the notice as requested, consider filing a complaint with the Arizona Department of Education ([see Section III.E](#) below for more information).

Q.5-12 When must public schools provide “written notice” to parents of children with disabilities?

Public schools must provide “prior written notice” (or “written notice”) to parents of students with disabilities whenever the school:

³¹⁴ 20 U.S.C. §1415(d)(2); 34 C.F.R. §300.504(c).

³¹⁵ Parental consent must be both informed and written to be valid. 34 C.F.R. §300.300.

³¹⁶ 20 U.S.C. §1415(d)(2)(A) – (L).

³¹⁷ A.A.C. R7-2-401(H)(1).

-*proposes* to initiate or change the identification, evaluation or educational placement of the student, or the provision of a free appropriate public education, or
-*refuses* to initiate or change the identification, evaluation or educational placement of the student, or the provision of a free appropriate public education.³¹⁸

Public schools do not have to provide written notice regarding each and every decision relating to the special education of your child, but the school will likely have to explain most important decisions by providing written notice. For example:

- If the school denies a parent’s request for a particular special education services made in an IEP meeting, the school will have to provide written notice because the school “refuses to initiate ... the provision of a free appropriate public education.”
- If the school wants to change the student’s educational placement (i.e., from a typical classroom to a resource room), the school will have to provide written notice to explain its “proposal to change the educational placement” of the child.
- If the school denies a parent’s request for a full and initial evaluation, the school must provide written notice.³¹⁹

Prior written notice must be issued in a “timely manner” following the school’s decision regarding the issue, or “within a reasonable time” before the school proposes to take an action.³²⁰ What is “reasonable” or “timely” will depend on the specific case – it may be necessary for a school to issue a written notice within a few days of a decision in emergency cases – but 10 business days is typically viewed as a “reasonable time” frame.

Q.5-13 What information must a public school include when it provides “written notice” to parents of students with disabilities?

Although the written notice will vary according to the type of decision the public school has made and the specific situation, in each written notice the public school must:

- describe the school’s action or refusal
- explain why the school proposes or refuses to take the action
- describe each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action
- describe any other options considered by the IEP team (or the school) and the reason why those options were rejected, and
- describe any other factors that are relevant to the school’s proposal or refusal.³²¹

³¹⁸ 20 U.S.C. §1415(b)(3).

³¹⁹ See also A.A.C. R7-2-401(D)(11).

³²⁰ A.A.C. R7-2-401(H)(2); 34 C.F.R. §300.503.

³²¹ 20 U.S.C. §1415(c)(1).

The written notice must also contain a statement about the parent’s procedural safeguards (and how to obtain a description of them) and sources for parents to contact to get help in understanding their rights. As with the procedural safeguards notice, the written notice must be written in understandable language and provided in the parent’s native language in almost all cases.³²²

Q.5-14 What should I do if I did not receive written notice when I was supposed to, or if I believe the “written notice” the school provided is insufficient?

If you believe a public school has not provided you with prior written notice when required, we recommend that you request written notice regarding the school’s decision or action. A sample letter is included in the [Appendix](#) to this guide.

If the school provided written notice but you believe it is insufficient, you should request clarification from the school (again in writing). Your letter should identify why the written notice does not meet the legal requirements. For example, suppose a school decided your child was no longer eligible for special education because of a new evaluation (i.e., “Your child is no longer eligible for special education because of the recent results on the XYZ test”) but failed to explain *why* those test results mean that your child is no longer a “student with a disability” under IDEA 2004. If the school does not provide you with the notice as requested, consider filing a state complaint with the Arizona Department of Education ([see Section III.E](#) below for more information).

B. Educational Records – Rights to Access and Confidentiality

In order to participate equally in making special education decisions, parents of students with disabilities must have access to the same information as school personnel do. The educational records of a student with a disability – which include test results, grade reports, IEPs, and the like – will form the basis of most decisions regarding the student’s special education program. Consequently, IDEA 2004 assures that parents will have access to their child’s educational records. Parents may also make corrections to their children’s education records if necessary.

While parents may access their children’s educational records, at the same time the law generally prevents schools from disclosing those records to anyone else. A child’s education records may be disclosed to third parties only if the parent consents or if disclosure is specifically permitted by law.

Q.5-15 What rights do parents of students with disabilities have to obtain access to their children’s educational records?

Public schools must permit parents to inspect any education records relating to their children that are collected, maintained or used by the school in connection with their

³²² 34 C.F.R. §300.503(c).

responsibilities under IDEA 2004.³²³ Schools must comply with a parent’s request for education records “without unnecessary delay,” and in no case more than 45 days after the request was made.³²⁴ Schools must also provide education records to parents upon request before any IEP meeting, due process hearing or discipline hearing according to the same time frames.

Parents may not only inspect their children’s education records, but may also ask the school to explain what the records mean. Public schools must respond to parents’ “reasonable requests for explanations and interpretations” of their children’s education records.³²⁵ So if you have received an evaluation report on your child and have questions – for instance, about what the Woodcock Johnson test means or what a standard deviation is – feel free to ask school staff for assistance in understanding the report. A sample letter requesting a child’s educational records is included in the Appendix of this guide.

Q.5-16 What are the rules regarding the confidentiality of educational records of students with disabilities?

In general, IDEA 2004 requires public schools to keep the educational records of students with disabilities confidential.³²⁶ That means that the records may only be disclosed as specifically permitted by law, or with the parent’s consent. Schools must maintain a record of who has access to your child’s educational records. If the school submits reports or public information regarding students with disabilities, the school may not disclose “personally identifiable” information regarding specific students.³²⁷

IDEA 2004 also incorporates another federal law that applies to the education records of all public school students - the Family Educational Rights and Privacy Act (“FERPA”).³²⁸ A fact sheet regarding the Family Educational Rights and Privacy Act is included in the [Appendix](#) to this guide.

Q.5-17 What can parents do if they believe a public school has violated the laws regarding access and confidentiality of educational records, or that their children’s records include incorrect information?

If parents believe that information in their children’s education records is inaccurate or misleading, or violates the privacy or other rights of the child, they may ask the school to

³²³ 34 C.F.R. §300.613(a). Another regulation specifies that a parent may inspect all education records regarding the identification, evaluation and educational placement of their child, and the provision of a free and appropriate public education. 34 C.F.R. §300.501(a)(1).

³²⁴ 34 C.F.R. §300.613(a).

³²⁵ 34 C.F.R. §300.613(a). Parents also have the right to receive copies of education records (if failing to provide copies would effectively prevent the parent from reviewing them) and to have their representatives inspect the records. The school may charge a fee for copying educational records (although this is rare), but not for searching for them. 34 C.F.R. §300.566.

³²⁶ 20 U.S.C. §§1412(a)(8), 1417(c); 34 C.F.R. §300.610; A.A.C. R7-2-401(I).

³²⁷ 34 C.F.R. §300.610 through §300.611.

³²⁸ 20 U.S.C. §1232g, et. seq., incorporated into IDEIA at 20 USC §1417(c). The federal regulations relating to the Family Educational Rights and Privacy Act are found at 34 C.F.R. Part 99.

change the records in order to correct the error. If the school denies the parents’ request to amend education records, the parents have a right to a hearing.³²⁹

In addition, the U.S. Department of Education maintains a complaint process for parents to use if they believe a school has violated the laws regarding education records. That process allows a parent to file a complaint with the Family Policy Compliance Office (a part of the U.S. Department of Education) within 180 days of the date of the alleged violation. Further information can be obtained from: from:

Family Policy Compliance Office - (202) 260-3887
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-5901
www.ed.gov/policy/gen/guid/fpco/ferpa/index.html

C. Independent Educational Evaluations

When parents disagree with a public school’s evaluation of their child, they can obtain a “second opinion” by requesting an independent educational evaluation. This evaluation is conducted by someone who is “independent” of – not employed by - the school district or charter school. Independent evaluations are provided at no expense to the parent.³³⁰

Q.5-18 When is it appropriate to request an independent educational evaluation?

A parent has a right to request an independent educational evaluation whenever the parent disagrees with an evaluation obtained by the public school.³³¹ For example, if the public school’s evaluation concludes that a student is not a “child with a disability” entitled to special education but the parent believes the child meets the applicable criteria, the parent may request an independent evaluation. An independent educational evaluation may also be requested if, on re-evaluation, the school decides that a student who has been receiving special education is no longer entitled to it.

The right to an independent evaluation is not restricted to eligibility determinations, however. If a school evaluation concludes that a child does not need services in a particular area (for instance, a child with autism does not need occupational therapy), the parent may request an independent educational evaluation if the parent disputes the evaluator’s opinion about the child’s need for a particular service.

Q.5-19 What is the process for requesting an independent educational evaluation?

The process begins when a parent sends a written request for an independent educational evaluation. A sample letter is included in the [Appendix](#) of the guide.

³²⁹ 34 C.F.R. §300.618 through §300.621.

³³⁰ 20 U.S.C. §1415(b)(1), 34 C.F.R. §300.502.

³³¹ 34 C.F.R. §300.502(b).

In response to the request, the public school has two choices: either provide the independent evaluation, or request a due process hearing to establish that the school’s evaluation was appropriate and an independent evaluation is not necessary. The school must take either action “without unnecessary delay.”³³²

Assuming the school does not file for a due process hearing, in response to a parent request the school must provide information about where to obtain an independent evaluation and a list of the agency criteria for independent evaluators.³³³ The “agency criteria” list typically sets out qualifications for evaluators, locations and reasonable costs for the evaluation. The agency criteria list may include a list of approved evaluators in the particular field.

Once the criteria or list of evaluators is received, the parent may then:

- select a particular evaluator from the list (this is the parent’s decision, not the school’s)
- select an evaluator who is not on the list, but who meets the agency criteria, or
- demonstrate to the school system that unique circumstances justify the use of an evaluator who does not meet the agency criteria.³³⁴

While schools may ask parents why they object to the school’s own evaluation, schools may not delay an independent evaluation or impose conditions not permitted by law.³³⁵

Q.5-20 What is the difference between an independent educational evaluation and a private evaluation?

A public school pays for an independent educational evaluation (or ensures that it is obtained at no cost to the parent), but the parent pays for a private evaluation.

In either case, the school must take the results of the new evaluation into account. IEP teams must consider the results of the initial or most recent evaluation in determining what special education and related services should be provided to the student, which would include considering independent educational evaluations and/or private evaluations.³³⁶

³³² 34 C.F.R. §300.502(b)(2).

³³³ 34 C.F.R. §300.503(e).

³³⁴ 34 C.F.R. §300.503; OSEP Letter to Alice Parker, Ed.D., dated February 20, 2004.

³³⁵ 34 C.F.R. §300.502.

³³⁶ 34 C.F.R. §300.324(a)(ii). For a case where a school district did not properly consider the results of an independent evaluation in determining a student’s eligibility for special education, see *Paradise Valley Unified School District v. Student “A”*, available on the ADE website (www.ade.az.gov) by selecting “Special Education,” then “Dispute Resolution,” then Level I due process hearing for FY 2001.

D. Mediation

IDEA 2004 requires States to provide an opportunity for parents and schools to resolve virtually any special education dispute through mediation.³³⁷ The Arizona Department of Education oversees the mediation process and appoints mediators to particular cases.

In mediation, the parents and school staff meet in order to discuss and try to resolve the issue(s) in dispute. Unlike a judge or an arbitrator, a mediator does not decide who is right or wrong, or how the dispute should be resolved. Instead, the mediator helps the parties communicate with each other, including identifying what issues the parties agree on and which are contested. The mediator is a neutral party who assists the parties in arriving at their own resolution to the dispute.

Q.5-21 When is mediation appropriate?

Parents and the public school can utilize mediation to resolve a special education dispute when both sides agree to it.

Mediation may be effective in situations where the dispute may be related to a breakdown in communication between the parents and the school. Because the mediator is not involved in the dispute or employed by the school, the mediation process may allow the issues to be more clearly understood and perhaps separated from the personalities of the people involved.

The advantages of mediation – as opposed to resolving a dispute through a due process hearing – is that it is less adversarial, it costs the parents nothing (the State pays for the mediator) and a dispute may be resolved more quickly than through due process or litigation.

Q.5-22 Do parents have to use mediation for every special education dispute with a school?

No. Mediation is voluntary. This means that a parent can decide whether or not to use the mediation process, and once in mediation, can decide whether or not to settle the matter. Although schools may encourage the use of mediation, the mediation process may not be used to deny or delay parents' rights, including the right to a due process hearing.³³⁸

³³⁷ 20 U.S.C. §1415(b)(5), 1415(e) (mediation shall be available to resolve disputes involving “any matter,” including those arising before a due process complaint is filed), 34 C.F.R. §300.506(a).

³³⁸ 20 U.S.C. §1415(e)(2)(A)(ii); 34 C.F.R. §300.506(b)(1).

Q.5-23 How does the mediation process work?

If a parent and the school agree to mediation, the Arizona Department of Education will appoint a “qualified and impartial” mediator who is trained in “effective mediation techniques.”³³⁹

The mediator will schedule the mediation in a “timely manner” and in a location that is convenient to the parties to the dispute.³⁴⁰ The mediator may talk to both sides beforehand to obtain a better understanding of the issue(s) in dispute and to obtain copies of relevant records. The mediator may also find out who will attend on the school’s behalf to ensure that the school will send a representative who has authority to commit school resources towards a resolution of the dispute.

A mediation session may last between 4 hours and a full business day. The mediator may allow each side to make a statement summarizing their position, may chose to hold the proceedings together or may meet privately (“caucus”) with one or both sides.

Discussions during mediation are confidential and may not be used as evidence in a subsequent due process hearing or lawsuit.³⁴¹ If mediation resolves the dispute, the parties then enter a “**legally binding agreement.**” The written agreement will explain how the parties agreed to resolve the dispute and will be signed by the parent and a school representative with the authority to bind the school system. The mediation agreement will be enforceable in state or federal court.³⁴²

Q.5-24 Can I have an attorney or advocate represent me at the mediation?

Yes. Nothing in IDEA 2004 prevents an attorney or advocate from representing a parent of a child with a disability during a mediation.

You may, however, find that the school (or the State) discourages the presence of lawyers because mediation is not an “adversarial” proceeding. If you decide to bring an attorney to a mediation session, the mediator will likely allow the school to bring its attorney as well. However, the mediator will probably limit the number of people on both sides, typically to three people per side.

E. Filing Complaints with the Arizona Department of Education – The State Complaint Procedure

Under IDEA 2004, the federal government provides special education funds to states, and states then distribute those funds to school districts and charter schools where special

³³⁹ 20 U.S.C. §1415(e)(2)(A)(iii).

³⁴⁰ 20 U.S.C. §1415(e)(2)(E).

³⁴¹ 20 U.S.C. §1415(e)(2)(G); 34 C.F.R. §300.506(B)(6)(i).

³⁴² 20 U.S.C. §1415(e)(2)(F); 34 C.F.R. §300.506 (B)(6)(ii), (7).

education is provided. In exchange for receiving federal money, states must assure that public schools follow federal and state special education standards.³⁴³

One of the ways the Arizona Department of Education provides these assurances is through the State Complaint Procedure. Parents may file a complaint with the State if they believe a public school has violated a special education law. If the Arizona Department of Education’s investigation finds that the public school is violating - or is “out of compliance” with - the law, the State must act to correct the problem and make sure it does not happen again.

