

# Education is Special



A Guide to  
Special Education  
in Maine



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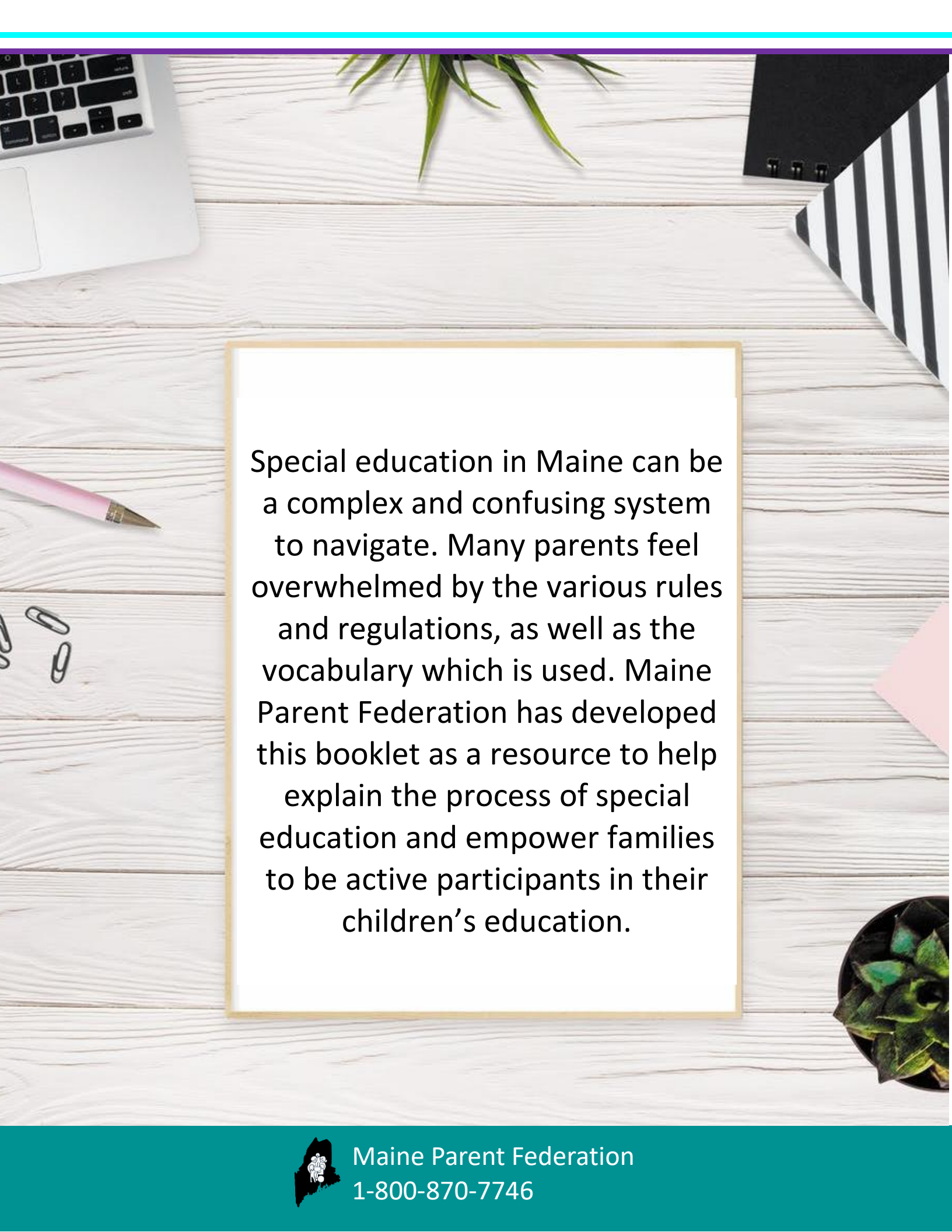


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Special education in Maine can be a complex and confusing system to navigate. Many parents feel overwhelmed by the various rules and regulations, as well as the vocabulary which is used. Maine Parent Federation has developed this booklet as a resource to help explain the process of special education and empower families to be active participants in their children's education.



## Introduction to Special Education Regulations

All public education is provided by the federal and state departments of education. The **United States Department of Education** is commonly abbreviated as “ED”, which stands for “Education Department”. The official U.S. Department of Education website can be found at [www.ed.gov](http://www.ed.gov).

