

## Special Education Fact Sheet

### **How to Get Programs and Services that are on the IEP**

#### **What should I do if my child is not getting a program or service that is written on his or her IEP?**

An Individualized Education Program (IEP) is a commitment by the Department of Education (DOE) to provide your child with the programs and services listed on his or her IEP. That means the services and programs listed on the IEP are ones the DOE has already agreed are necessary for your child. Unless you agree to change your child's IEP, the Committee on Special Education (CSE), the Integrated Service Center (ISC), or the Committee on Pre-School Special Education (CPSE), and the school have a legal obligation to provide all of the services listed on your child's IEP. Therefore, if you have proof that your child is not getting these services, or is not getting them consistently or in the frequency or duration that is listed on the IEP, you should request a meeting with the school-based support team, CSE, ISC, or CPSE to discuss this. If the problem is not corrected in a reasonable amount of time, you should request mediation or an impartial hearing.

#### **How long do I wait to try resolve the issue informally before requesting a hearing or mediation?**

The amount of time that is reasonable to wait before requesting mediation or a hearing will depend on the type of program or service that your child is not receiving. The less urgent the service, the longer you should wait before concluding that the Department has not acted within a reasonable time and a hearing is necessary. If, for example, your child needs a piece of equipment that the school does not have or that is broken, and new equipment must be ordered, it may take time to obtain the piece of equipment. If, however, your child's immediate health and safety are being jeopardized by the school's failure to provide the service, you should request a formal mediation or hearing immediately.

To request legal assistance to help you get the services that are on your child's IEP, or with mediation or a hearing to challenge the failure to provide programs or services, please contact New York Lawyers for the Public Interest, Inc. (NYLPI) after you have complained to the school-based support team, the CSE, or CPSE and waited a reasonable amount of time and the service still is not being provided, or provided in the amount stated in the IEP.

### **How do I know if my child is receiving his or her services?**

Sometimes you will not know for certain whether a service listed on your child's IEP is being provided, or whether it is being provided in the required amount. It is important that you find out as much as you can. If your child is able to tell you what is going on at school and what services he or she is getting, speak with your child. Ask the school for a copy of your child's weekly schedule so you can see whether the service is on the schedule. If it is, go over the schedule with your child to find out whether your child is receiving the services listed on the schedule. Call the school-based support team, your child's teachers, or other service providers at the school, and find out as much as you can. Sometimes these people will admit that certain services are not being provided.

### **Can services be taken away from my child?**

If the school, CSE, or CPSE is claiming that your child no longer needs one or more of the services listed on his or her IEP, it cannot stop providing the service until after the IEP is changed, and the IEP cannot be changed without your participation and agreement unless a hearing officer determines that the change is appropriate. If you do not agree to the proposed change, you may request a CSE review meeting, mediation, or an impartial hearing to challenge it. If you go to an impartial hearing, you will need to prove that your child still needs the service. You may need evaluations or testimony from experts to make your case.

### **What if the services my child is receiving is not adequate?**

If your child is getting the service listed on the IEP, but you believe the service is not being given properly, you should raise the problem with the school-based support team, CSE, or CPSE and then request a mediation or hearing if you do not get a satisfactory response. The law assumes that the programs and services will be adequately provided. Therefore, it is a violation of the IEP and of special education law to provide a program or service inadequately, whether because of an inadequate number of staff, staff without adequate training, broken equipment, or other reasons.

As with proving that your child is not getting a service at all, proving that a service is being provided inadequately can be simple or difficult. It may be easy to prove that a school is using an untrained individual to provide a service if the individual freely admits he or she is not trained in a particular field. The fact that your child does not like a teacher or provider of a related service does not mean that the services provided are inadequate and will not entitle you to change teachers or providers.

### **How do I request mediation?**

To request mediation, contact the CPSE or CSE in writing, describing your concerns, the efforts you have made to work out the problems with the school, and the solution you propose. The mediation process is voluntary on both sides (please see our Mediation fact sheet for more) and can be requested whether or not you think you might eventually need an impartial hearing. It is possible that the Department of Education will believe that there is no

possible solution and refuse to attend a mediation session with you. If that should occur, you may request an impartial hearing.

### **How do I request an impartial hearing?**

To request an impartial hearing, request a form from the Impartial Hearing Office, New York City Department of Education, 131 Livingston Street, Room 201, Brooklyn, New York 11201, (718) 935-3280. It is recommended that you use this form to request your hearing, as your request may be dismissed if it does not include all the information required. In general, your request for a hearing will have to include the following information:

- (i) your child’s name, CSE case number, address and school;
- (ii) a short statement of the reason why you want a hearing – that is, the problem that you want the hearing officer to resolve – and the facts supporting your case; and
- (iii) a short statement of what you want the hearing officer to do to resolve the problem.

After receiving your request, the DOE is required to contact you to schedule a resolution session, which is a meeting to discuss whether you can resolve your issues by agreement. If you and the DOE’s representative both agree that you want to skip (or “waive”) the resolution session and go straight to hearing, or if the resolution session fails to resolve the dispute, your case will proceed to hearing at a later date. You may also request a mediation session in lieu of a resolution session.

### **TIPS**

- **Keep a notebook**
  - **Record all phone conversations and in-person conferences and meetings**
  - **Keep all the papers you received from the DOE**
  - **Keep letters and envelopes**
  - **If documents are not dated, note the date you received the document on the back of the document or envelope**
- **Send all communications by certified mail or hand deliver them, asking the receiver to initial and date your copy**
- **Always**
  - **Keep a copy of everything you give to the DOE**
  - **take the name of the DOE person you’re dealing with**
    - **If you can, get title, office, and detailed contact information**
    - **write it all down for future use**

**\*DUE TO THE GENERAL NATURE OF THE INFORMATION PRESENTED, THIS FACT SHEET SHOULD NOT BE REGARDED AS LEGAL ADVICE. \***

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