Q.5-25 How does the State complaint process work in general?

1. Filing the complaint

The complaint resolution procedure begins when a parent or organization files a written complaint with the Arizona Department of Education.³⁴⁴ A violation of law that might support a state complaint could include a public school’s failure to:

- follow timelines for assessment and referral of a child to special education
- inform parents of an IEP meeting as required
- implement an IEP
- comply with a due process hearing decision or mediation agreement.

. The current complaint form is located on the Arizona Department of Education website at (<http://www.ade.state.az.us/ess/dispute/complaints/StateComplaintForm.doc> or contact ADOE at (602) 542-3085) for assistance on filing a complaint under the State Complaint Procedure.

2. Investigation

Once a complaint is filed, the Arizona Department of Education will investigate it. The investigation will include an opportunity for the person filing the complaint to provide additional information, and may include an on-site visit to the school. The Department may provide the parties an opportunity to resolve the matter informally before a full investigation occurs.

3. Findings

After the Arizona Department of Education completes the investigation, a written decision will be issued resolving each allegation in the complaint. If the public school is found out of compliance with a special education law, the State will order corrective action to address the violation. Corrective action may include providing compensatory

³⁴³ 20 U.S.C. §1412(11)(A).

³⁴⁴ The current federal regulations regarding State Complaint Procedures are found at 34 C.F.R. §300.151 through §300.153.

education services, reimbursement of costs to the parents, and/or other actions to ensure that the public school corrects the problem in the case and that it does not recur.³⁴⁵

Further information about the State Complaint Procedure is available at Arizona Department of Education’s website, www.ade.az.gov/ess/dispute.

Q.5-26 When must a state complaint be filed?

In general, a state complaint must be received by the Arizona Department of Education within one year of the date the violation of law occurred.³⁴⁶ At this point, it is unclear whether there are any exceptions to the one year limitations period. Please contact the Center or a private attorney if you have questions regarding how the one year time limit may affect your case.

Q.5-27 How long does the state complaint process take?

The Arizona Department of Education must complete the investigation, including issuing a written decision, within 60 days of the date the complaint is filed, with limited exceptions.³⁴⁷

Q.5-28 What types of issues are best addressed through the State Complaint Procedure, and when is it better to request a due process hearing to resolve a special education dispute?

The state complaint system tends to be most effective for parents in cases where a public school did not do something it promised to do (such as provide a service included in an IEP), or something the school was required to do by law (such as refer a student for a full evaluation if a screening showed a possible disability). This is because the State’s role in the complaint resolution process is to ensure that the public school is following appropriate procedures. If the complaint investigation shows that the public school followed required procedures and reached a determination that is reasonably supported by the student-specific data, the State will probably find the public school is in compliance with the law.³⁴⁸

When a dispute concerns the *quality* of a decision made by a school, the dispute may be better resolved through a due process hearing rather than a state complaint. For instance, suppose the public school has adopted a behavioral intervention plan for a student with emotional disabilities. The behavioral plan meets all legal requirements, but the parents object because they don’t think it is a very good plan. This case may be more appropriate for due process, since to find in favor the parents the decision maker would have to judge

³⁴⁵ 34 C.F.R. §300.151(b).

³⁴⁶ 34 C.F.R. §300.153(c).

³⁴⁷ 34 C.F.R. §300.152(a), (b). Under the current regulations, the 60 day period can be extended only if “exceptional circumstances exist with respect to the particular complaint.”

³⁴⁸ July 17, 2000 OSEP Memorandum 00-20 to Chief State School Officers Regarding Part B/IDEA complaint resolution procedures, available on-line at www.ed.gov.

the quality of the plan, and possibly decide among competing expert opinions. On the other hand, if the school was required by law to adopt a behavioral plan for a student and failed to do so entirely, that issue could be effectively resolved through the State Complaint Procedure. Here are some more examples:

EXAMPLE:

At an IEP meeting, the public school recommends placing a child with a disability in a self-contained classroom. The parents are seeking an inclusive setting. The school provided the parents with all appropriate notices and a proper statement of their procedural rights, and made its decision based on data related to the child. This decision would be more effectively addressed in a due process hearing, rather than through a state complaint.

EXAMPLE:

The parents of a child with a suspected disability request that the school conduct an initial evaluation to determine their child’s eligibility for special education. The evaluation takes over eight months to complete, and the child is eventually found eligible for special education. The parents may file a state complaint because the school did not complete the evaluation within 60 days as required. The parents may also seek compensatory education to make up for the lost services.

Q.5-29 If the Arizona Department of Education decides that a parent’s complaint is justified, what remedies are available?

If the Arizona Department of Education’s investigation reveals that the public school violated special education laws, the State will first create a “corrective action plan” for the school system.³⁴⁹ The corrective action plan will outline the steps the school needs to take to correct the problem and the time frames for taking the actions, as well as specify the documentation the school must submit to the State to demonstrate the correction actions have been taken.

Second, if applicable, the State may order the school system to provide the student with compensatory education services and/or monetary reimbursement for costs that should not have been incurred by the family. The State may determine the level of compensatory services or refer that determination to the student’s IEP team. If the IEP team has the responsibility for determining what compensatory services will be provided

³⁴⁹ 34 C.F.R. §300.151(b)(remedies for denial of appropriate services).

to the child or what costs parents will be reimbursed for, the team will have to submit documentation of their decisions to the State.

F. Due Process Hearings

When the parents of a student with a disability and the public school disagree about the student’s eligibility for special education, or what type of special education program should be provided, either side can request a due process hearing.³⁵⁰

A due process hearing is an administrative hearing that is held before an impartial hearing officer. Each side has the opportunity to present evidence, cross-examine witnesses, and make legal arguments. The hearing officer listens to the evidence, and then issues in a written decision. The officer has broad authority to issue orders that address any violation of law, including the authority to decide the appropriate educational setting for a student, or to award compensatory education.³⁵¹

Q.5-30 When must a due process complaint be filed?

In general, a parent or school must request a due process hearing within two years of the date the party knew or should have known of the conduct that forms the basis of the complaint.³⁵² The two-year time frame may be extended if:

- The school specifically misrepresented to the parents that it had resolved the problems forming the basis of the complaint, or
- The school withheld information from the parent that was required to be provided.³⁵³

If you are considering filing a due process complaint and requesting a hearing, we do not recommend that you wait two years from the date of the school’s action you are challenging. As in other types of legal cases, it is often best to file a complaint promptly, when it is easier to remember what happened and to gather the necessary information. The two-year time frame and the exceptions to the two-year rule provide a safety net to protect children’s rights.³⁵⁴

350 20 U.S.C. §1415(b)(6),§1415(f); 34 C.F.R. §300.507 through 300.511.

351 20 U.S.C. §1415(b)(6)(A) (due process hearings must be available to resolve “any matter” relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education); 20 U.S.C. §1415(i)(2)(C)(iii) (courts may “grant such relief” as they determine is “appropriate” in an IDEA case); *Corcores v. Portsmouth N.H. School Dist.*, 779 F.Supp. 203, 206 (D.N.H. 1991) (hearing officer’s ability to award relief is co-extensive with the federal court’s).

³⁵² 20 U.S.C. §1415(f)(3)(C), §1415(b)(6)(B); 34 C.F.R. §300.507.

³⁵³ 20 U.S.C. §1415(f)(3)(D).

³⁵⁴ This “statute of limitations” is new in IDEA 2004. Under the old law, the time frames for filing due process complaints were decided based on state law. Arizona law was previously interpreted as allowing a one year time period to file due process complaints. Although normally statutes of limitation for claims brought by a child are “tolled” and do not start until a child turns 18, that rule does not apply in special education where parents are expected to act in the place of students for purposes of asserting their legal rights.

Q.5-31 How long does it take to resolve a case through a due process hearing?

It may take up to 75 days from the time you file a due process complaint until the hearing is completed and a written decision is mailed. A school has 30 days from the time the school receives the due process complaint to try to resolve the matter, by holding a “resolution session.”³⁵⁵ If the matter is not resolved to the parent’s satisfaction within 30 days of the school’s learning of the complaint, the rules provide a 45 day period for the due process hearing to occur and for the written decision to be issued.³⁵⁶ If a parent who filed the due process complaint fails to participate in the resolution process, the 45 day period requiring the school to hold a due process hearing does not occur.³⁵⁷ Likewise, if the school does not hold the resolution session within 45 days (30 days plus an additional 15 days) of receiving the due process complain, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.³⁵⁸

Q.5-32 What types of disputes may be addressed through an impartial due process hearing?

Although the law allows a parent or public school to file a due process hearing regarding almost any special education issue, some cases are more appropriate for due process hearings than others.³⁵⁹ A due process hearing may be appropriate where:

- The parents and school disagree about whether the child is eligible for special education services.
- The parent and school disagree about where the child should be educated – i.e., the parent believes the child should be educated in the regular classroom with supports, but the school wants the child to be educated only with other children with disabilities.
- The parent and school disagree about the type of education program or methodology the school should provide – i.e., the parents of an autistic child request ABA therapy, but the school refuses.
- The parent and school disagree about the amount of services that should be provided – i.e., the parent believes the child needs speech therapy several times a week in a one-on-one setting, but the school claims once a week group therapy is enough.

³⁵⁵ 20 U.S.C. §1415(f)(1)(B) provides that, before a due process hearing is held, the public school shall convene a meeting (to occur within 15 days of receiving the due process complaint) with the parents and relevant IEP team members to provide the school with an opportunity to resolve the complaint. For more information, see “Arizona Due Process Hearing Procedures Under IDEA 2004” included in the [Appendix](#) to this guide.

³⁵⁶ 20 U.S.C. §1415(f)(1)(B)(ii) provides that if the public school system “has not resolved the complaint to the satisfaction of the parents within 30 days of receipt of the complaint, the due process hearing may occur and all of the applicable time lines for a due process hearing under this part shall commence.” The current federal regulations provide a 45 day period to conduct the due process hearing and for the hearing officer to reach a final decision. 34 C.F.R. §300.510(b)(2).

³⁵⁷ 34 C.F.R. §300.510(b)(3).

³⁵⁸ 34 C.F.R. §300.510(b)(5).

³⁵⁹ A due process hearing may be requested (by a parent or public school) “with respect to any matter related to the identification, evaluation, or educational placement of the child, or the provisions of a free appropriate public education to the child.” 20 U.S.C. §1415(b)(6). *See also* A.R.S. §15-766(F)(1).

The ultimate question in a due process hearing will be whether the public school denied a free and appropriate public education to the child with a disability. If the parent claims the school committed a “procedural” violation of the law – for example, the school failed to send out timely notice of an IEP meeting – the parent will need to show that the school’s error affected the child’s education or limited the parent’s opportunity to participate in special education decisions to win the due process hearing.³⁶⁰

Even if a “procedural” violation of IDEA 2004 is not serious enough to support a hearing officer’s determination that the child did not receive an appropriate education, the school can still be held accountable. A parent may file a State complaint to address the school’s failure to comply with the law, even if a due process hearing is filed at the same time.³⁶¹

Or, if a due process hearing focuses on substantive education issues but the hearing officer finds the school violated a special education procedural rule, the hearing officer can order the school to comply with IDEA 2004 procedural requirements.³⁶²

Q.5-33 How does the impartial due process system work in Arizona?

Although federal law sets forth general requirements for impartial due process hearings (such as requirements for hearing officers), it permits states flexibility in designing their own due process systems.

In Arizona, the due process hearing system has recently changed. In 2005, the Arizona legislature passed a law that changed the Arizona due process system from a “two step” to a “one step” process.³⁶³ Under the old system, hearing officers appointed by the Arizona Department of Education would conduct the due process hearing (step one) and an appeal could then be filed with the Arizona Office of Administrative Hearings (step two). The new law simplifies the process and provides for one hearing conducted by an administrative law judge from the Arizona Office of Administrative Hearings.³⁶⁴ The new law also requires the State Board of Education to adopt rules providing more specific guidance on impartial due process hearings.³⁶⁵

An outline of due process hearing procedures based on IDEA 2004 and the 2005 changes to Arizona law is included in the Appendix to this guide.

³⁶⁰ 20 U.S.C. §1415(f)(3)(E)(ii) provides: “In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies

- (I) impeded the child’s right to a free appropriate public education
- (II) significantly impeded the parents’ opportunity participate in the decision-making process regarding the provision of a free appropriate public education to the parents’ child, or
- (III) caused a deprivation of educational benefits.”

³⁶¹ 20 U.S.C. §1415(f)(3)(F) (nothing in the due process section of the statute affects a parent’s right to file a complaint with the State educational agency). If a parent files a due process complaint and a state complaint on similar issues, the Arizona Department of Education will generally hold the complaint investigation while the due process hearing goes forward. For further information, please check with the Arizona Department of Education (www.ade.az.gov/ess/dispute - select “Complaint Procedures”).

³⁶² 20 U.S.C. §1415(f)(3)(E)(iii); 34 C.F.R. §300.532(b) (hearing officer has the authority to change a child’s placement or return the child to his or her previous placement).

³⁶³ H.B. 2534, 47th Legislature, 1st Regular Session 2005, amending A.R.S. §15-761 and §15-766.

³⁶⁴ A.R.S. §15-761(3).

³⁶⁵ A.R.S. §15-766(F). The current rules at A.A.C. R2-7-405 reflect the old, “two tier” system.

Q.5-34 If a due process hearing is requested and the parents and school disagree about the appropriate placement for a student with disabilities, what happens to the student while the dispute is being resolved?

With some exceptions involving significant misconduct, the child “stays put” in the child’s current educational placement while the special education dispute is being resolved.³⁶⁶ Unless the parents and school agree to a different placement, the child stays in the same last-agreed upon placement and is provided with the same services as were in place before the dispute resolution proceedings began. If the child is initially applying for admission to a school, the child shall be placed in the public school program until all proceedings have been completed, with the parents consent.³⁶⁷

Q.5-35 What remedies are available in a due process hearing?

Due process hearing officers have broad authority to issue orders designed to ensure that students with disabilities receive an appropriate public education. Like federal and state courts, due process hearing officers must “grant such relief” as they determine is “appropriate.”³⁶⁸ That may include ordering a school to change the educational placement of a student, or ordering a public school to comply with the procedural requirements of IDEA 2004.³⁶⁹

Hearing officers may also award “compensatory education” in appropriate cases. If, for instance, the hearing officer finds that a school failed to provide a free appropriate public education to a student with a disability, the hearing officer may order the school to provide additional educational or related services – beyond what is contained in the student’s current IEP – to make up for the school’s failure to provide appropriate education in the first place.³⁷⁰ The burden of proof rests upon the parents who filed for due process.³⁷¹

EXAMPLE:

In one Arizona due process hearing case, the school district proposed an IEP for a deaf kindergartener student that did not include “glossing,” the educational methodology requested by her parents. Given the facts of that case and after reviewing research, the hearing officer concluded that the district denied a free and appropriate public education to the student by failing to including glossing as part of the special education services

³⁶⁶ 20 U.S.C. §1415(k) (the child “shall remain in the then-current educational placement of the child” during any dispute resolution proceedings provided for in IDEA 2004, including due process or mediation).