At the state level we have **Maine’s Department of Education**. This is commonly abbreviated as MDOE. You can find the official Maine Department of Education website at [www.maine.gov/DOE/home](http://www.maine.gov/DOE/home).



### Federal Level



### State Level

At the federal level, special education is mandated by the **Individuals with Disabilities Education Act (IDEA)**. IDEA is a federal law that provides federal financial assistance to state and local education agencies to ensure a **Free and Appropriate Public Education (FAPE)** via special education programs and related services to eligible children with disabilities. All public schools in the United States must follow IDEA in order to receive federal funding. Private schools are



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not covered under IDEA, do not receive this funding, and are not required to follow IDEA. However, they must still follow Section 504.



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Section 504 of the Rehabilitation act of 1973 is a federal civil rights law, not an education law. This law prohibits discrimination of people with disabilities at the federal level. This applies to ALL public and private schools, as well as colleges and universities who receive federal funding. Section 504 is very different from special education, and the conditions to qualify are generally more accessible than IDEA. People may qualify for a 504 plan, who don't necessarily need the services provided by an IEP. A 504 provides accommodation and modifications, rather than specialized instruction.

Special education is mandated at the state level by **Maine's Unified Special Education Regulations (MUSER)**, also known as Chapter 101. MUSER has to meet or *exceed* the expectations put forth by IDEA. The basis of MUSER is IDEA, and when reading MUSER, you will notice normal text and italicized text. The nonitalicized text is the language of IDEA, the italicized text is where Maine law *exceeds* the federal law.



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## The Individuals with Disabilities Education Act is made up of 4 parts.



### Part A

- Lays out the general provisions of the law
- Defines the terms used throughout the rest of the Act
- Provided for the creation of the **Office of Special Education Programs (OSEP)**
  - OSEP is responsible for administering and carrying out the terms of IDEA

### Part B and B-619

- Lays out the educational guidelines for school children ages 3-21
- Declares states are *required* to educate students with disabilities
- Provides financial support for state and local school districts
- Part B-619 details the guidelines for children ages 3-5

### Part C

Part C recognizes the need for early intervention (EI) for young children with disabilities by providing guidelines concerning the funding and services for birth through 2 years old.

- Identifies who is responsible for **child find** at this age
- Indicates eligible services for families through part C of IDEA

### Part D

- Part D describes national activities to improve the education of children with disabilities
- Includes grants to improve the education and transitional services provided to students with disabilities
- Provides resources to support programs, projects, and activities which contribute to positive results for children with disabilities



Maine Parent Federation receives part of its funding from the Office of Special Education Programs, which is made possible because of Part D of IDEA.



**Maine’s Unified Special Education Regulations (MUSER)** is Maine’s interpretation of IDEA. This law must meet or exceed the services, supports, and protections set forth by the federal law IDEA.

As defined in IDEA, “Special Education is specially designed instruction (SDI), provided at no cost to the parents, to meet the unique needs of a child with a disability.” Remember the term, **Specially Designed Instruction (SDI)**, as this is a key part of special education.

IDEA states that children with disabilities should have access to a **Free and Appropriate Public Education (FAPE)**. A Free and Appropriate Public Education is NOT limited to academics only. Instead it includes all aspects of the school day including unified arts, such as physical education, music, and art. When determined appropriate by the IEP team, access to specially designed instruction can also be received at home, or other places like hospitals.



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A **Free and Appropriate Public Education (FAPE)** includes access to services and accommodations.

Services-could include access to:

- Speech Therapy
- Occupational Therapy





- Fine Motor Skills such as, grasping objects, writing, shoe-tying etc.
- Physical Therapy
- Consultation from Specialists
  - Including Board Certified Behavioral Analysts (BCBA's)
- Counseling Services
- Extended School Year
  - Receiving special education services beyond the school year -- oftentimes this occurs when summer school is in session.

**Accommodations** are changes that remove the barriers to education. Accommodations do not change *what* the material being covered is, rather it makes changes to adapt to *how* the child learns.

