



## WHERE WILL YOUR CHILD GET SERVICES?

**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 for a referral, or contact an attorney of your choice.

## WHAT PLACEMENT OPTIONS SHOULD BE AVAILABLE IN MY SCHOOL OR SCHOOL DISTRICT?

The law requires all charter schools and school districts to have a *continuum* of regular and special education programs available for their students. The options available should include: regular education classes with support services, part-time and full-time special classes in regular schools, and, for children whose needs cannot be met in a public program, private schools that can meet the needs of children with disabilities. Pennsylvania law also requires school districts to offer their students a range of special education services and support programs such as learning support, emotional support, life skills, and autistic support programs. School districts usually operate some specialized classrooms, and many send students to classrooms run by the local Intermediate Unit (IU) or use the IU's resources in other ways.

## HOW WILL MY CHILD'S PLACEMENT BE DECIDED?

The family is part of the Team that decides what educational placement will work for the child. The Team must also include a school district staff person

knowledgeable about the meaning of the evaluation data and the school or school district's placement options. The school or school district must give the parent a written invitation to the meeting at which the educational placement decision will be made and must make the same effort to include the parent that applies to Individualized Education Program (IEP) Team meetings (in fact, these decisions are usually made as part of the IEP process). The school or school district can make the placement decision at a meeting that does not include the parent, but only if it can document that it made repeated efforts to include the parent, including offering alternate means of participating such as video conferences and conference calls.

The decision must be based on the child's individualized needs. When an IEP Team meets, the Team must first discuss and write the child's IEP, which outlines the child's strengths and weaknesses, identifies the child's learning goals for the year, and lists the amount and type of special services the child needs in order to make educational progress at school. (For more information on IEPs, see ELC's Fact Sheet entitled *Developing the Special Education Program*. All ELC's publications can be downloaded from our website at [www.elc-pa.org](http://www.elc-pa.org) or ordered by calling the Philadelphia number listed below.) At the end of the IEP form, the team must write down how much time the child will spend in a regular classroom, and how much time (if any) she will spend in a pull-out special education program. If the child needs a pull-out program to make educational progress, the Team must decide *what kind* of separate program the child needs and for *how much* of the school day.

Children with disabilities have a right to be educated in a regular classroom if they can make reasonable educational progress in that setting (and if their behaviors aren't too disruptive in that setting) when they are given extra supports. These supports are called "supplementary aids and services." The question that the IEP Team should ask is not how the child will learn or behave in the regular classroom alone - but how they will learn and behave in that classroom when they are given supplementary aids and services. Even if a student with a disability must be in a "pull-out" program for some of her academic classes (for example, if she needs a resource room for reading), the student should remain in the regular education setting (with supports if needed) for the rest of her academic classes and for non-academic and extracurricular activities (lunch, recess, music class, etc.).

Some examples of supports that can be helpful to a student with a disability in a regular class are special equipment (such as a modified desk or a communication device), a modified regular education curriculum, or help for the student or the student's teacher from a special education teacher or aide. In this way, the child is included and supported within the general student population and the general education curriculum.

For children attending school in public school districts, the IEP Team also decides the *type of support* the child needs. This decision is based on the child's most important learning need. If the child most needs to focus on academic skills, a "learning support program" might be selected. If the child needs to learn to control behaviors that interfere with her learning, the choice might be an "emotional support" class. Or if a child needs to learn basic life skills such as dressing, feeding, or basic academics, a "life skills support" class might be selected.

Finally, for children in school districts and charter schools, the IEP should list the "location" in which the services will be provided. If the school is offering the family a program in the local Intermediate Unit, a private school, or other location outside the regular school building, the IEP must list the specific school or facility that is recommended for the child. The facility that the Team chooses must provide all of the services that the Team has included in the child's IEP. For example, if the Team writes in the IEP that the child needs an hour each day of special education help in a regular classroom in her neighborhood school, the neighborhood school must make sure that she has that help.

Like all special education decisions, the placement decision must be based on the child's individual abilities and needs as described in the child's IEP and evaluations. The school CANNOT refuse to allow a child to attend a regular classroom for reasons that have nothing to do with the child's needs. In addition, the law says that the school CANNOT refuse to allow a child to attend a regular classroom simply because the curriculum used in that classroom has to be modified for the child because of her disability.

**For example:** A school CANNOT decide to place a child in a special education classroom (instead of a regular classroom) because:

- There is no room in the regular classroom for more students, but there is room in the special education classroom
- It is more convenient (or costs less money) to put all of the special education students together than to spread them out in different regular classrooms
- The school has a policy of putting all children with autism in a full-time autistic support classroom (if your child can succeed in a regular classroom with extra supports, that placement must be offered)

A student with a disability should be placed in the same school she would attend if she were not disabled (her "neighborhood school") unless her special education needs require that she be educated elsewhere. The school chosen for the child should be as close as possible to the child's home. The law does not *completely require* that all children with disabilities attend their neighborhood schools or that they attend the closest schools - but these are factors that must be considered when the Team decides what school to offer the child.

### **ARE THERE RULES THAT LIMIT CLASS SIZE OR THE AGE RANGE OF THE STUDENTS IN THE CLASS?**

When the child is attending a class in a school district or IU-operated program for children in K-12<sup>th</sup> grade, the other children in her class must be near her age. The maximum age range allowed in classrooms serving students with disabilities is three years for grades K-6, and four years for grades 7-12. The IEP Team can decide that an exception to this rule is appropriate for a particular child, but it must explain in the IEP why it made an exception to the rule for that child.