³⁶⁷ 20 U.S.C. §1415(k); 34 C.F.R. §300.518 (different classifications of children are treated differently).

³⁶⁸ 20 U.S.C. §1415(i)(2)(C)(iii); 20 U.S.C. §1415(b)(6)(A) (due process hearings must be available to resolve “any matter” relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education); *Corcores v. Portsmouth N.H. School Dist.*, 779 F.Supp. 203, 206 (D.N.H. 1991) (hearing officer’s ability to award relief is co-extensive with the federal court’s).

³⁶⁹ 20 U.S.C. §1415(f)(3)(E)(iii).

³⁷⁰ See, e.g., *Charter Oak Unified School District*, 42 IDELR 213, Cal. SEA #SN03-00220 (November 26, 2004) (hearing officer awarded 2 years of compensatory education services to help student with reading and writing).

³⁷¹ *Schaffer v. Weast* 546 U.S. ____ (2005)

provided to the student. The District was ordered to provide compensatory education consisting of additional hours of specialized instruction by a trained ASL/gloss specialist. See *V. v. Flowing Wells School District*, Level I due process decision FY 2003 (January 22, 2003), available at www.ade.az.gov (Select Programs, then Special Education, then Dispute Resolution, then Due Process/ Hearing Decisions).

Q.5-36 Do I need to hire a lawyer to represent me at a due process hearing?

No. Individuals may represent themselves in administrative hearings held at the Office of Administrative Hearings (which is where due process hearings will be under the new Arizona law).³⁷² Whether you want to hire a lawyer is up to you. Some parents have successfully represented themselves in due process cases.³⁷³ Even if you do not hire a lawyer for a due process case, you should expect the school system to be represented at the hearing by a lawyer.

Q.5-37 Can a due process hearing officer award attorneys’ fees?

Not directly, but attorneys’ fees awards may result from a due process hearing. IDEA 2004 allows a court to order the public school to pay the parents’ attorneys’ fees if the parents win the case.³⁷⁴ While the statute does not explicitly permit due process hearing officers to “award” attorneys’ fees, hearing officers may make findings in a due process case which would then allow the parents to go to court for a fee award, unless the parties simply negotiate an agreement as to how much attorneys’ fees should be paid.³⁷⁵ Recently the United States Supreme Court barred reimbursement for expert witness fees for prevailing parents³⁷⁶.

Q.5-38 If I file a due process complaint or lawsuit against the school to obtain better services for my child with a disability and the school wins, will I have to pay the school’s attorneys’ fees?

No. Historically, federal courts awarded attorneys’ fees to parents who won lawsuits filed under IDEA, but did not make parents pay the attorneys’ fees of the public school if they lost, except in extreme cases.

³⁷² See “Frequently Asked Questions,” posted on the website of the Arizona Office of Administrative Hearings, www.azoah.com.

³⁷³ To see examples of previous due process hearing decisions issued in Arizona, including cases where parents successfully represented themselves, you may want to check the decisions from 2001-2004, available at the Arizona Department of Education’s website (www.ade.az.gov - select Programs, then Special Education, then Dispute Resolution, then Due Process/ Hearing Decisions). Please note that these decisions were based on the old IDEA, not IDEA 2004.

³⁷⁴ 20 U.S.C. §1415(i)(3)(B) provides that “the court, in its discretion, may award reasonable attorneys’ fees as part of the costs – to a prevailing party who is the parent of a child with a disability.” The statute goes on to provide additional guidance about attorneys’ fees awards. 34 C.F.R. §300.517.

³⁷⁵ *Corcores v. Portsmouth N.H. School Dist.*, 779 F.Supp. 203, 206 (D.N.H. 1991) (hearing officer’s ability to award relief is co-extensive with the federal court’s).

³⁷⁶ *Arlington Central v. Murphy*, 548 U.S. ____ (2006)

IDEA 2004 now allows courts to consider awarding attorneys’ fees against parents of children with disabilities, but only in the same type of extreme circumstances that had been recognized in earlier case law.³⁷⁷ Courts may consider attorneys’ fees awards against parents only if the parents’ complaint was presented for “any improper purpose such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.”³⁷⁸ If parents file a complaint in order to improve services for their child, they will not have to pay the school’s attorneys’ fees even if they ultimately lose the case because they did not file the action for an “improper purpose.” This provision addresses the rare case in which a parent files a lawsuit simply to force the school to spend money, to get back at an administrator or to otherwise “harass” the school.

In addition, the court may award attorneys’ fees against the attorney of a parent of a child with disabilities if that attorney filed a complaint that was “frivolous, unreasonable or without foundation, or if the attorney continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.”³⁷⁹ While this section of IDEA 2004 is new, the idea behind is not: federal and state court rules already prohibit attorneys from filing frivolous lawsuits.

Although filing any kind of legal action involves some risk, if you believe you have good reasons for filing a lawsuit or due process complaint and are pursuing the action for the benefit of your child, you should not let the new attorneys’ fees provisions in the law stop you from going forward.

SIDE BY SIDE COMPARISON OF STATE COMPLAINT PROCEDURES AND DUE PROCESS HEARINGS

	Arizona Complaint Procedures	Due Process Hearings
Who can file a complaint?	An organization or an individual (does not need to be the parent).	The parent of a student with a disability, the student (if over age 18), or a public school system.
When must the complaint be filed?	Complaint must be received within <u>one year</u> from the date the violation of law occurred.	Complaint must be filed within <u>two years</u> of the date the party knew or should have known of the conduct that forms the basis of the complaint, unless an exception applies.
What types of issues can be raised in the	A public school has violated federal or state	Matters relating to the identification, evaluation or

³⁷⁷ The IDEA 2004 attorney’s fees provisions are found at 20 U.S.C. §1415(i)(3)(B) – (G).

³⁷⁸ 20 U.S.C. §1415(i)(3)(B)(i)(III); 34 C.F.R. §300.517.

³⁷⁹ 20 U.S.C. §1415(i)(3)(B)(i)(II). Parent attorneys are also potentially subject to attorneys’ fees awards if they file or continue a claim for an “improper purpose.” 20 U.S.C. §1415(i)(3)(B)(i)(III).

	Arizona Complaint Procedures	Due Process Hearings
complaint?	special education law.	educational placement of a child with disability, or the provision of a free appropriate public education.
How long does the process take?	The investigation will be completed within 60 days, with limited exceptions.	No more than 75 days – up to 15 days to hold resolution session, another 15 days for district to resolve, and 45 days for the hearing officer to hold the hearing and issue a written decision.
What remedies are available?	The State may order corrective action to remedy the legal violation, including compensatory education or monetary reimbursement for the child with a disability, and/or actions to provide appropriate services in the future for all children.	Due process hearing officers may order appropriate relief, including compensatory education for the child with a disability and/or ordering the public school to correct legal violations.
Is there a right to appeal?	No. Although there used to be a mechanism for appealing State complaint procedures to the U.S. Department of Education, that no longer exists. Under Arizona’s current procedures, a parent can write to the Arizona Department of Education after a complaint has been resolved, and the Department will decide whether to take additional steps regarding the matter.	Yes. A parent or the public school may appeal a due process hearing decision to state or federal court.

G. Filing Lawsuits

After an administrative law judge has issued a written decision resolving the issues raised in a due process hearing, that decision is “final.”³⁸⁰ At that point, either the parent or public school may appeal the decision by filing a lawsuit in federal or state court.³⁸¹ If a lawsuit is filed under IDEA 2004, the court will receive a record of the due process hearing. The court may allow the parties to add new evidence to support their positions, such as witness testimony or new documents. After hearing any additional evidence and considering the arguments of the parties, a federal or state judge has the authority to “grant such relief as the court determines is appropriate.”³⁸²

Q.5-39 What is the time frame for filing a lawsuit after a final due process hearing decision has been issued?

Under IDEA 2004, a party has 90 days to file a lawsuit appealing a due process hearing officer’s decision, or, “if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows.”³⁸³ Arizona law generally allows a party 35 days to file an appeal from a final administrative action, so appeals from due process hearing decisions should be filed within the 35 day time frame.³⁸⁴

If you may want to file a lawsuit if a due process hearing is not decided in your favor, consult with an attorney as early as possible. If you wait until after the case is decided, there may not be enough time for an attorney to review the case, file a complaint and adequately represent you.

Q.5-40 If I have a serious dispute with the school, can I go straight to court and file a lawsuit, or do I have to first request a due process hearing?

Parents (and schools) do not have the right to immediately file a lawsuit for special education disputes arising under IDEA 2004. A party must first file for a due process hearing or use another dispute resolution procedure before filing a lawsuit in federal or state court under IDEA 2004. In legal terms, parties must “exhaust their administrative remedies.”³⁸⁵ If you have a claim under another federal disability rights law (such as Section 504 or the Americans with Disabilities Act), you may also be required to first “exhaust administrative remedies” before filing a lawsuit.

³⁸⁰ A.R.S. §15-766 (F)(3).

³⁸¹ 20 U.S.C. §1415(i)(2)(A); A.R.S. §15-766(F)(3).

³⁸² 20 U.S.C. §1415(i)(2)(C).

³⁸³ 20 U.S.C. §1415(i)(2)(B); 34 C.F.R §300.516(b) states that the 90 days is after the date of the hearing officer’s decision or the decision of the state review official.

³⁸⁴ A.R.S. §12-904(A) (time period for appealing final administrative decisions to court).

³⁸⁵ 20 U.S.C. §1415(l).

While the exhaustion requirement applies to most IDEA lawsuits, there are some exceptions to the rule.³⁸⁶ Because this area of law is complex and depends on the facts of an individual case, consult an attorney if you are considering filing a lawsuit regarding your child’s special education.

Q.5-41 Can a court award money damages against a public school for violating IDEA 2004?

Whether a court can award money to parents of children with disabilities in an IDEA lawsuit depends on the purpose of the request. Under the IDEA, courts may award money to parents to reimburse them for special education expenses they have incurred or to provide compensatory education services to the child. However, the IDEA does not generally allow courts to award money damages in order to compensate for emotional pain and suffering.³⁸⁷

Apart from the IDEA, other state and federal laws may permit an award of money damages against a public school for actions (or inactions) relating to a child receiving special education. Money damages have been permitted in some cases involving physical injury to the child or particular egregious failures to comply with special education laws.³⁸⁸ Because the availability of a damages award depends heavily on the particular facts, consult a lawyer for legal advice if you have questions about what remedies might be available in your case.

Q.5-42 When can a court award attorneys’ fees and costs in an IDEA lawsuit?

Generally, courts can award attorneys’ fees and costs to parents if they win a lawsuit brought under IDEA 2004.³⁸⁹ Attorneys’ fees awards against parents or their attorneys are permitted only in extreme cases of bad conduct. Please see Q.5-38 for more information.

³⁸⁶ *Christopher S. v. Stanislaus County Office of Education*, 384 F.3d 1205 (9th Cir. 2004) (discussing IDEA exhaustion requirement generally and finding it inapplicable to that case, where parents challenged a district policy providing less instructional time to students with autism).

³⁸⁷ 20 U.S.C. §1415(i)(2)(C)(iii). Repeating the language of the old law, IDEA 2004 provides that, in an IDEA lawsuit, the court “shall grant such relief as the court determines is appropriate.” See *Ortega v. Bibb County School Dist.*, 397 F.3d 1321, 1325 (11th Cir. 2005) (“[W]e agree with our sister circuits that the IDEA’s primary purpose is to ensure a free appropriate public education, not to serve as a tort-like mechanisms for compensating personal injury.”) (internal quotations and citations omitted); *Witte v. Clark County School Dist.*, 197 F.3d 1271, 1275 (9th Cir. 2002) (ordinarily monetary damages is not relief available under the IDEA); *Robb v. Bethel School Dist.*, 308 F.3d 1047 (9th Cir. 2002) (discussing interplay between the type of relief requested and IDEA’s exhaustion requirement).

³⁸⁸ See *McCormick v. Waukegan School Dist.*, 374 F.3d 564 (7th Cir. 2004) (IDEA’s exhaustion requirement does not bar lawsuit seeking money damages for injuries resulting from physical education teacher’s disregard of student’s IEP).

³⁸⁹ 20 U.S.C. §1415(i)(3)(B) provides that “the court, in its discretion, may award reasonable attorneys’ fees as part of the costs – to a prevailing party who is the parent of a child with a disability.” An award of costs under IDEA 2004 may include expert witness fees, although courts are split on this issue. Compare *Murphy v. Arlington Central School Dist.*, 405 F.3d 332 (2th Cir. 2004) (expert witnesses consulting fees recoverable as costs under IDEA 2004) to *Goldring v. District of Columbia*, ---F.3d--- 2005 WL 1719586 (D.C. Cir. 2005) (reaching opposite result).

IV. Specific Issues and Questions Regarding Special Education Disputes and Parents' Rights

This section covers specific issues or questions that may arise relating to special education issues. The questions relate to the following areas:

- Discipline of children with disabilities
- Private schools, including tuition reimbursement
- Retaliation – parent concerns
- Section 504 complaints

Q.5-43 The school system said that my child with a disability violated the school code of conduct, and is subject to discipline. They are threatening to suspend my child from school or transfer him to alternative educational setting. Does my child have any legal protections?

Yes. The law recognizes that students with disabilities should not be disciplined for conduct beyond their control – in other words, for conduct resulting from a disability. Although IDEA 2004 significantly changed the old law and made it harder for parents to prove that discipline should not be imposed because of a child's disability, protections remain in place.

A full discussion of the IDEA 2004 discipline provisions is beyond the scope of this guide. Very generally, here are some of the key points of the law:³⁹⁰

- Although public schools may discipline children with disabilities according to school procedures, their authority is limited if the child's disability caused the conduct (*or was directly and substantially related to it*), or if the school's failure to implement the child's IEP caused the conduct that led to the disciplinary action.
- The protections also apply to children who have not yet been determined eligible for special education, if the school had "knowledge" that the child was a child with a disability before the behavior that led to the disciplinary action occurred.
- The discipline protections apply only if the school is seeking a "change of placement" – such as a suspension, expulsion or transfer to an alternative educational setting – for more than 10 days.³⁹¹
- The public school must provide educational services to allow a child with a disability to advance towards the child's IEP goals, even while the child is suspended or placed in a different setting.
- Within 10 days of the school's decision to change the placement of a child, the relevant members of the IEP team must meet with the parents to conduct a "manifestation determination." If the conduct for which the child is being disciplined is decided to be a "manifestation" of the child's disability, the student must be returned to her original placement (in other words, the suspension, expulsion or removal is not valid). Also, the school must implement or revise a

³⁹⁰ 20 U.S.C. §1415(k).

³⁹¹ 34 C.F.R. §300.530.

behavior intervention plan for the student to address the behavior that resulted in the discipline.³⁹²

- Schools have more authority to discipline or change the placement of students with disabilities if the conduct involves guns, illegal drugs, or if the student seriously injured another person.
- Parents can request a hearing if they disagree with the school’s decisions about the placement of their child, the manifestation determination, or whether maintaining the child’s current placement is substantially likely to result in injury to the child or others.