Accommodations can include

- Extra time for all school work, including standardized tests
- Planned motor breaks throughout the day
- Preferential or flexible seating
- Taking tests verbally, rather than written
- Para-professional support
  - Also known as an instructional aide, educational technician, or teacher's aide

Special Education can also include instructions for

- Positive behavioral Supports and Interventions (PBIS)
  - These are methods used to identify and support behavior. This is intended to create a safe learning environment by allowing the child to feel safe, respected, engaged in learning, and involved in school life.
- Behavior Plans
  - Behavior plans can help reduce behavior problems by addressing the cause of the behavior.
- Social and emotional skills
  - Social and emotional skills are important to a child's well-being. A child's academic performance can improve greatly, by identifying struggles, teaching empathy, and building strong positive connections with peers/educators.
- Independent living skills



- Independent living skills are the skills that can help a person with disabilities learn important life skills including but not limited to: cooking, personal hygiene, financial management, home management
- Transition plans for adulthood
  - It's important to create a transition plan in high school to prepare for life after graduation. Children's services, and Adult services are very different from each other, and families often need support in navigating the new system. We recommend reading our booklet, "Transition Planning: A Guide for parents of children with Disabilities" to help you prepare.
- Vocational Rehabilitation (VR)
  - VR is a series of services which helps people with disabilities prepare to find and keep a job. For more information please check out The Bureau of Rehabilitation on Maine's Department of Labor website.
  - <https://www.maine.gov/rehab/dvr/vr.shtml>

## The Purpose and Structure of the IEP/504

The **Individualized Education Program**, also known as the IEP is a document which ensures all children with disabilities have access to a Free and Appropriate Public Education. The IEP indicates special education services and accommodations which will be provided based on the student's unique and individual needs. Eligibility is determined by Maine's Unified Special Education Regulations (MUSER). The IEP is developed by the IEP team.

### How does the process begin?



Each school district is mandated to engage in Child Find. Child Find is a method in which the state identifies which students need to access special education services. The state requires that districts “find” and identify students who have disabilities. Referral can occur any time and be made by multiple individuals. Child Development Services (CDS), parents, school personnel, and providers all have the authority to refer a student for special education eligibility.

A school district is tasked with finding children who qualify for special education services in that district, and providing ANY child who lives in that district, access to appropriate special education services. A child who is home-schooled or enrolled in private school is still entitled to receive evaluation, but they are choosing to give up their access to special education services as this only applies to public school education.

Diagnoses can be challenging to determine at a young age, instead “developmental delay” is often used as the qualifying diagnosis. Developmental delay can be used to qualify up to the age of 5. To determine whether a child has a developmental delay, the following areas must be considered:

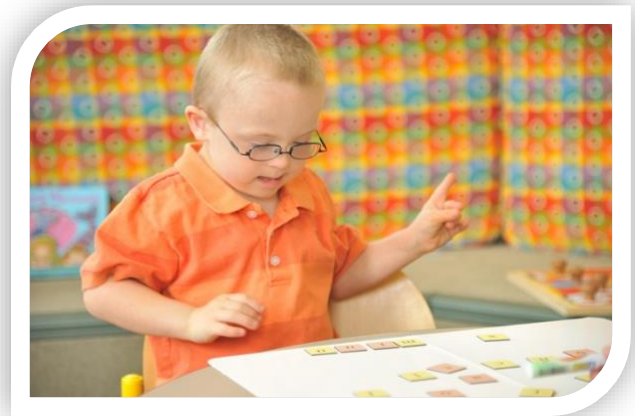
- Cognitive development
- Physical development, including vision and hearing
- Communication development
- Social and emotional development
- Adaptive development

From Birth to 2 years of age, services and funding are mandated by Part C of IDEA. This part of IDEA recognizes the need **for Early Intervention**. At this age, an Individualized Education Program (IEP) is not written, instead an Individualized Family Service Plan is written for the child. (IFSP)

Part B 619 of IDEA lays out the laws for children ages 3-5. This part of the law states that once a child turns 3 years old, an IEP will be put in place, and the student will be placed in the **Least Restrictive Environment (LRE)**.



The **Least Restrictive Environment** for a child is not just about *where* the education is taking place, it's also the *who*, and the *how*. It's a combination of location, programming, and practices. The Least Restrictive Environment for a child can change throughout the day depending on the subject matter, staff, or classmates.-It's important to be able to identify the factors that allows a child to succeed, and use that to their benefit.