State law also sets out the maximum number of children that can be on a special education teacher's roster in the various types of special education support programs (for example, learning support, life skills support, and emotional support). For the text of the regulation, visit:

[www.pacode.com/secure/data/022/chapter14/S14.142.html](http://www.pacode.com/secure/data/022/chapter14/S14.142.html). A school district can not go beyond the numbers in this regulation unless it first gets approval from the

Department of Education after a process that gives parents, teachers, and others a chance to comment on the proposed changes.

## **HOW DO I KNOW WHERE MY CHILD WILL RECEIVE SERVICES, AND WHAT IF I DON'T AGREE WITH THE PLACEMENT CHOSEN BY THE SCHOOL?**

After the IEP has been written, the school district or charter school must give the family a "Notice of Recommended Educational Placement" (NOREP) form that tells the family what "placement" the school is recommending for the child. The "placement" listed on the NOREP usually does not include the "location" at which the program will be offered (but, as we explain above, that information must be listed in the IEP). Instead, the NOREP must explain the type of special education service (full-time, part-time, etc.), and the type of educational program (life skills, emotional support, etc.) the school is offering the child. The NOREP should also explain what other placement options the Team considered and why the Team decided those choices were not right for the child.

If the parent agrees with the offered IEP and placement, she should check "I approve the recommendation" on the NOREP. If the parent disagrees with the offer, she should check "I do not approve the recommendation" on the NOREP and select one of the options for resolving disputes, which range from a meeting with school district officials to a "Due Process" Hearing. If the parent wants to try to persuade a special education Hearing Officer that the placement the school or school district is offering is not appropriate (this mostly means that the child's IEP cannot be provided at the offered placement), the parent must check the "I do not approve" box on the NOREP and the box for a Due Process Hearing, AND must also file a request for a hearing with the school district and the state's Office of Dispute Resolution. With the school or school district's consent, the family can also try mediation. (For more information on each of the options listed on the NOREP, including how mediation and the special education hearing system works, see ELC's Fact Sheet entitled, *How to Resolve Special Education Disputes*.)

If the child will be receiving special education services *for the first time*, the school cannot start services without the parent's written agreement. That means, if you don't check the "I approve this recommendation" box and return the NOREP, special education services will not begin.

If the child is already receiving special education services and the school is proposing a change in the child's placement that the parent does not like, the parent must check the "I do not approve this recommendation" box on the NOREP and give it to the school district within 10 *calendar* days. (If you lose the NOREP form, you can give the school district a letter saying that you do not agree with the school's proposal within the same time period.) **In addition**, *if you want to stop the school from changing your child's placement while you challenge the new placement at a hearing*, you must also check the box requesting a "Due Process" hearing and follow through with the process for filing a hearing complaint. (See ELC's fact sheet on *How to Resolve Special Education Disputes* for the details.) You can choose one of the other options on the NOREP (mediation, a pre-hearing conference, or a meeting with the school or school district), *but unless you also properly request a hearing, the school will have the power to change your child's placement while the dispute is being resolved.*

If you miss the 10-day deadline for returning the NOREP and requesting a hearing, you can still challenge the proposed placement at mediation or at a hearing. *But, in the meantime, the school can move your child to the new classroom and your child will have to stay in the new placement until you get a decision in your favor from a special education appeal panel, or until you have successfully completed all steps in the hearing and appeal process.*

## **WHAT IS A PARENT'S CHANCE OF SUCCEEDING IN CHALLENGING THE SCHOOL DISTRICT'S OFFER OF A PARTICULAR SCHOOL THROUGH THE SPECIAL EDUCATION HEARING SYSTEM?**

If the school refuses to allow the child to attend a regular classroom, and the parents believe the child could succeed in that setting if the school gave the child the proper supports, they may want to go to a hearing. Every case is different and we cannot predict whether you will win, but your chances of winning will be better if you have an expert who can testify at the hearing and explain to the Hearing Officer how your child could succeed in a regular classroom with supports. The law strongly favors educating children with disabilities in regular classrooms with needed supports, so parents have a leg-up when they are challenging a school district's offer of a separate classroom or facility which is

limited to children with disabilities. (For more information on getting an independent expert, see ELC's Fact Sheet entitled *Getting Your Child an Independent Educational Evaluation*).

However, in most other kinds of cases, if the parent agrees that (a) the IEP offered to the child (including the type of service and type of special education support program) meets the child's needs; (b) the IEP can be provided at the proposed location; and (c) the child is placed in the "least restrictive" setting appropriate to the child's needs, the parent will probably not have a legal basis for refusing to accept the placement or location that is being offered in the IEP. But a parent might be successful in challenging the location offered in the IEP if the child is being placed in a school that is not as close to home as possible or if the child is not being placed in the neighborhood school (if there is no disability-related reason that the neighborhood school cannot serve the child).

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*Prepared by:* Education Law Center (Rev. 8/07)  
(215) 238-6970 (Philadelphia)  
(412) 258-2120 (Pittsburgh)  
[www.elc-pa.org](http://www.elc-pa.org)