Arizona rules require school systems to have policies and procedures regarding the suspension and expulsion of students with disabilities.³⁹³ A sample letter requesting school policies is included in the Appendix of this guide. If a school is threatening to take disciplinary action against your child with a disability, contact the Center or a private attorney for legal advice on how the new law may apply in your child’s particular case.

Q.5-44 We voluntarily decided to place our child in a private school. What can we do if we have a special education dispute with the school district that serves our child’s private school?

Your dispute resolution options depend on the type of dispute.³⁹⁴ As discussed in [Chapter 3](#) of this guide, children with disabilities who voluntarily attend private schools have some rights under IDEA 2004, but not the same rights as children with disabilities attending public schools. The dispute resolution options available to private school parents mirror this distinction.

In general, private school children with disabilities have the same rights to be determined eligible for special education as public students do.³⁹⁵ The school district in which your child’s private school is located is responsible for identifying and evaluating children with disabilities attending the private school.³⁹⁶ If you disagree with the school district about whether your child is eligible for special education under IDEA 2004, you can request an independent educational evaluation or a due process hearing.³⁹⁷

If the dispute is about the quality or amount of special education services the local school district is providing your child, you may file a complaint with the Arizona Department of Education, but you may not request a due process hearing.³⁹⁸

³⁹² 34 C.F.R. §300.530.(e).

³⁹³ A.A.C. R7-2-401(O).

³⁹⁴ Parents have due process right over child find disputes and evaluation disputes, but not disputes over services. 34 C.F.R. §300.140.

³⁹⁵ For example, the school district where the school is located has no requirement to offer a free and appropriate education. 34 C.F.R. §137(a).

³⁹⁶ 20 U.S.C. §1412(a)(10)(A).

³⁹⁷ 34 C.F.R. §300.140 (due process is not applicable unless the school district evaluated the child under child find). See Section III of this chapter for more information for more information about dispute resolution procedures.

³⁹⁸ 34 C.F.R. §300.140(c); *Greenland School Dist. v. Amy N.*, 358 F.3d 150, 157 (1st Cir. 2004). [See Section III.E](#) of this Chapter for information on the State complaint procedure.

Another option may be to work with your private school administrators to resolve the issue. Private school officials may file a complaint with the Arizona Department of Education if a school district does not engage in “meaningful consultation” with private school officials or give “due consideration” to their views.³⁹⁹ Whether this process will help resolve a particular dispute will depend on the facts of the situation.

Q.5-45 If I want to transfer my child with a disability from a public to a private school without the school’s agreement, what do I have to do in order to get the public school to reimburse me for private school tuition?

A public school is potentially liable for private school tuition only if it first refused to provide a free and appropriate public education to a child with a disability.⁴⁰⁰ If the public school offers an appropriate education for a child with a disability, but the parents elect to place the child in a private school anyway, the public school is not liable for the cost of the child’s education.⁴⁰¹ On the other hand, if a public school fails to offer an appropriate education, parents may transfer their child to a better school and obtain reimbursement for private school tuition in appropriate cases.⁴⁰² The conditions for reimbursement are:

- (1) The public school failed to provide a free appropriate public education in a timely manner before the child was enrolled in a private school.
- (2) The private school placement is appropriate for the child, even if it does not meet State standards.
- (3) The parents informed the public school in writing that they were rejecting the public school’s proposed placement, stating their concerns with the school’s placement and informing the school that they intend to enroll their child in a private school at public expense. This notice to the school must be given either at the most recent IEP meeting the parents attended before removing their child from public school, or 10 business days before removing their child from public school.⁴⁰³

Reimbursement may be reduced or denied if:

- (1) The public school wanted to evaluate the child before the parents removed the child from public school, but the parents did not make the child available for evaluation

³⁹⁹ 20 U.S.C. §1412(a)(10)(A)(v).

⁴⁰⁰ This differs from the situation where the IEP team (including the parents) decides that a child should attend a private school in order to receive an appropriate education. In that case, the public school must pay for tuition and provide all other services and rights as if the student were attending the public school. 20 U.S.C. §1412(a)(10)(B).

⁴⁰¹ 20 U.S.C. §1412(a)(10)(C)(i); 34 C.F.R. §300.137(a).

⁴⁰² 20 U.S.C. §1412(a)(10)(C)(ii); 34 C.F.R. §§300.148(a), (b), (c), and(d). Requiring a public school to reimburse parents for private school tuition is not a financial penalty. As the Supreme Court has recognized, reimbursement “merely requires the [public school] to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper IEP.” *Burlington School Committee v. Dept. of Education*, 471 U.S. 359, 370-1 (1985).

⁴⁰³ 34 C.F.R. §300.148(e).

- (2) The parents acted unreasonably,
- (3) If parents failed to give the school notice and the parents are not literate or cannot write English, or
- (4) If the parents failed to give the school notice and providing notice would likely resulted in serious emotional harm to the child.⁴⁰⁴

Reimbursement must not be reduced or denied to a parent if:

- (1) The school prevented the parents from providing notice,
- (2) Parents did not receive notice of procedural safeguards, or
- (3) If providing notice to the school would likely cause the child physical harm.⁴⁰⁵

Because tuition reimbursement is considered an “equitable remedy” – a remedy that is fair under the circumstances - the statute allows for exceptions to the requirements noted above.⁴⁰⁶ For instance, parents will not penalized for failing to notify the public school of their intent to transfer their child to private school if the parents are illiterate, or if the school prevented them from giving notice in the first place. These notice requirements will also not apply if enforcing them would have harmed the child. The hearing officer or court deciding whether or not parents should be reimbursed for private school tuition will look at the facts of the individual case. In light of the financial risk involved, we recommend that parents obtain legal advice before removing their child from a public school to a private school setting if they wish to obtain reimbursement for private school expenses from the public school.

Q.5-46 Will the public school retaliate against my child if I file a due process complaint or take other legal steps to improve special education services for my child?

Our experience is that school personnel typically do not retaliate against children whose parents assert their legal rights. While we obviously cannot offer any guarantees, it would be both illegal and unprofessional for a teacher or school administrator to mistreat your child because you have filed a legal action on his behalf.⁴⁰⁷

⁴⁰⁴ 20 U.S.C. §1412(a)(10)(C)(ii) – (iii); 34 C.F.R. §300.148(d).

⁴⁰⁵ 34 C.F.R. §300.148(e).

⁴⁰⁶ 20 U.S.C. §1412(a)(10)(C)(iv); 34 C.F.R. §300.148(e).

⁴⁰⁷ Section 504 of the Rehabilitation Act – which applies to children with disabilities under IDEA 2004 – prohibits retaliation against a person who has asserted their disability law rights. [The regulation implementing Section 504 at 34 C.F.R. §104.61 incorporates by reference the procedural provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., including the prohibitions on retaliation against persons who have sought to protect rights secured under these laws contained in the Title VI regulation at 34 C.F.R. §100.7(e).] In addition, teachers and administrators who hold certificates issued by the Arizona State Board of Education could have disciplinary action taken against them for engaging in “unprofessional and immoral conduct.” Under Arizona rules, it is considered “unprofessional and immoral” for a certificate holder to: “discriminate against or harass any pupil ... on the basis of ... disability.” A.A.C. R7-2-1308(B)(1). Retaliating against a student with a disability because the student’s parent has asserted the student’s rights under IDEA 2004 would constitute illegal disability discrimination. Teachers and administrators may also not “engage in a pattern of conduct for the sole purpose or with the sole intent or embarrassing or disparaging a pupil” or engage in conduct which would “discredit the teaching profession.” A.A.C. R7-2-1308(B)(4), (15).

If you are concerned about how school personnel might react to a due process complaint or to another type of legal action, first try to resolve the dispute informally. Sometimes problems can be solved through a phone call or by meeting with the right person in the school system. If that does not work, mediation is not considered an adversarial process and may be worth trying before taking legal action.

Q.5-47 My child has a disability, but is eligible for services under Section 504 rather than IDEA 2004. If I have a dispute with the school regarding my child’s Section 504 rights, how can I resolve the dispute?

School systems have a great deal of flexibility to establish their own procedures for resolving complaints regarding Section 504 services.⁴⁰⁸ Your school system probably has a “Section 504 complaint” process overseen by a “Section 504 coordinator.” If the public school has not clearly notified you of your rights under Section 504, we recommend that you contact the Section 504 coordinator (if you know who it is) for more information or request a copy of the school system’s policies and procedures for dispute resolution processes under Section 504. A sample letter is included in the Appendix of this guide.

In addition, parents may file a complaint with the U.S. Department of Education’s Office for Civil Rights for violations of their children’s rights under Section 504. You do not need to file a complaint at the school system level before filing a complaint with the Office for Civil Rights. Complaints alleging violations of Section 504 must generally be filed within 180 days of the conduct, unless the Office for Civil Rights extends the deadline for good cause. To obtain a complaint form or for more information about Section 504 complaints, contact:

Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-1100
1-800-421-3481
FAX: (202) 245-6840; TDD: (877) 521-2172
E-mail: OCR@ed.gov
Web: www.ed.gov/about/offices/list/ocr/index.html

⁴⁰⁸ The Section 504 regulations require schools to adopt a system of “procedural safeguards” for actions regarding the identification, evaluation, or educational placement of students with disabilities. 34 C.F.R. §104.36 The procedural safeguards must include:

- notice
- an opportunity for parents to examine relevant records
- an impartial hearing with an opportunity for participation by the parents and legal representation, and
- review procedures. Schools may use their IDEA procedural safeguard procedures to meet Section 504 requirements, but are not required to do so. 34 C.F.R. §104.36.

**Arizona Center for Disability Law
Protection & Advocacy System for Arizona**

Understanding Your Child's Educational Rights



APPENDIX



**A Self-Advocacy Guide
For Parents of Children with Special Needs**

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INDEX TO APPENDIX TO ARIZONA CENTER FOR DISABILITY LAW SPECIAL EDUCATION
LAW SELF-ADVOCACY GUIDE

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12. Requesting written notice (Chapter 4, Q.4-21; Chapter 5, Q.5-14)
13. Requesting an independent educational evaluation (Chapter 5, Q.5-19)

ATTACHMENT B Eligibility Categories for Specific Types of Disabilities
(Chapter 2, Q.2-4 through Q.2-7)

ATTACHMENT C Comparison chart of IDEA 2004 and Section 504
(Chapter 1, Q.1-4 through Q.1-7)

ATTACHMENT D Time Frames under IDEA 2004

ATTACHMENT E Statewide Tests for Students with Disabilities
(Chapter 4, Q.4-38 through Q.4-40)

ATTACHMENT F Information Regarding Family Educational Rights Privacy Act (FERPA)
(Chapter 5, Q.5-16)

ATTACHMENT G Arizona Due Process Hearing Procedures Under IDEA 2004 (Chapter 5,
Q.5-30 through Q.5-38)

ATTACHMENT H Acronym List

Appendix - Sample letters

Attachment A - SAMPLE LETTERS

1. SAMPLE LETTER REQUESTING AN INITIAL EVALUATION

[Parent Name/Contact Information]

[Date]

_____, Director of Special Education
[School District or Charter School]

Re: Request for Initial Evaluation

Dear _____:

I am writing to request that the __[Name of School District or Charter School]__ conduct a full initial evaluation to determine whether my child, __[Name of Child]__, is eligible for special education and to determine his/her educational needs.

[OPTIONAL – Here, you might want to describe what your child’s disability is or may be, or what kind of evaluation(s) you believe are necessary. An example: “My child has been diagnosed with Down Syndrome, and I suspect he may also have a speech disorder.”]

In the evaluation process, please consider whether my child is a “child with a disability” as defined by IDEA 2004 or Section 504 of the Rehabilitation Act.

You may consider this letter as parental consent to conduct the evaluation. If you need my signature on any particular forms, please send those to me as soon as possible.

I will look forward to hearing from you regarding the evaluation arrangements. The best way to reach me is __[by phone and/or e-mail, provide specific number and/or address]__. Thank you.

Sincerely,

Parent

2. SAMPLE LETTER REQUESTING SCHOOL POLICIES

[Parent Name/Mailing Address]

[Date]

Custodian of Records

[School District or Charter School]

Re: Public Records Request

Dear Custodian:

Please provide me with a copy of all policies and procedures of the [Name of School District or Charter School] related to:

[Select which topic(s) you want information on and draft letter accordingly]

- The identification and referral of all children with disabilities, aged birth through 21, including children with disabilities attending private schools and home schools.
- The initial evaluation (and/or re-evaluation) of children to determine eligibility for special education.
- Preschool programs for children with disabilities, including policies and procedures for children who are transitioning from the Arizona Early Intervention Program to public school preschool programs.
- Children with disabilities who voluntarily attend private schools, including policies and procedures regarding how the school district provides special education and related services to those children.
- The development, implementation, review and revision of IEPs.
- Procedural safeguards, including information on any dispute resolution mechanisms that are available for parents and/or students attending the [Name of School District or Charter School] .
- Suspension and expulsion of students with disabilities.
- The evaluation and education of children with disabilities under Section 504 of the Rehabilitation Act of 1973 and its regulations, including all policies, procedures and standards for [fill in any particular area of interest – i.e., “initial evaluation of children to determine eligibility under Section 504,” “development and revision of 504 accommodation plans,” “school district procedures for resolving disputes relating to children with disabilities under Section 504”] .
- Special education.

Thank you for promptly responding to this public records request in accordance with Arizona law. If it will take more than a few days to provide these records, please let me know.

Sincerely,

Parent

3. SAMPLE LETTER REQUESTING EVALUATION REPORTS BEFORE ELIGIBILITY DETERMINATION/IEP MEETING

[Parent Name/Mailing Address]

[Date]

_____, Director of Special Education
[School District or Charter School]

Re: [Your Child]

Dear _____:

The __[Name of School District or Charter School]__ has scheduled a meeting to discuss my child's eligibility for special education on __[Date of Meeting]__. In order to fully participate in that meeting, I would like to review the results of my child's evaluation in advance. Please provide me with a copy of all of my child's evaluation results, including all tests, procedures and records regarding my child that will be provided to school personnel attending the meeting, by _____.

If you have any questions, the best way to reach me is __[by phone and/or e-mail, provide specific number and/or address]__. Thank you.

Sincerely,

Parent

4. SAMPLE LETTER REGARDING SCHEDULING OF IEP MEETING

[Parent Name/Contact Information]

[Date]

_____, Director of Special Education
[School District or Charter School]

Re: [Your Child's Name and School]

Dear _____:

I understand that the [Name of School District or Charter School] will be scheduling the annual IEP meeting for my child, [Name of Child] , in the near future. To assist your staff in scheduling the meeting for a time when I/we can attend, I am writing to let you know what dates and times are most convenient. At this point, these dates and times will probably work best:

[List dates that are open, time frames that are convenient and/or dates and times when you are not available]

Please let me know as soon as the IEP meeting is scheduled, so I can confirm that I am able to attend. If you have any questions, the best way to reach me is [by phone and/or e-mail, provide specific number and/or address] . Thank you.

Sincerely,

Parent

5. SAMPLE LETTER REQUESTING RECORDS BEFORE IEP MEETING

[Parent Name/Mailing Address]

[Date]

_____, Director of Special Education
[School District or Charter School]

Re: [Your Child's Name and School]

Dear _____:

An IEP meeting regarding my child, [Name of Child], a student at [Name of School], is scheduled for [Date and Time of IEP Meeting].