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*i.e. ...a student who gets distracted during reading in the mainstream classroom due to noise and activity level, might actually benefit from a quiet place to work.*

*...but that same student might receive greater benefits from working with a group during hands-on activities.*

Part B-619 also states that after the age of 5, “Developmental Delay” can no longer be used to qualify for special education services. Instead, eligibility is based on one or more of the thirteen identified disabilities.

### **Thirteen Qualifying Disabilities under IDEA**

- Autism
- Deaf-Blindness
- Deafness
- Developmental Delay
- Emotional Disturbance
- Hearing Impairment
- Intellectual Disability
- Orthopedic Impairment (Physical Impairment)
- Specific Learning Disability
- Speech or Language Impairment
- Traumatic Brain Injury
- Visual Impairment including Blindness
- Multiple Disabilities



A student's diagnosis must *negatively impact* their ability to access their education in the general curriculum. This means a student is not automatically entitled to support services simply because they have a diagnosis. The school will perform the appropriate evaluations, and determine whether the disability impacts the student's ability to access their education in the general curriculum. Schools DO have the right to deny the request for support services if the disability does not negatively impact the student.

## Evaluations

After a child is identified by Child Find, the school will complete evaluations. Schools have 45 school days after signed parental consent to complete the evaluations and hold an IEP to review the evaluations

The results from the evaluation will be used to decide the child's eligibility for special education. The IEP team will determine whether the child qualifies for special education services. After the child is determined to be eligible, the IEP team will put together an IEP immediately.

The school then has 30 school days to implement the IEP.

### The IEP team consists of

- School Administrators
- Special Education Teachers
- Mainstream Education Teachers
- Therapists (OT, PT, Speech)
- Parents
- Evaluators

At this initial IEP meeting, the child's strengths, weaknesses, and needs are discussed, and team members are encouraged to bring any concerns in order to determine if additional evaluations need to be completed. The purpose of this meeting is to discuss the student's



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current **Present Level Of Performance (PLOP)**, academically, socially, and emotionally.

The IEP team must meet annually to revise and update the student's IEP. This is the minimum set by IDEA. The purpose of the annual IEP team meeting is to

- Review evaluations, and determine the Present Level of Performance (PLOP)
- Measure the progress towards the student's goals, and adapt accordingly
- Allow parents and teachers the opportunity to provide updates on the student
- To consider changes to services and modifications

In addition to the annual IEP meeting, the team must meet every 3<sup>rd</sup> year for the **Triennial IEP Meeting**. This is a very important meeting, as it is held to assess if the student's needs have changed, and whether or not they are still eligible to receive special education services. Often times, in this meeting there are additional team members such as a school psychologist, who bring new data. This information will help inform the IEP goals.

Triennial IEP Meetings can be hard for parents as it is often a time to reflect on the areas which are challenging for their child, rather than highlighting their strengths and accomplishments. In order to continue qualifying for special education services, necessary attention must be paid to the challenges. This is to prove there is a need for special education services.

When the IEP team determines it's necessary to perform evaluations, it is the school's responsibility to conduct the evaluation, and hold the IEP meeting to discuss the results within 45 school days. School days do not include breaks, snow days, or professional development days, so 45 school days can end up being a lot longer than 45 calendar days.

For children birth to 2 years in early intervention programs, CDS has 60 calendar days to schedule this meeting.

Parents should always receive the results of these evaluations at least 3 days before the IEP meeting. If a parent receives new information regarding the results



of evaluations less than 3 days before the IEP meeting, then they may request the meeting to be rescheduled until they have had ample time to review and prepare.

## Planning for the IEP meeting

The school should send the **Advance Written Notice** 7 days prior to the meeting. This document states the reason for the meeting, and includes a list of who will be present at the meeting.

Parents should remember they have the right to invite additional people to the meeting, but should always notify the team of anyone they plan to bring. This is *especially* important if parents plan to bring a legal representative. If a parent shows up to an IEP meeting with a legal representative and has not notified the school in advance, the school has the right to cancel that meeting and reschedule to another day/time, when they too will have a legal representative present.

We encourage parents to determine a list of prioritized concerns to discuss at the meeting. Plan to discuss your top 3 concerns, and think about possible solutions or outcomes. Bring in data to assist in the requests your making. This can include progress reports and evaluations from any outside therapists, counselors, or other service providers.



