



EIGHT COMMON MYTHS ABOUT THE SPECIAL EDUCATION LAWS

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us or an attorney of your choice.

1. **MYTH:** *Your child can't get special education (or early intervention) services because there's a waiting list.*

FACT: "Waiting lists" for special education or early intervention are illegal. Of course, the school district is permitted to take a certain amount of time to evaluate your child and give you the evaluation report (60 *school* days from the district's receipt of the signed Permission to Evaluation form for school aged children, 60 *calendar* days for preschoolers); to develop the child's education program (30 *calendar* days for school aged children and children three to five and 45 *calendar* days total to evaluate and develop a program for children under three); and to begin providing the services (10 *school* days from completion of the Individualized Education Program (IEP) for school aged children, 14 *calendar* days for children three to five, and 14 *calendar* days for the youngest children). Longer delays violate the law.

If the school district has exceeded these deadlines you can so send a complaint to the Division of Compliance, Monitoring and Planning, Bureau of Special Education, Pennsylvania Department of Education, 333 Market Street, Harrisburg, PA 17126. The Division has 60 *calendar* days within which to issue a written report, and, if a violation is found, it must follow-up and make sure the problem is corrected. You can also ask for a Due Process Hearing. For more information on due process hearings and other dispute resolution mechanisms, visit our website at www.elc-pa.org, and download some of our "legal rights" brochures, especially the Fact Sheet entitled *Resolving Special Education Disputes*. You can also call our offices at the numbers listed below, and we will send the publications to you.

2. **MYTH:** *Your child needs a type of program or placement that isn't offered by your school district, so she will have to take what's available instead.*

FACT: Your child has the legal right to a program that is suited to her individual needs, and in which she can make meaningful educational progress. If the district doesn't have such a program, it must take steps to make one available - even if that involves special arrangements or expense.

3. **MYTH:** *Your child can't have physical (or occupational or speech) therapy because the district doesn't have a therapist available to provide the service.*

FACT: A child is entitled to the "related services" (such as physical, occupational, and speech therapy, psychological counseling and other behavioral supports, specialized transportation, school health services, and so forth) that are needed to assist the child to benefit from her special education program. If the district doesn't have the necessary personnel, it must hire them or "contract out" for the service. Remember, however, that the district must provide only those "related services" that are needed to help the child be maintained in school and benefit from her educational program as set forth on the IEP. If the therapy is not related to the child's educational program, the district is not required to provide it. (But remember, if your child is eligible for Medical Assistance (MA), you may be able to get additional therapies, and physical and behavioral health care at school, through MA.)

4. **MYTH:** *Your child isn't capable of handling the vocational education program offered by the district, or the vocational-technical school, so she can't have vocational education.*

FACT: Students with disabilities, like other students, are legally entitled to vocational education. If the vocational program that is offered to children without disabilities at district facilities or at the vocational-technical school could, with modifications, be made appropriate for your child, the modifications must be made. If not, another program appropriate for your child must be provided. Not later than the first IEP after the student is 16, the IEP must address the student's transition to post-high school objectives such as training, education, employment, and, where appropriate, independent living skills, and must

include the transition services needed to achieve those objectives.

5. MYTH: *Your child has a severe disability, so she must be placed in a special "center" for children with disabilities, or in a private school.*

FACT: **Your child must be educated with non-disabled children to the maximum extent appropriate to the child's needs.** This means that, if your child could receive the services on his or her IEP in a regular school, the program must be offered there and must include those additional services needed to help the student succeed. Moreover, if your child could be educated with children without disabilities in a regular classroom for all or part of the school day, the district must so specify on the IEP and insure that such "mainstreaming" occurs. Only if your child's IEP cannot be carried out appropriately in a regular school should a special school be considered. And only if the child's needs cannot be met in a district or Intermediate Unit program can the district offer a placement in a private school.

6. MYTH: *You've already approved your child's Notice of Recommended Educational Placement and IEP. Therefore, you must wait until next year to request a change in your child's program or placement, or go to a due process hearing.*

FACT: **Even if you approved the Notice and IEP, you may, at any time, request a change in your child's program or placement.** The district must then notify you whether it is willing to make the change. If the district will not make the change that you have requested, you have a right to a Due Process Hearing. No matter what you have signed, you never lose or "waive" your right to change your mind and pursue that change through the Due Process procedures. You can also request a re-evaluation once each year.

7. MYTH: *You disagree with the program or placement that the district has proposed for your child, so you shouldn't sign the IEP or Notice of Recommended Educational Placement.*

FACT: **On the contrary - you should immediately check "I disapprove," and then sign and return the IEP or Notice within the time period listed.** To take no action, or to take action too late, in most cases, will authorize the school district to implement the proposed change. Even if you don't receive a form to sign and return, you should promptly send the district a letter if you disagree with a proposed IEP or placement.

8. **MYTH:** *The district has decided that your child no longer needs one of the services or activities on the IEP, so the service will be terminated.*

FACT: The district must give you written notice of a proposal to change any aspect of the child's IEP or placement. If, after receiving the notice, you want to prevent the district from implementing a proposed change, you must object in writing, and can request a Due Process Hearing or agree with the school district to mediate the dispute. If you have objected in writing and requested a Due Process Hearing within applicable timelines, the proposed change cannot take place until the Hearing Officer has issued a decision agreeing with the proposed change (or, if appeals are taken from the decision, until all appeals have been completed). For more details on how this works, including a discussion of the applicable timelines, check "The Right to Special Education in Pennsylvania: A Guide for Parents," which can be ordered from ELC or can be downloaded from our website at www.elc-pa.org. For more on dispute resolution options, see ELC's Fact Sheet *Resolving Special Education Disputes* which is also available from our website or can be ordered by calling the numbers below.

Funding for this brochure was provided, in part, by Pennsylvania Protection & Advocacy, Inc. (PP&A), pursuant to the Developmentally Disabled Assistance and Bill of Rights Act, P.L. 101-496, and the P&A for Mentally Ill Individuals Act, P.L. 99-319. PP&A is located at 1414 N. Cameron Street, Suite C, Harrisburg, PA 17103. Telephone: 800-692-7443 or 717-236-8110. Website: www.ppainc.org.

Prepared by: Education Law Center (Rev. 8/06)
(215) 238-6970 (Philadelphia)
(215) 789-2498 (TTY – Philadelphia)
(412) 391-5225 (Pittsburgh)
(412) 467-8940 (TTY – Pittsburgh)
www.elc-pa.org