As a parent, it is important for me to have a full understanding of my child's educational needs so that I can meaningfully contribute to the IEP team meeting. In order to prepare for the IEP meeting, I would appreciate it if you would send me copies of the following records:

[Select which records you want and draft letter accordingly]

- My child's current IEP.
- My child's prior IEPs for the last () school years.
- All progress reports regarding my child for the ____ school year(s).
- Copies of the results of any standardized tests given to my child during the ____ school year(s), including state and district-wide assessments and any reading assessments. If accommodations were provided to my child during the tests, please provide records identifying the accommodations.
- Copies of the results of any evaluations conducted regarding my child, including all tests, procedures, and records regarding my child that will be provided to school personnel attending the IEP meeting.
- Policies and procedures for developing, reviewing and implementing IEPs of the [Name of School District or Charter School].

Please send these records to me at least one week before the IEP meeting so that I have enough time to review them beforehand. If you have any questions about this request, the best way to reach me is [by phone and/or e-mail, provide specific number and/or address]. Thank you.

Sincerely,

Parent

6. SAMPLE LETTER REQUESTING EDUCATIONAL RECORDS

[Parent Name/Mailing Address]

[Date]

_____, Director of Special Education
[School District or Charter School]

Re: [Your Child's Name and School]

Dear _____:

I am the parent of ___[Name of Child]___, age ____. My child currently receives special education services and is enrolled in the ___ grade at ___[Name of School]___.

OPTION #1: Please send me copies of these portions of my child's educational records:

[Identify what records you want and for what time frame or school years – i.e., current/prior IEPs, progress reports, standardized test results, evaluation reports, etc..]

I would appreciate receiving these records within a week from today's date. If you expect that it will take longer to respond to this request or if there is a fee involved, please let me know right away.

OPTION #2: I would like to inspect all of my child's educational records, including records maintained by both the school and the district. Please contact me so we can make the necessary arrangements.

If you have any questions about this request, the best way to reach me is ___[by phone and/or e-mail, provide specific number and/or address]___. Thank you.

Sincerely,

Parent

7. SAMPLE LETTER REQUESTING A RE-EVALUATION

[Parent Name/Contact Information]

[Date]

_____, Director of Special Education
[School District or Charter School]

Re: [Your Child's Name and School]

Dear _____:

I am the parent of ____[Name of Child]____, age ____, who attends ____[Name of School]____. My child receives special education services because of his/her ____[Type of Disability]____.

I am writing to request that the ____[Name of School District or Charter School]____ conduct a complete re-evaluation of my child in accordance with IDEA 2004 and its regulations.

[If appropriate, add one or both of the following sentences (as modified)]:

- I believe a re-evaluation is needed to gain a better understanding of my child's current academic and functional abilities, so that the IEP team can plan appropriate goals and services for the next school year.
- I believe a re-evaluation is needed to determine if my child would benefit from assistive technology. Specifically, I understand that ____[Assistive Technology Device or Service]____ can improve functioning for children with ____[Your Child's Type of Disability]____.

The best way to reach me is ____[by phone and/or e-mail, provide specific number and/or address]____. Thank you.

Sincerely,

Parent

8. SAMPLE LETTER REQUESTING A REVIEW OF AN IEP

[Parent Name/Contact Information]

[Date]

_____, Director of Special Education
[School District or Charter School]

Re: [Your Child's Name and School]

Dear _____:

I am the parent of [Name of Child], age , who attends [Name of School]. My child receives special education services because of his/her [Type of Disability].

I am writing to request that the [Name of School District or Charter School] schedule an IEP team meeting in order to review my child's current IEP, and revise it if appropriate.

My understanding is that Arizona rules require that this IEP review meeting be held within 15 school days from the date you receive this request. To help with the scheduling, here are the dates and times that I expect to be available in the next few weeks:

[List dates and times that you available, or specify dates/times when you are not available to attend a meeting]

If you have any questions, the best way to reach me is [by phone and/or e-mail, provide specific number and/or address]. Thank you.

Sincerely,

Parent

9. SAMPLE LETTER REQUESTING PEER-REVIEWED RESEARCH

[Parent Name/Contact Information]

[Date]

_____, Director of Special Education
[School District or Charter School]

Re: [Your Child's Name and School]

Dear _____:

I am the parent of [Name of Child], age , who attends [Name of School]. My child receives special education services because of his/her [Type of Disability].

At the last IEP meeting, school personnel proposed [identify specific type of special education program, methodology or related service] for my child. I understand that IDEA 2004 requires schools to provide special education and related services that are based on peer-reviewed research, to the extent practicable.

This letter is to request that you provide me with copies of the peer-reviewed research that supports the school's proposal for my child. Please include copies of all peer-reviewed research articles that apply, and if copies of the articles themselves are not available, citations to the journals or resources where the peer-reviewed research can be located.

If no peer-reviewed research supports the school's proposal for my child, please let me know.

Thank you.

Sincerely,

Parent

10. SAMPLE LETTER REQUESTING INFORMATION ON TEACHER QUALIFICATIONS

[Parent Name/Contact Information]

[Date]

_____, Principal/Building Administrator
[School or Charter School]

Re: [Name of Teacher]

Dear Principal/Administrator _____:

I am the parent of __[Name of Child]__, who is in the ___ grade at __[Name of School]__.

_____[Name of Teacher]_____, is one of my child's teachers. I am writing to learn more about the professional qualifications of __[Name of Teacher]__ and whether s/he meets the standards for "highly qualified" teachers as described in federal law. _____[Describe what type of instruction the teacher provides, i.e., "Ms. Brown teaches in the self-contained classroom for children with emotional disorders" "Mr. Hatch teaches 2nd grade, " "Ms. Smith teaches 8th grade math"]_____.

Please answer the following questions:

1. Is _____[Name of Teacher]_____ highly qualified to teach _____[Type of Instruction]_____ ?
2. If not, will _____[Name of Teacher]_____ meet those standards by the end of the 2005-2006 school year?
3. If _____[Name of Teacher]_____ is not highly qualified at this time, when do you expect the teacher to meet the highly qualified standard for the type of instruction the teacher provides? What additional training or coursework is needed?
4. What are the professional qualifications of _____[Name of Teacher]_____ to teach _____[Type of Instruction]_____? Please describe the type of teaching certificate(s) and/or endorsements held by the teacher as well as the teacher's educational background (including bachelor's major, graduate coursework or graduate degrees). Please describe any other State qualifications the teacher has met for the type of instruction the teacher provides.
5. Is _____[Name of Teacher]_____ teaching under an emergency teaching certificate?

If you expect that it will take longer than a week to answer these questions, please let me know. The best way to reach me is _____[by phone and/or e-mail, provide specific number and/or address]_____.

Thank you.

Sincerely,
Parent

11. SAMPLE LETTER REQUESTING PROCEDURAL SAFEGUARDS NOTICE

[Parent Name/Mailing Address]

[Date]

_____, Director of Special Education
[School District or Charter School]

Re: [Your Child's Name and School]

Dear _____:

I am the parent of __[Name of Child]__, age ____, who attends __[Name of School]__.

This letter is to request a copy of the procedural safeguards notice of the __[Name of School District or Charter School]__ explaining the rights of parents and students with disabilities under IDEA 2004. Please provide me with the procedural safeguards notice within three business days of the date of this letter.

Thank you.

Sincerely,

Parent

12. SAMPLE LETTER REQUESTING WRITTEN NOTICE

[Parent Name/Mailing Address]

[Date]

_____, Director of Special Education
[School District or Charter School]

Re: [Your Child's Name and School]

Dear _____:

I am the parent of ___[Name of Child]___, age ____, who attends ___[Name of School]___. An IEP meeting regarding my child was held on ___[Date]___.

At the IEP meeting, school personnel ___proposed/refused___ my request for ___(*specifically indicate what was proposed or refused – i.e., inclusion in a regular education class, additional supports in the classroom, assistive technology device, a related service such as occupational therapy*)___.

Please provide me with written notice regarding this refusal, as required by IDEA 2004 and its regulations, as well as Arizona state law.

Thank you.

Sincerely,

Parent

13. SAMPLE LETTER REQUESTING INDEPENDENT EDUCATIONAL EVALUATION

[Parent Name/Contact Information]

[Date]

_____, Director of Special Education
[School District or Charter School]

Re: [Your Child]

Dear _____:

I am the parent of __[Name of Child]__, age ____, who attends __[Name of School]__.

__[Name of School District or Charter School]__ recently conducted an evaluation of my child that was performed by __[Name of Evaluator]__. I disagree with this evaluation. This letter is to request that __[Name of School District or Charter School]__ provide an independent educational evaluation for my child, as required by IDEA 2004 and its regulations.

Please provide me with the necessary information about the next steps for scheduling the independent educational evaluation, including a copy of your agency criteria. If you have any questions, the best way to reach me is __ [by phone and/or e-mail, provide specific number and/or address]__. Thank you.

Sincerely,

Parent

Attachment B - ELIGIBILITY CATEGORIES FOR SPECIFIC DISABILITIES

The following chart summarizes the different categories of disabilities under Arizona law, which corresponds to federal law. It states how Arizona law defines each disability category, and describes the requirements for the initial evaluation to determine if a child may meet the criteria for a particular category. In order to be eligible for special education, a child must meet the criteria for a disability category and need special education as a result of the disability.

This chart also includes a list of the types of diagnoses that may qualify a child for special education in a specific disability category. Whether a child qualifies for special education and in what disability category depends on the individual, and especially how the disability affects the child in a school setting. For more information, please refer to [Chapter 2, Q.2-4 through Q.2-7](#) of this guide.

Federal special education category ⁴⁰⁹	Arizona definition of special education category ⁴¹⁰	Arizona evaluation requirements ⁴¹¹	Diagnoses that may apply to the category
Autism	"Autism" means a developmental disability that significantly affects verbal and nonverbal communication and social interaction and that adversely affects educational performance. Characteristics include irregularities and impairments in communication, engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines and unusual responses to sensory experiences. Autism does not include children with characteristics of emotional disability as defined in this section.	No specific requirements.	<ul style="list-style-type: none"> - Autism - Asperger’s Syndrome - Pervasive Developmental Disorder/Not Otherwise Specified
Emotional Disability	<p>"Emotional disability":</p> <p>(a) Means a condition whereby a child exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects the child's performance in the educational environment:</p> <p>(i) An inability to learn which cannot be explained by intellectual, sensory or health factors.</p> <p>(ii) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.</p> <p>(iii) Inappropriate types of behavior or feelings</p>	Verification of a disorder by a psychiatrist, licensed psychologist, or a certified school psychologist.	<ul style="list-style-type: none"> - Depression - Bipolar Disorder -Schizophrenia -Mood Disorder -Post-traumatic Stress Disorder (PTSD) -Oppositional-Defiant Disorder (ODD)

⁴⁰⁹ 20 U.S.C. §1401(3)(A)(i).

⁴¹⁰ A.R.S. §15-761.

⁴¹¹ A.A.C. R2-7-401(E)(6).

Federal special education category ⁴⁰⁹	Arizona definition of special education category ⁴¹⁰	Arizona evaluation requirements ⁴¹¹	Diagnoses that may apply to the category
	<p>under normal circumstances.</p> <p>(iv) A general pervasive mood of unhappiness or depression.</p> <p>(v) A tendency to develop physical symptoms or fears associated with personal or school problems.</p> <p>(b) Includes children who are schizophrenic but does not include children who are socially maladjusted unless they are also determined to have an emotional disability as determined by evaluation as provided in section 15-766.</p>		
Hearing impairment	<p>"Hearing impairment" means a loss of hearing acuity, as determined by evaluation pursuant to section 15-766, which interferes with the child's performance in the educational environment and requires the provision of special education and related services.</p>	<p>(1) An audiological evaluation by an audiologist, and</p> <p>(2) An evaluation of communication/language proficiency.</p>	
Mental Retardation	<p>"Mental retardation" means a significant impairment of general intellectual functioning that exists concurrently with deficits in adaptive behavior and that adversely affects the child's performance in the educational environment.</p> <p>"Mild mental retardation" means performance on standard measures of intellectual and adaptive behavior between two and three standard deviations below the mean for children of the same age.</p> <p>"Moderate mental retardation" means performance on standard measures of intellectual and adaptive behavior between three and four standard deviations below the mean for children of the same age.</p>	<p>No specific requirements.</p>	<p>Down Syndrome</p>
Multiple Disabilities	<p>"Multiple disabilities" means learning and developmental problems resulting from multiple disabilities as determined by evaluation pursuant to section 15-766 that cannot be provided for adequately in a program designed to meet the needs of children with less complex disabilities. Multiple disabilities include any of the following conditions that require the provision of special education and related services:</p> <p>(a) Two or more of the following conditions:</p>	<p>No specific requirements.</p>	<p>- Chromosomal disorders</p>

Federal special education category ⁴⁰⁹	Arizona definition of special education category ⁴¹⁰	Arizona evaluation requirements ⁴¹¹	Diagnoses that may apply to the category
	(i) Hearing impairment. (ii) Orthopedic impairment. (iii) Moderate mental retardation. (iv) Visual impairment. (b) A child with a disability listed in subdivision (a) of this paragraph existing concurrently with a condition of mild mental retardation, emotional disability or specific learning disability.		
Multiple Disabilities – Severe Sensory Impairment	"Multiple disabilities with severe sensory impairment" means multiple disabilities that include at least one of the following: (a) Severe visual impairment or severe hearing impairment in combination with another severe disability. (b) Severe visual impairment and severe hearing impairment.	No specific requirements.	
Orthopedic Impairment	"Orthopedic impairment" means one or more severe orthopedic impairments and includes those that are caused by congenital anomaly, disease and other causes, such as amputation or cerebral palsy, and that adversely affect a child's performance in the educational environment.	Verification of the physical disability by a doctor of medicine.	- Cerebral Palsy - Muscular Dystrophy
Other health impairment	"Other health impairments" means limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, due to chronic or acute health problems which adversely affect a pupil's educational performance.	Verification of a health impairment by a doctor of medicine.	- Attention Deficit Disorder (ADD) - Attention Deficit Hyperactivity Disorder (ADHD) - Epilepsy/seizure disorders -Asperger's Syndrome
Preschool Moderate Delay	"Preschool moderate delay" means performance by a preschool child on a norm-referenced test that measures <i>at least one and one-half, but not more than three</i> , standard deviations below the mean for children of the same chronological age in two or more of the following areas:	No specific requirements.	