Narrowing your priorities down to the top 3 will not only help the meeting to run efficiently, but you may also find that several of your other concerns fall under the “umbrella” of your top 3 priorities. Come prepared with written questions, and reflect on any information you would like to share with the school that could help shape your child’s plan.

We recommend picking out available dates to reconvene the IEP meeting in the event you run out of time. Picking out dates in advance will help to take the pressure off yourself to get everything accomplished in one sitting. View this



meeting as part 1 of 2 parts. It's also helpful to try to avoid scheduling the meeting for longer than 2 hours to avoid exhaustion and frustration.

### **After the IEP meeting**

The school must send the Prior Written Notice within a reasonable time. The Prior Written Notice documents the minutes of the IEP meeting, detailing who was present, what was discussed and what determinations (changes) were made. It is important for parents to closely review this document for any inaccuracies and address inaccuracies with the school as soon as possible. Prior Written Notices will be sent prior to the new IEP being received and implemented.

After the IEP is held, parents should receive an updated copy of the IEP within 21 school days. Any IEP changes must be implemented within 30 calendar days of the previous IEP meeting.





## IEP

## 504

Which Law is Responsible?

Individuals with Disabilities Education Act- This is the law that provides Special Education.

Rehabilitation Act of 1973-This is a Civil Rights law.

Which Department?

OSEP- Office of Special Education Programs

OCR- Office of Civil Rights

Eligibility Requirements

Developmental delay, or if over age 5, one of the 13 qualifying disabilities. Disability must negatively impact student's ability to assess general curriculum.

Has a disability that significantly impacts one or more major life activities.

What is included?

Special education services, accommodations, and related services.

Accommodations and Modifications-Changes how people access education, not specially designed instruction.



## Procedural Safeguards and Due Process

Procedural Safeguards are protections for the parents. The Procedural Safeguard notice is designed to inform parents of what rights they have to protect them and their child. The school is required by IDEA to provide this notice to parents of students with disabilities. This document outlines the legal rights and protections parents have when working with the school under IDEA and Maine's Unified Special Education Regulations. It DOES NOT address the structure of the IEP/504 plan, rather it sets the rules for proper procedures.

Knowing and understanding your rights as a parent, can help you to be an effective member of the team.

It's best to be **assertive** when advocating for your child's needs. Being assertive allows you to express yourself, in a respectful controlled manner. Assertiveness is based on mutual respect. It not always what you have to say, but *how* you say it; use a conversational tone, stay relaxed, and try to stay open to all new information. Being assertive is stating your opinion, while still being respectful of others.

You never want to be **aggressive**. While you may actually reach your goals this way, you are damaging the relationships of the people who may be working with your child or making decisions on your child's behalf. You may have entirely valid reasons for feeling the way you do as a parent, but giving aggression will only lead to you receiving aggression.

Being too **passive** doesn't allow you to fully express your opinions. Passive parents may agree with others despite their own feelings. As a parent you know your child the most! You are an equal member in your child's IEP team and your voice matters!



Sometimes when implementing the rules of IDEA into a real-world IEP, violations can occur. If you suspect a violation has occurred, you can file a **complaint** with the Maine Department of Education.

A complaint may be filed to the state by either a parent or organization that alleges there was a violation of IDEA within the school. A Complaint Investigator is assigned, and they will examine the proposed violation. The Complaint Investigator will decide whether or not the school has violated IDEA. There is no appeal process for the complaint, and if either party is unhappy with the ruling, they may proceed with mediation and/or due process.



**Mediation** is another process of resolving a conflict, in which both parties (parents and the school) agree to participate. A third-party mediator is assigned, and both the parent and school present their perspectives to them. Both sides participate in discussion about ways to resolve their opposing views. Each party might need to make compromises, but this is often an effective way to help everyone reach a common ground.

There is no appeal process for mediation, and the agreement is considered to be legally binding. However, if an agreement cannot be met parties may move forward with Due Process.

A **due process** hearing is the last method by which a dispute may be resolved. A written complaint requesting due process may be filed to the Maine Department of Education by either the parent or the school district. If both parties do not choose to resolve the dispute by participating in mediation, a resolution meeting will be required.



A hearing officer will be assigned to the meeting, and they are tasked with the responsibility of determining if a violation has occurred and how the violation must be remedied. There is an appeal process if the finding is not acceptable to both parties involved.



# Notes



# Notes





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