



A Comparison of the Rights of a Child with a Disability Who Needs "Special Education" and a Child Who is a "Protected Handicapped Student"

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.

Chapter 14 ¹		Chapter 15 ²
Who is eligible?	A child is eligible if she has mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), serious emotional disturbance, an orthopedic impairment, autism, a traumatic brain injury, is "other health impaired," or has a specific learning disability - AND because of that disability needs specialized instruction.	A child is eligible if she has a physical, mental or other health impairment which substantially limits one or more major life activities, such as learning, walking, seeing, hearing, speaking, breathing, or caring for oneself. To be eligible for help under Chapter 15, a child must not be eligible for Chapter 14 (that is, must not require "specialized instruction") unless

¹ 22 Pa. Code Chapter 14 are the state regulations that implement the federal Individuals with Disabilities Education Act and explain how children with disabilities who need special education can get help from their school districts.

² 22 Pa. Code Chapter 15 are the state regulations that implement Section 504 of the Rehabilitation Act, a federal law that prohibits discrimination against persons with disabilities by school districts and other agencies that receive federal funds.

		the child/family is alleging that the district has discriminated based on the child's disability.
What services can be provided?	The district must provide <i>specially designed instruction</i>. Usually this instruction is provided by a special educator, but a regular classroom teacher can also "specialize" instruction for a student with a disability. Examples include a different way of teaching math for a student with a learning disability, or instruction in basic life skills for a child with significant retardation. <i>Related services</i> can be provided. Related services are services needed to help a child with a disability benefit from the special education program. Examples include transportation, speech therapy, psychological counseling, school health services, and assistive technology.	The district must provide <i>necessary supports</i> for a child to participate in and benefit from the educational program at school. The child must have equal access to all extracurricular school programs and activities such as clubs, assemblies, lunch, and field trips. Some examples of supports are: access to an elevator, assistance for using the bathroom, assistance for getting around the school building, a modified desk, an adjusted school schedule, the administration of medicine, and monitoring of the child's medical condition during school hours.

Chapter 14**Chapter 15**

How does a child begin receiving services?	The first step in identifying a child's disability is for the school district to conduct a comprehensive evaluation. The parent must consent in writing to the first evaluation before it can begin. Evaluations that the family has obtained privately must be "considered" by the school district. Under some circumstances, the school district must pay for an "independent evaluation."	Parents should write a letter to the district explaining the child's disability and the type of assistance the child needs. The parents can also give the district private evaluations that explain the child's condition and needs. The school district can accept the private reports or it can notify the family that it will conduct its own evaluation.
How long does the district have to respond to a request?	The school district must complete the evaluation and give the parent a written report within 60 <i>school</i> days of the date the parents sign the "Permission to Evaluate" form.	The school district must respond in 25 <i>calendar</i> days stating whether they agree to provide the services the parent has requested.
Is the family entitled to a written agreement describing the services the child needs?	An <i>Individualized Education Plan</i> (IEP) is created within 30 <i>calendar</i> days of the completed evaluation. The IEP is developed by a team which includes the parents, child (if appropriate), special education teacher, regular education teacher (if appropriate), and a representative of the school district. The IEP describes the special instruction and related services that the child will receive. The IEP also includes annual goals, in some cases short-term goals, a behavior plan (if appropriate), and how progress will be measured.	A <i>Service Agreement</i> , also called a §504 Plan, states the services that will be provided to enable the child to participate fully in the school program and extracurricular activities.

Chapter 14

Chapter 15

What happens if parents and schools disagree on what services should be provided?

Parents must be given written notice when a district wants to evaluate a child, believes that a child is not eligible, or proposes to initiate or change a child's program and placement.

→ If parents want to stop the school district from implementing its recommendation, the parent must check "I do not approve" on the written notice (called a NOREP or Notice of Recommended Educational Placement), request a pre-hearing conference, or skip the pre-hearing conference and request a special education hearing.

→ The parent can request mediation from the Office for Dispute Resolution.

→ The parent or district can appeal a Hearing Officer's decision to a state appeals panel and then to court.

→ The parent can file a complaint for clear violations of federal or state law with Pennsylvania's Division of Compliance Monitoring and Planning. The Department will respond in writing within 60 *calendar* days.

Parents must be given written notice when a school district intends to qualify or disqualify a student for special services or to change the services in the service agreement.

→ The parent can request an informal conference. The school district must have a conference within 10 *calendar* days.

→ If the informal conference doesn't work, the parent can request a formal hearing by sending a written request to the principal or superintendent. Pennsylvania uses the same hearing system for Chapter 14 and Chapter 15 complaints. The hearing officer's decision can be appealed directly to court.

→ The parent can send a letter to the Office for Civil Rights if the complaint involves disability discrimination.

→ The parent can send a letter to Pennsylvania's Division of Compliance Monitoring and Planning for clear violations of Chapter 15. The Department will respond in writing within 60 *calendar* days.

→ The parent can file a lawsuit.

What happens to the child's services during the hearing process?	Once the parent requests a hearing, the school district cannot change the child's disability label, placement, or the services listed in the IEP unless the parents agree. This "stay put" right continues until all administrative and court proceedings have been finished. There are some exceptions to this rule in the area of school discipline.	When the parent rejects a proposed school district change and requests a hearing, the child has a continuing right to receive the services in the service agreement until the hearing officer reaches a decision that the services should stop.
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