Federal special education category ⁴⁰⁹	Arizona definition of special education category ⁴¹⁰	Arizona evaluation requirements ⁴¹¹	Diagnoses that <i>may</i> apply to the category
	<p>(a) Cognitive development.</p> <p>(b) Physical development.</p> <p>(c) Communication development.</p> <p>(d) Social or emotional development.</p> <p>(e) Adaptive development.</p> <p>The results of the norm-referenced measure must be corroborated by information from a comprehensive developmental assessment and from parental input, if available, as measured by a judgment based assessment or survey. If there is a discrepancy between the measures, the evaluation team shall determine eligibility based on a preponderance of the information presented.</p>		
Preschool Severe Delay	<p>"Preschool severe delay" means performance by a preschool child on a norm-referenced test that measures <i>more than three</i> standard deviations below the mean for children of the same chronological age in one or more of the following areas:</p> <p>(a) Cognitive development.</p> <p>(b) Physical development.</p> <p>(c) Communication development.</p> <p>(d) Social or emotional development.</p> <p>(e) Adaptive development.</p> <p>The results of the norm-referenced measure must be corroborated by information from a comprehensive developmental assessment and from parental input, if available, as measured by a judgment based assessment or survey. If there is a discrepancy between the measures, the evaluation team shall determine eligibility based on a preponderance of the information presented.</p>	No specific requirements.	
Preschool Speech/	"Preschool speech/language delay" means performance by a preschool child on a norm-	No specific requirements.	

Federal special education category ⁴⁰⁹	Arizona definition of special education category ⁴¹⁰	Arizona evaluation requirements ⁴¹¹	Diagnoses that may apply to the category
Language Delay	referenced language test that measures at least one and one-half standard deviations below the mean for children of the same chronological age or whose speech, out of context, is unintelligible to a listener who is unfamiliar with the child. Eligibility under this paragraph is appropriate only if a comprehensive developmental assessment or norm-referenced assessment and parental input indicate that the child is not eligible for services under another preschool category. The evaluation team shall determine eligibility based on a preponderance of the information presented.		
Specific Learning Disability	<p>"Specific learning disability":</p> <p>(a) Means a specific learning disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations.</p> <p>(b) Includes such conditions as perceptual disabilities, minimal brain dysfunction, dyslexia and aphasia.</p> <p>(c) Does not include learning problems which are primarily the result of visual, hearing, motor or emotional disabilities, of mental retardation or of environmental, cultural or economic disadvantage.</p> <p><u>NOTE:</u> The federal statutory definition, upon which the Arizona definition is based, did not change in IDEA 2004.</p>	<p>Current Arizona regulations require that the initial evaluation for a specific learning disability include a determination of whether the discrepancy between achievement and ability meet the school systems criteria. The 2006 regulations require a finding that: (1) the child is not achieving in one or more of several categories (oral expression, mathematics, etc.) and the child was provided with an appropriate learning experience and instruction for the child's age and grade level; (2) with the use of scientific, researched-based intervention, the child does not make sufficient progress to meet age or grade level standard; and (3) the determination of failure to achieve adequately cannot be a result of another disability (vision, hearing, limited English proficiency, etc.).⁴¹²</p>	<p>-Central auditory processing disorder -Dyslexia -Dysgraphia -Dyscalculia - Non-verbal Learning Disability</p>
Speech/ Language	"Speech/language impairment" means a communication disorder such as stuttering,	An evaluation by a certified speech/ language therapist.	- Apraxia

⁴¹² 34 C.F.R. §300.309(a)(1)-(3).

Federal special education category ⁴⁰⁹	Arizona definition of special education category ⁴¹⁰	Arizona evaluation requirements ⁴¹¹	Diagnoses that <i>may</i> apply to the category
Impairment	impaired articulation, severe disorders of syntax, semantics or vocabulary, or functional language skills, or voice impairment, as determined by evaluation pursuant to section 15-766, to the extent that it calls attention to itself, interferes with communication or causes a child to be maladjusted.	For students whose speech impairments appear to be limited to articulation, voice or fluency problems, the written evaluation may be limited to: (1) an audiometric screening within the past calendar year (2) A review of academic history and classroom functioning (3) An assessment of the speech problem by a speech therapist, or (4) An assessment of the student's functional communication skills.	
Traumatic Brain Injury	"Traumatic brain injury": (a) Means an acquired injury to the brain that is caused by an external physical force and that results in total or partial functional disability or psychosocial impairment, or both, that adversely affects educational performance. (b) Applies to open or closed head injuries resulting in mild, moderate or severe impairments in one or more areas, including cognition, language, memory, attention, reasoning, abstract thinking, judgment, problem solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, information processing and speech. (c) Does not include brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.	Verification of the injury by a doctor of medicine.	
Visual Impairment	"Visual impairment" means a loss in visual acuity or a loss of visual field, as determined by evaluation pursuant to section 15-766, that interferes with the child's performance in the educational environment and that requires the provision of special education and related services.	Verification of a visual impairment by an ophthalmologist or optometrist.	

Attachment C - COMPARISON CHART – IDEA 2004 and SECTION 504

Two key laws define the educational rights of children with disabilities – the “Individuals with Disabilities Education Improvement Act of 2004,” 20 U.S.C. §1400, *et. seq.* (“IDEA 2004”) and Section 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. §794 (“Section 504). Although this guide primarily discusses IDEA 2004, Section 504 also provides important protections to children with disabilities. For more information on the two laws, please see Chapter 1, Q.1-4 through Q.1-7.

Issue	IDEA 2004	Section 504
Main purpose of the law	To ensure that children with disabilities receive a free appropriate public education.	To ensure that public schools do not discriminate against children on the basis of their disability.
<i>Who is protected by the law</i>	A “child with a disability”	A “child with a disability”
How “child with a disability” is defined	A child who: *has one of the types of disabilities recognized in the law, ⁴¹³ and *needs special education and related services because of the disability.	- A child who has a physical or mental impairment that substantially limits one or more major life activities, or - A child who has a “record” of a physical or mental impairment that substantially limits one or more life activities, or - A child who is “regarded” as having a physical or mental impairment that substantially limits a life activity, even though the child does not actually have a current disability. ⁴¹⁴
Who the law applies to (who must follow the law)	All Arizona public schools, including charter schools.	All entities that receive federal funds, including all Arizona public schools and charter schools.
Services children with disabilities can receive under the law	- Special education (specially designed instruction to meet the unique needs of a child with a disability) - Related services (services a child needs to benefit from special education). ⁴¹⁵	- Free and appropriate educational services designed to meet the individual needs of children with disabilities to the same extent as the needs of children without disabilities are met. - This could include special education and related aids and services, or education in regular classrooms with accommodations. ⁴¹⁶
How eligibility under the law is established	By obtaining a full and initial evaluation of the child to determine if the child is a “child with a	By obtaining a full and initial evaluation of the child to determine if the child is a “child with a disability” as defined by

⁴¹³ 20 U.S.C. §1401(3); A.R.S. §15-761(3) (defining child with a disability); A.R.S. §15-761(5) (eligibility for special education).

⁴¹⁴ 34 C.F.R. §104.3.

⁴¹⁵ 20 U.S.C. §1401(29) (definition of special education), §1401(26) (definition of related services).

⁴¹⁶ 34 C.F.R. §104.33(b).

Issue	IDEA 2004	Section 504
	disability” as defined by IDEA 2004. ⁴¹⁷	Section 504. ⁴¹⁸
How services are delivered to a child with a disability	Through an Individualized Educational Program (IEP) that addresses the child’s educational needs, goals and what special education and related services are required. ⁴¹⁹	Through a “504 plan” or “504 accommodation plan” that specifies the accommodations and/or services that will be implemented by school personnel so that students will benefit from their educational program. ⁴²⁰
How the legal rights of children with disabilities and their parents are protected.	A series of “procedural safeguards” allow parents to obtain information and provide ways of resolving disputes with school systems. ⁴²¹	A series of “procedural safeguards” that includes rights to written notice, to examine records and to an impartial hearing. ⁴²² Section 504 regulations give school systems flexibility in designing their own procedures.

⁴¹⁷ 20 U.S.C. §1414(a)(1)(A) (schools must conduct full and initial evaluations before providing special education services).

⁴¹⁸ 34 C.F.R. §104.35 (evaluation must occur before providing special education services).

⁴¹⁹ An “IEP” is defined in 20 U.S.C. §1414(d)(1) and discussed throughout §1414. Please see Chapter 4 of the guide for information about IEPs.

⁴²⁰ A.A.C. R7-2-620(A)(2).

⁴²¹ 20 U.S.C. §1415 and Chapter 5 of this guide for a discussion of the various procedural rights provided in IDEA 2004.

⁴²² 34 C.F.R. §104.36.

Attachment D - TIME FRAMES UNDER IDEA 2004

This chart summarizes some time frames that apply at various points in the special education process (to the extent known in September, 2005).

Issue/Situation	Applicable Time Frame	Comments/References
Time for a public school to complete an initial evaluation to see if a child is eligible for special education after parent consent given.	60 days	20 U.S.C. §1414(a) (C)(i)(I); Chapter 2, Q.2-2 of this guide.
When an IEP must be developed for a child with a disability.	<ul style="list-style-type: none"> • 30 days from the date the child was first determined eligible for special education, or By the beginning of the school year (if the child was previously found eligible) 	34 C.F.R. §300.343. See Chapter 4 of this guide for more information on IEPs. Once an IEP is developed, special education services should be provided as soon as possible.
How often a child is re-evaluated after being found eligible for special education	At least once every 3 years, but more frequently if parents request or if necessary.	20 U.S.C. §1414(a)(2)(b)(ii); Chapter 2, Q.2-16 of this guide.
Time for public schools to screen students to see if a full evaluation is needed.	45 days from the student's enrollment in school	A.A.C. R7-2-410(D)(5); Chapter 2, Q2-23 of this guide.
How often an IEP is reviewed	At least once a year.	20 U.S.C. §1414(d)(4)(A) (i); Chapter 4, Q.4-45 of this guide
How much notice school must provide to parents regarding upcoming IEP meeting	Parents must be notified "early enough to ensure that they will have an opportunity to attend."	34 C.F.R. §300.345. A school district may have its own policies for providing notice to parents of IEP meetings. Chapter 3, Q.4-6 of this guide.
Time frame for school to respond to parent's request for educational records.	"Without unnecessary delay" - 45 days is the outside limit. Schools must provide records before IEP meeting, due process hearings or resolution sessions.	34 C.F.R. §300.562.
Time frame for school to response to parent's request for public records.	"Promptly," under Arizona's public records laws.	See A.R.S. §39-121, <i>et. seq.</i> "Promptly" is not defined in the law, but if the request is for something easily available to staff (like their own policies) a "prompt" response should not take longer than a few days. Chapter 2, Q.2-10 of this guide.

Attachment E- STATEWIDE TESTS FOR STUDENTS WITH DISABILITIES

Most Arizona public school children with disabilities will take some version of a standardized test during an academic year. Although parents of children with disabilities sometimes question the usefulness of standardized tests, these tests can provide important information about how your child is doing in school and whether or not your child has learned the material or skills the school should be teaching. The United States Department of Education and the Arizona Department of Education frequently update standards, practices and accommodations for persons with disabilities when dealing with state wide testing. Parents should frequently check the websites of the USDOE and AZDOE at www.ed.gov and <http://www.ade.state.az.us/> respectfully.

The IEP team will analyze standardized test results in the review of your child's current levels of academic and functional performance and to help set annual measurable goals. The IEP team will also decide what type of standardized test (or "assessment") your child will take the following year and how that test will be given. Parents may ask school officials to explain the results of standardized tests so they can fully participate in IEP team meeting discussions.⁴²³ Please refer to [Chapter 4, Q.4-38 through Q.4-40](#) for more information on the IEP requirements regarding standardized tests for student with disabilities.

A. What Standardized Tests Are Administered to Arizona Students

In Arizona, students (depending on their grade level) may be given one or both of the following standardized tests:

- The Arizona Instrument to Measure Standards ("AIMS") test measures whether the student has met the Arizona academic standards that apply for that child. This is called a "criterion referenced test." The AIMS-Alternate ("AIMS-A") corresponds to the AIMS test, but is designed for students with disabilities who are being instructed on skills or at a grade level that is significantly below their chronological age. In testing terminology, AIMS-A is the "alternate assessment" for the AIMS test. The AIMS-A test is broken down into two levels – Level I of the AIMS-A test may be given to students in grades 3 – 12, and Level II of the AIMS-A test (which measures against higher standards) may be given to students in grades 6 – 8 and grades 10 - 12.⁴²⁴
- The Terra Nova test measures how the student performs as compared to other students who have taken the same test. This is a "norm referenced test." (In previous years, the Stanford 9 was the norm-referenced test given to Arizona students). The Alternate State Achievement Test (ASAT) is the alternate assessment for the Terra Nova. The ASAT is also broken down into two levels. Level I of the ASAT may be given to students in grades 2 – 9, and Level II of the ASAT may be given to students in 6 – 9.

⁴²³ Under IDEA 2004, parents have the "right to a response" from the school system to "reasonable requests for explanations and interpretations" of their child's education records. See 34 C.F.R. §300.613(b). According to the Arizona Department of Education, parents of students who participate in alternate assessments "shall be informed of the individual results and be provided an opportunity for explanation of the results by professional staff" within the school system. [Arizona Department of Education's Alternate Assessment Manual at p.8, (January, 2005) available at www.ade.az.gov/ess/aims-a]

⁴²⁴ ADE Alternate Assessment Manual (January, 2005).

B. Standardized Tests for Arizona Students with Disabilities

Federal law requires states and school districts to include all students with disabilities in their standardized testing programs. The IEP team – including the parents – decides what type of standardized test will be given and with what accommodations, if appropriate.

To understand how the standardized test requirements affect your child with a disability, understanding some of the key terminology may be helpful:

- “Assessment” is the legal term for a standardized test, like the AIMS test (Arizona Instrument to Measure Standards test). An assessment may be given to all students in the State, or may be given by a school district to all students in the district to see how students are performing.
- An “alternate assessment” is a standardized test that may include a performance evaluation, a parent interview, an activity-based assessment or other measures in lieu of or in addition to a “fill in the bubble” pencil and paper test.
- An “accommodation” is changing something about how the test is given so the test measures what the student knows and not the effects of the student’s disability.
- “Achievement standards” are standards set by the State that articulate what students are expected to know at a particular grade level in a given subject (i.e., kindergarteners should know the sounds of letters to meet the reading standard). In Arizona, these are called the “Arizona Academic Standards.”⁴²⁵
- “Alternate” achievement standards” are achievement standards that typically focus on functional abilities or life skills, or on attaining a kindergarten through 3rd grade level of academic achievement.
- Standardized tests are often “aligned” to academic standards, so the results of the test will tell you if the child knows what is expected. For example, the 3rd grade AIMS test in writing is aligned to the Arizona academic writing standards, so the test results should tell you whether the student has the writing skills expected of a 3rd grader in Arizona.
- “Alternate assessments aligned to alternate achievement standards” means a standardized test that may be administered in a manner other than pencil and paper, and is designed to assess whether a student has achieved functional or life skills, or non-grade level academic abilities.

1. Eligibility for alternate assessments aligned to alternate achievement standards

To be eligible to take an alternate assessment aligned to alternate achievement standards such as AIMS-A or ASAT, the student must have a “significant cognitive disability” as defined by the State of Arizona.⁴²⁶ Whether a student has a “significant cognitive disability” depends on an analysis of the student’s test scores, the intensity of instruction received by the student and what type of curriculum or goals the child is working towards.⁴²⁷ The IEP team determines whether a child with a disability will take an alternate assessment.⁴²⁸

⁴²⁵ The Arizona Academic Standards are available by grade level and/or subject matter from the Arizona Department of Education’s website, www.ade.az.gov.

⁴²⁶ ADE Alternate Assessment Manual at p. 13.

⁴²⁷ ADE Alternate Assessment Manual at pp. 15-16.

⁴²⁸ IDEA 2004 requires IEPs to include:

A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with Section 612(a)(16)(A); and

2. Students who work at or near grade level

If your child with a disability works at or near grade level or does not have a “significant cognitive disability” as defined by the State, your child will probably be taking the AIMS, AIMS-DPA or Terra Nova test for the child’s grade. In that case, you will most likely be focusing on the types of accommodations the school should provide your child during the test. An accommodation is a change in the way the test is usually given to students, such as extra time, providing the test in an alternative format like large print, or giving the test to the student in a private room. Accommodations are available for students with disabilities who are covered by Section 504 (or who have “504 plans”) as well as to students who are eligible for special education under IDEA 2004.

3. Students who do not have significant cognitive disabilities, but cannot perform at grade level.

In April, 2005, the U.S. Department of Education adopted a new policy allowing States to create a different version of standardized tests for students who are sometimes called “gap kids.”⁴²⁹ These children do not have significant cognitive disabilities (and so are not eligible for alternate assessment aligned to alternate achievement standards), but cannot succeed at grade level standardized tests, even with appropriate accommodations and the best instruction.

The U.S. Department of Education calls these children “students with persistent academic difficulties.” The new policy allows states to develop “modified achievement standards,” and to create alternate assessments aligned to these new modified achievement standards to test the academic progress of students with persistent academic difficulties. The Department of Education expects states to have them in place for the 2005-2006 school year (or by the 2006-2007 year at the latest). If you believe this type of standardized test might be appropriate for your child, ask your school system or contact the Arizona Department of Education for information on its availability in Arizona.

C. AIMS and High School Graduation Requirements

As explained more in the guide (see [Chapter 4, Q.4-52](#)), the IEP team determines whether or not a student must pass the AIMS test in order to graduate from high school.⁴³⁰ Even if the IEP team decides that passing AIMS is not a graduation requirement for the student, however, the student must still take the AIMS (or AIMS-A) test.⁴³¹ In that case, the team will probably be less concerned about whether the student “passes” and more interested in what skills the student has

If the IEP team determines that the child shall take an alternate assessment on a particular State or district-wide assessment of student achievement, a statement of why --

- (c) the child cannot participate in the regular assessment; and
- (d) the particular alternate assessment selected is appropriate for the child. 20 U.S.C. §1414(d)(1)(A) (VI).

⁴²⁹ The new federal policy is called “Raising Achievement: Alternate Assessments for Students with Disabilities” (April 7, 2005), available from the U.S. Department of Education’s website at www.ed.gov/policy/elsec/guid/raising/alt-assess-long.html.

⁴³⁰ A.R.S. §15-701.01(A)(3).

⁴³¹ 20 U.S.C. §1412(a)(16)(A).

obtained and how that information can be used to plan for the student's transition from high school to independent living, employment or further education.

D. Additional Resources

Although a full discussion of how the Arizona assessment system impacts students with disabilities is beyond the scope of this guide, the role of the IEP team in deciding what standardized tests will be given to a child with a disability is discussed further in [Chapter 4, Q.4-38 through Q.4-40](#).

Additional information about standardized tests for students with disabilities is available from the Arizona Department of Education's website, www.ade.az.gov. The most complete document available at this time is the Alternate Assessment Manual for the Arizona Student Achievement Program (Arizona Department of Education, January 2005) available at www.ade.az.gov/ess/aims-a (click on "Alternate Assessment Manual") or by requesting a copy of the Arizona Department of Education at 1535 West Jefferson Street, Phoenix, AZ 85007. Some of the information is geared more for school testing coordinators, but some is useful to parents. The Arizona Department of Education is also in the process of reviewing and revising guidance it provides to school systems about how to provide accommodations to children with disabilities on standardized tests.

The Arizona State Board of Education may be revising rules or setting policies relating to statewide testing for students with disabilities. Check the Board's website for more information (www.ade.az.gov/stateboard/). The website of the U.S. Department of Education (www.ed.gov) includes information on federal laws and policies relating to standardized tests for students with disabilities, and may be a helpful resource as well.

Attachment F- **INFORMATION REGARDING THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)**

The following documents, “FERPA” and “FERPA General Guidance for Parents” (dated February 17, 2005), were downloaded from the website of the U.S. Department of Education, which is charged with enforcing this law.

Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
 - School officials with legitimate educational interest;
 - Other schools to which a student is transferring;
 - Specified officials for audit or evaluation purposes;
 - Appropriate parties in connection with financial aid to a student;
 - Organizations conducting certain studies for or on behalf of the school;
 - Accrediting organizations;
 - To comply with a judicial order or lawfully issued subpoena;
 - Appropriate officials in cases of health and safety emergencies; and
 - State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

For additional information or technical assistance, you may call (202) 260-3887 (voice). Individuals who use TDD may call the Federal Information Relay Service at 1-800-877-8339.

Or you may contact us at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-5920

FERPA General Guidance for Parents

FERPA is a Federal law that applies to educational agencies and institutions that receive funding under a program administered by the U. S. Department of Education. Parochial and private schools at the elementary school levels do not generally receive such funding and, therefore, are not subject to FERPA. The statute is found at 20 U.S.C. § 1232g and the Department's regulations are found at 34 CFR Part 99.

Under FERPA, schools must generally afford parents: -access to their children's education records -an opportunity to seek to have the records amended -some control over the disclosure of information from the records.

Parents may access, seek to amend, or consent to disclosures of their children's education records, unless there is a court order or other legal document specifically stating otherwise. When a student turns 18 years of age or attends a postsecondary institution, the student, and not the parent, may access, seek to amend, and consent to disclosures of his or her education records.

Access to Education Records

Schools are required by FERPA to:

- provide a parent with an opportunity to inspect and review his or her child's education records within 45 days of the receipt of a request
- provide a parent with copies of education records or otherwise make the records available to the parent if the parent, for instance, lives outside of commuting distance of the school
- redact the names and other personally identifiable information about other students that may be included in the child's education records.

Schools are not required by FERPA to:

- Create or maintain education records;
- Provide parents with calendars, notices, or other information which does not generally contain information directly related to the student;
- Respond to questions about the student.

Amendment of Education Records

Under FERPA, a school must:

- Consider a request from a parent to amend inaccurate or misleading information in the child's education records;
- Offer the parent a hearing on the matter if it decides not to amend the records in accordance with the request;
- Offer the parent a right to place a statement to be kept and disclosed with the record if as a result of the hearing the school still decides not to amend the record.

A school is not required to consider requests for amendment under FERPA that:

- Seek to change a grade or disciplinary decision;
- Seek to change the opinions or reflections of a school official or other person reflected in an education record;
- Seek to change a determination with respect to a child's status under special education programs.

Disclosure of Education Records:

A school must:

- Have a parent's consent prior to the disclosure of education records;
- Ensure that the consent is signed and dated and states the purpose of the disclosure.

A school MAY disclose education records without consent when:

- The disclosure is to school officials who have been determined to have legitimate educational interests as set forth in the school district's annual notification of rights to parents;
- The student is seeking or intending to enroll in another school;

- The disclosure is to state or local educational authorities auditing or evaluating Federal or State supported education programs or enforcing Federal laws which relate to those programs;
- The disclosure is pursuant to a lawfully issued court order or subpoena; and
- The information disclosed has been appropriately designated as directory information by the school.

Annual Notification

A school must annually notify parents of students in attendance that they must allow parents to:

- Inspect and review their children's education records;
- Seek amendment of inaccurate or misleading information in their children's education records;
- Consent to most disclosures of personally identifiable information from education records.

The annual notice must also include:

- Information for a parent to file a complaint of an alleged violation with the FPCO;
- A description of who is considered to be a school official and what is considered to be a legitimate educational interest so that information may be shared with that person;
- Information about who to contact to seek access or amendment of education records.

Means of notification:

- Can include local or student newspaper; calendar; student programs guide; rules handbook, or other means reasonable likely to inform parents;
- Notification does not have to be made individually to parents.

Complaints of Alleged Violations:

Complaints of alleged violations may be addressed to:

Family Policy Compliance Office
 US Department of Education
 400 Maryland Avenue, SW
 Washington, DC 20202-5901

Complaints must:

- Be timely submitted, not later than 180 days from the date you learned of the circumstances of the alleged violation
- Contain specific allegations of fact giving reasonable cause to believe that a violation has occurred, including:
 - Relevant dates, such as the date of a request or a disclosure and the date the parent learned of the alleged violation;
 - Names and titles of those school officials and other third parties involved;
 - A specific description of the education record around which the alleged violation occurred;
 - A description of any contact with school officials regarding the matter, including dates and estimated times of telephone calls and/or copies of any correspondence exchanged between the parent and the school regarding the matter;
 - The name and address of the school, school district, and superintendent of the district;
 - Any additional evidence that would be helpful in the consideration of the complaint.

For more information about FERPA, contact the U.S. Department of Education Family Policy Compliance Office (www.ed.gov - type "FERPA home" in the search box). For technical assistance about FERPA, you may call (202) 260-3887 (voice) or 1-800-0877-8339 (to use TTD).

Attachment G - ARIZONA DUE PROCESS HEARING PROCEDURES UNDER IDEA
2004

This document reviews the new laws for impartial due process hearings and outlines the steps of how due process hearing procedures will work in Arizona (to the extent known in the Fall of 2005).

A. The Laws That Apply to Special Education Due Process Hearings

The main laws that govern the impartial due hearing process are IDEA 2004 and Arizona law, as amended in 2005.

To understand the current system for special education due process hearings in Arizona, some background may be helpful. In 2005, the Arizona legislature passed a law that changed the Arizona due process system from a “two step” to a “one step” process.⁴³² Under the old system, hearing officers appointed by the Arizona Department of Education would conduct the due process hearing (step one) and an appeal could then be filed with the Arizona Office of Administrative Hearings (step two). The new law simplifies the process and provides for one hearing conducted by an administrative law judge from the Arizona Office of Administrative Hearings.⁴³³

The Arizona Office of Administrative Hearings is a state agency that provides for independent administrative law judges (or hearing officers) to hear disputes relating to state agencies. Under the new Arizona law, an administrative law judge from the Office of Administrative Hearings will be the “impartial due process hearing officer” who, under IDEA 2004, hears evidence and decides the issues raised in due process cases.

If you are considering filing for a due process hearing, the key laws and regulations that will govern the process are:

1. The federal IDEA 2004, especially 20 U.S.C. §1415(b)(6), (c)(2) and §1415(f).
2. The federal regulations implementing IDEA 2004. At the time this chart was prepared, the U.S. Department of Education was in the process of drafting administrative rules to further define the requirements of IDEA 2004. To stay updated on the status of the new federal regulations, check the website of the Office of Special Education and Rehabilitative Services, which is part of the U.S. Department of Education (www.ed.gov/policy/speced/guid/idea/idea2004.html click on “IDEA 2004 resources” icon). The federal regulations interpreting the 1997 law are found at 34 C.F.R. §300.500 through 300.517.
3. Arizona state law as amended in 2005 - A.R.S. §15-761(3) (definition of due process hearing) and A.R.S. §15-766.
4. Arizona state regulations. The Arizona State Board of Education will change the current due process administrative hearing rules to conform to the new 2005 Arizona law. To stay updated on the status of new Arizona regulations, check the website of the Arizona State Board of Education (www.ade.az.gov/stateboard/, click on “State Board Rules Under Development”). Look for references to “due process” or “special education” rules, and any references to amendments to the current due process hearing rules (A.A.C.R7-2-404).

⁴³² H.B. 2534, 47th Legislature, 1st Regular Session 2005, amending A.R.S. §15-761 and §15-766.

⁴³³ A.R.S. §15-761(3).

5. Laws and regulations that apply to the Office of Administrative Hearings. Because due process hearings will now be held at the Arizona Office of Administrative Hearings, their laws and procedures will govern due process hearings unless a specific special education law or rule applies. The website of the Office of Administrative Hearings (www.azoah.com) includes useful information about their hearing process including links to the applicable statutes (A.R.S. §41-1092.01 through §41-1092.11) and rules (A.A.C. R2-19-101 through R2-19-111).

B. Key Timeframes

Here are some of the key time frames that apply to impartial due process hearings in Arizona:

- Due process complaints must be filed within two years of the conduct that is being challenged, although more time may be allowed in exceptional situations.⁴³⁴ For example, if a parent disagrees with the school system's September 1, 2005 decision that a child was not eligible for special education, the parent should file a due process complaint by September 1, 2007.
- It may take up to 75 days from the time you file a due process complaint until the hearing is completed and a written decision is mailed. A school has 30 days from the time the school receives the due process complaint to try to resolve the matter, by holding a "resolution session" (as discussed further below). If the matter is not resolved to the parent's satisfaction within 30 days of when the school learns of the complaint, the rules provide a 45 day period for the due process hearing to occur and for the written decision to be issued.⁴³⁵
- The time to appeal an unfavorable due process hearing decision from an administrative law judge to an appropriate state or federal court is 35 days.⁴³⁶

C. Due Process Hearing Procedures in Arizona.

A due process hearing can be requested by a parent, an eligible student or a public school if there is a dispute about the identification, evaluation or educational placement for a student with a disability, or the provision of a free appropriate education.⁴³⁷ For more information about when due process hearings can be requested, please see Chapter 5, Q.5-28 and Q.5-32 of this guide. The procedures outlined below apply to cases where a parent has requested a due process hearing (as opposed to the school) and cover the basic steps of the process, not every detail.

1. Step #1 - File a due process complaint.

⁴³⁴ See 20 U.S.C. §1415(b)(6), §1415(f)(3)(D) and Chapter 5, Q.5-30 for a more detailed discussion of the time frames (and exceptions) for filing a due process complaint.

⁴³⁵ 20 U.S.C. §1415(f)(1)(B)(ii) provides that if the public school system "has not resolved the complaint to the satisfaction of the parents within 30 days of receipt of the complaint, the due process hearing may occur and all of the applicable time lines for a due process hearing under this part shall commence." The current federal regulations provide a 45 day period to conduct the due process hearing and for the hearing officer to reach a final decision. 34 C.F.R. §300.515(a).

⁴³⁶ Under IDEA 2004, a party has 90 days to appeal a due process hearing officer's decision, or, "if the State has an explicit time limitation for bringing such action under this part, in such time as the State law allows." Arizona law generally allows a party 35 days to file an appeal from an administrative action (like a due process hearing held in the Office of Administrative Hearings), so appeals should be filed within the 35 day time frame. A.R.S. §12-904(A) (time period for appealing final administrative decisions to court).

⁴³⁷ 20 U.S.C. §1415(b)(6); A.R.S. §15-766(F)(1).

- a. The due process hearing procedure begins when a parent files a due process hearing complaint. A parent should file the complaint with the school system and at the same time provide a copy to the Arizona Department of Education.⁴³⁸ The contact information is:

Arizona Department of Education
Exceptional Student Services Division
1535 West Jefferson Street
Phoenix, Arizona 85007
(602) 543-3084
www.ade.az.gov (go to “Programs,” “Special Education,” then “Dispute Resolution”)

When the Arizona Department of Education receives a due process complaint, the Department will immediately provide it to the Office of Administrative Hearings (so an administrative law judge can be assigned to the case).

- b. The Arizona Department of Education will be developing a model form for due process complaints.⁴³⁹ A due process complaint must include all of the required components before a due process hearing can go forward.⁴⁴⁰ The Arizona Department of Education and public schools must keep due process hearing complaints confidential.⁴⁴¹

2. **Step #2 – Insufficiency objections (in some cases)**

- a. If the school system thinks your due process complaint does not meet the legal requirements, the school can file an “insufficiency objection.”⁴⁴² The school must notify you and the administrative law judge assigned to the due process hearing that the school does not believe the complaint is sufficient within 15 days of receiving it, or else the complaint is considered sufficient.⁴⁴³
- b. If an insufficiency objection filed, the administrative law judge has 5 days to determine whether the complaint is sufficient, and must then immediately notify the parties of the determination.⁴⁴⁴

3. **Step #3 – School’s response to the parent’s due process complaint**

- a. If the school has not already sent the parent prior written notice explaining the reasons for the school’s decision that is disputed, at this point the school must do so.⁴⁴⁵

⁴³⁸ 20 U.S.C. §1415(b)(7)(A)(i); A.R.S. §15-766(F)(2).

⁴³⁹ A.R.S. §15-766(F)(2).

⁴⁴⁰ 20 U.S.C. §1415(b)(7)(B).

⁴⁴¹ 20 U.S.C. §1415(b)(7)(A).

⁴⁴² 20 U.S.C. §1415(c)(2)(A).

⁴⁴³ 20 U.S.C. §1415(c)(2)(C).

⁴⁴⁴ 20 U.S.C. §1415(c)(2)(D). Once a due process complaint has been filed, it can be amended (changed) only if the school consents, and is given an opportunity to resolve the matter through a “resolution meeting” or the hearing officer allows the party to amend the complaint (but only if permission is granted more than 5 days before the due process hearing). 20 U.S.C. §1415(c)(2)(E).

- b. This response must be sent within 10 days of receiving the complaint. In the response, the school must explain why it proposed or refused to take the disputed action, what other options were considered and the reasons why they were rejected, what tests or records the school used as a basis for its decision and other relevant factors. The information the school must provide at this point is the same information the school is required to provide in a “prior written notice” (as explained in [Chapter 5, Q.5-12 through Q.5-13](#) of this guide).

ADVOCACY TIP:

While the law allows the parent to receive the school’s written response to a due process complaint that has already been filed, we recommend that parents obtain written notice from the school *before* requesting a due process hearing if possible. In almost all cases that go to due process hearings, the school already has an obligation to provide parents with “prior written notice” or “written notice” explaining the basis of the school’s decision that the parents disagree with. If your child’s school has not provided you with written notice about a decision, request it before you file a due process complaint so you can understand the school’s reasons and better evaluate your case. A sample letter for requesting written notice is included in the [Appendix](#) to this guide.

4. Step #4 – Resolution Session

- a. After a due process complaint is filed – but before the due process hearing is held -- the public school must generally hold a “resolution session” to try to resolve the issues raised in the complaint.⁴⁴⁶
- b. The resolution session:
- Occurs within 15 days of when the school learns of the parent’s due process complaint.
 - Includes the parents, the relevant members of the IEP team, a school representative with decision-making authority, but no school lawyers unless the parent brings a lawyer to the meeting.
 - Provides an opportunity for parents to discuss their complaint and the facts supporting it and for the school to try to resolve the complaint.⁴⁴⁷
- c. The parents and school personnel who are the parties in the due process case can skip the resolution session if they (1) agree in writing to waive the resolution session meeting or (2) agree to use the mediation process instead.⁴⁴⁸

⁴⁴⁵ 20 U.S.C. §1415(c)(2)(B)(i)(I). In a case where a public school has filed a due process complaint against the parent of a child with a disability, the parent must send a response that “specifically addresses the issues in the complaint” within 10 days of receiving it. 20 U.S.C. §1415(c)(2)(B)(ii).

⁴⁴⁶ 20 U.S.C. §1415(f)(1)(B)(i).

⁴⁴⁷ 20 U.S.C. §1415(f)(1)(B)(i)(I) – (III).

⁴⁴⁸ 20 U.S.C. §1415(f)(1)(B)(i).

- d. If the resolution session leads to a resolution of the dispute(s) raised in the due process complaint, the parties must enter into a “legally binding agreement” that (1) is signed by the parent and the representative of the public school that has authority to bind the agency and (2) is enforceable in state or federal court.⁴⁴⁹

Even if the resolution session resolves the case and the parties enter into a “legally binding agreement”, the parents or the school can back out of the agreement (“void” it) within 3 business days of the date the agreement is signed.⁴⁵⁰

- e. If the school system has not resolved the issues to parent’s satisfaction within 30 days of receiving notice of the due process complaint, the due process hearing may occur and all of the applicable time lines for a due process hearing shall commence.⁴⁵¹

RESOLUTION SESSION – ISSUES TO CONSIDER

If you are a parent filing a due process complaint, you will need to decide whether to go forward with the resolution session meeting, go to mediation or see if the school will agree to skip the resolution session. (If you take no action, the school will argue that you cannot have a due process hearing until the resolution session is held). Here are some issues to consider as you make the decision about a resolution session:

1. Who will be at the resolution session meeting? Will you be re-hashing the same issues with the same people, or is there anyone new that can participate in the discussion and perhaps help formulate a resolution to the problem.

2. *Mediation is a process where a neutral third party helps the parties communicate with each other to attempt to resolve a dispute. If you chose mediation (which must be scheduled in a “timely manner”) but the mediation is not successful, you can then go forward with the due process hearing. Utilizing mediation may not delay your right to a due process hearing.*

3. If you and school staff have discussed the issues at length and simply have a difference of opinion, you may want to see if the school will agree to skip the resolution session so the hearing can go forward.

5. Step #5 - Impartial due process hearing

- a. When a due process complaint is filed, the parties involved have the right to an impartial due process hearing.⁴⁵² In Arizona, the impartial due process hearing is conducted or overseen by the Arizona Department of Education, but the hearing officers are administrative law judges of the Arizona Office of Administrative Hearings.
- b. The due process hearing occurs within a 45 day time frame beginning from when the resolution session period ends, typically 30 days after the school learns of the due process complaint.

⁴⁴⁹ 20 U.S.C. §1415(f)(1)(B)(iii).

⁴⁵⁰ 20 U.S.C. §1415(f)(1)(B)(iv).

⁴⁵¹ 20 U.S.C. §1415(f)(1)(B)(ii).

⁴⁵² 20 U.S.C. §1415(f)(1)(A).

- c. An administrative law judge from the Office of Administrative Hearings will be the “impartial due process hearing officer” as defined by IDEA 2004.⁴⁵³ The Office of Administrative Hearings provides judges to hear disputes throughout the State. The due process hearing should be held at a time and place that is reasonably convenient to the parents and child involved.⁴⁵⁴
- d. Any party to a due process hearing has these rights:⁴⁵⁵
 - The right to legal representation.
 - The right to present evidence, cross-examine and compel witnesses to attend the hearing (to issue subpoenas).
 - The right to receive a record of the hearing proceedings (which may be written, on tape, or digital).
 - The right to findings of fact and decision (which are kept confidential, but transmitted to state advisory panel).
- e. At least 5 business days before the hearing, each side must disclose evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing. If evaluations and recommendations are not disclosed by that time, the administrative law judge may bar the non-disclosing party from using those evaluations or recommendations at the hearing unless the other side consents.⁴⁵⁶
- f. A party may not raise issues that were not included in the due process complaint at the due process hearing, unless the other side agrees.⁴⁵⁷ However, parents may file a separate due process complaint if a new issue arises.⁴⁵⁸

6. **Step #6 – Hearing officer (administrative law judge) decision**

- a. Under IDEA 2004, the decision of the hearing officer (in Arizona, the administrative law judge) shall be made on “substantive grounds,” based on a determination of whether a child with a disability received a free appropriate public education.⁴⁵⁹
- b. The administrative judge may find that a child with a disability did not receive a free appropriate public education in a case alleging “procedural violations” only if the procedural inadequacies –
 - Impeded the child’s right to a free appropriate public education

⁴⁵³ IDEA 2004 sets forth qualifications for hearing officers in 20 U.S.C. §1415(f)(3)(A). The hearing officer may not be an employee of the State educational agency (Arizona Department of Education) or the involved school district or charter school. Hearing officers may not have a personal or professional interest that conflicts with the person’s objectivity in the hearing and must have the knowledge and ability to understand the law, to conduct hearings and write decisions.

⁴⁵⁴ 34 C.F.R. §300.515(d).

⁴⁵⁵ 20 U.S.C. §1415(h).

⁴⁵⁶ 20 U.S.C. §1415(f)(2).

⁴⁵⁷ 20 U.S.C. §1415(f)(3)(B).

⁴⁵⁸ 20 U.S.C. §1415(o) (parents not precluded from filing a separate due process complaint on an issue separate from a due process complaint already filed).

⁴⁵⁹ 20 U.S.C. §1415(f)(3)(E)(i).

- Significantly impeded the parents opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the child, or
 - Caused a deprivation of educational benefit.⁴⁶⁰
- c. Even if a hearing officer does not find that a procedural violation was severe enough to affect the child’s free and appropriate public education, the administrative judge still has authority to order a public school to comply with IDEA procedural requirements.⁴⁶¹
- d. If a parent’s main dispute with the public school concerns procedural violations of IDEA 2004– such as failing to send out notice of an IEP team meeting on time – parents may still file a complaint with the Arizona Department of Education for procedural violations or other compliance issues.⁴⁶²

7. Step #7 – Appeal to state or federal court

- a. After an administrative law judge has issued a written decision resolving the issues raised in a due process hearing, that decision is “final.”⁴⁶³ At that point, either the parent or public school may appeal the decision by filing a lawsuit in federal or the appropriate state court.⁴⁶⁴
- b. If a lawsuit is filed under IDEA 2004, the court will receive a record of the due process hearing. The court may, at the request of either party, hear additional evidence. After hearing any additional evidence and considering the arguments of the parties, a federal or state judge has the authority to “grant such relief as the court determines is appropriate.”⁴⁶⁵
- c. An appeal from a due process hearing decision must be filed within 35 days. If you think you may want to appeal a due process hearing decision if it is unfavorable, consult with an attorney as early in the process as possible.

D. Arizona Due Process Hearing Decisions

Written decisions in previous Arizona due process cases are available from the Arizona Department of Education. Please remember that these decisions were issued under the old IDEA, so some of the law relied upon by the hearing officers has changed. If you have access to the Internet, go to the Arizona Department of Education’s website at www.ade.az.gov, click on “Programs,” then “Special Education,” then “Dispute Resolution,” then “Due Process/Hearing Decisions.” Decisions from fiscal years 2001 through 2004 are currently posted. If you do not have Internet access, contact the Arizona Department of Education/Exceptional Student Services to make arrangements to inspect previous due process hearing decisions.

⁴⁶⁰ 20 U.S.C. §1415(f)(3)(E)(ii).

⁴⁶¹ 20 U.S.C. §1415(f)(3)(E)(iii).

⁴⁶² 20 U.S.C. §1415(f)(3)(F). Please see [Chapter 5, Q.5-25 through Q.5-29](#) for more information on the State complaint process.

⁴⁶³ A.R.S. §15-766 (F)(3).

⁴⁶⁴ 20 U.S.C. §1415(i)(2)(A); A.R.S. §15-766(3).

⁴⁶⁵ 20 U.S.C. §1415(i)(2)(C).

Attachment H - Filing a State Complaint with the Arizona Department of Education

MODEL DUE PROCESS COMPLAINT NOTICE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

PLEASE TYPE OR PRINT

Date: _____

The notice must be in writing and may include supporting documents. A notice may be submitted on this model form or in some other written format at the discretion of the parent(s) or the public education agency (PEA).

REQUESTED INFORMATION

Complainant Name (Parent or PEA): _____

Complainant Address _____

Complainant Phone home _____ work _____ cell _____
The best time(s) to call (example: during normal working hours 8-5 weekdays): _____

Alternate phone number(s) or preferred method of contact: _____

REQUIRED INFORMATION

Student's Name: _____

Student's Address: _____

Public Education Agency (School/ District): _____

School/District Student is currently attending: _____

Provide a description of the nature of the problem, including facts relating to the problem, concerning the child which relates to the proposed or refused initiation or change in the identification, evaluation or educational placement of the child or the provision of a free appropriate public education (FAPE). **Please be specific and include relevant facts.**

Provide a proposed resolution of the problem(s) to the extent known and available to you.*

Parent or Attorney Signature: _____

***Please attach additional sheets if needed. You have the right to receive a copy of the Procedural Safeguards Notice from the school/district at the time you submit your complaint.**

Additional questions concerning this form or due process rights may be addressed by contacting:

ARIZONA DEPARTMENT OF EDUCATION
EXCEPTIONAL STUDENT SERVICES
1535 WEST JEFFERSON STREET, BIN 24
PHOENIX, ARIZONA 85007
PHONE (602) 542-3084 FAX (602) 364-0641
www.ade.az.gov/ess/dispute

Attachment I- How to file an OCR Complaint

In order to learn the procedures on how to file an Office of Civil Rights Complaint “OCR” complaint go to: <http://www.ed.gov/about/offices/list/ocr/complaints-how.html>.

To access the complaint go to: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>

Attachment J-ACRONYM LIST

Although we have tried to use as few acronyms as possible in this guide, this list is included to help you translate commonly used acronyms in the special education field.

AAC – Arizona Administrative Code

ADE – Arizona Department of Education

ADE/ESS – Arizona Department of Education, Exceptional Student Services Division.

AIMS – Arizona Instrument to Measure Standards Test

AT – Assistive technology

CFR – Code of Federal Regulations.

DOE – Department of Education. This can refer to either the United States Department of Education (U.S. DOE) or the state Department of Education (AzDOE)

ED – Emotional disability

ESY – Extended school year

FAPE – Free appropriate public education

FERPA – Family Educational Rights and Privacy Act

IAES – Interim alternative educational settings

IDEA, IDEA 1997 – The 1997 Individuals with Disabilities in Education Act, the law that preceded the current law.

IDEIA, IDEIA 2004 – The Individuals with Disabilities Education Improvement Act, the current federal law that governs special education, passed in December, 2004.

IEE – Independent educational evaluation

IEP – Individualized education program

LD – Learning disability (Sometimes called SLD, for specific learning disability)

LEA – Local education agency. The federal term for a school district or other entity that directly provides special education to students. The analogous state term is public education agency (PEA).

LRE – Least restrictive environment

MET or MDT – Multidisciplinary evaluation team

MDR – Manifestation determination review

MR – Mental retardation

NCLB – No Child Left Behind Act

OAH - Arizona Office of Administrative Hearings

OCR – Office for Civil Rights, within the U.S. Department of Education

OSEP – Office of Special Education Programs, within U.S. Department of Education, now called the Office of Special Education and Rehabilitative Services (OSERS)

PEA – Public education agency. The state term for “local education agency.”

PWN – Prior written notice

RTI- Response to Intervention

SEA – State Education Agency (in Arizona, this is the Arizona Department of Education).

USC – United States Code

VR – Vocational rehabilitation