

Special Education Fact Sheet # 2

HOW TO OBTAIN THE SERVICE/PROGRAM SPECIFIED IN YOUR CHILD'S INDIVIDUALIZED EDUCATION PROGRAM (IEP)

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

A: An Individualized Education Program (IEP) is a commitment by the Department of Education to provide the programs and services listed on the IEP. That means that the services and programs listed on the IEP are ones that the Department has already agreed are necessary for your child. Unless you agree to change your child's IEP, the CSE or 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 in the amount stated on the IEP, you should request a meeting with the school-based support team, CSE, or CPSE and raise this issue at the meeting. You can also complain to the Regional Administrator for Special Education ("RASE"). If the problem is not corrected in a reasonable amount of time, you should request an impartial hearing.

The amount of time that it is reasonable to wait before requesting 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 hearing immediately.

If you want legal assistance to help you get the services that are on your child's IEP, or want legal representation at a hearing to challenge the failure to provide programs or services, you should 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.

Sometimes you will not know for sure 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 if you can get 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 in fact 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.

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, they cannot stop providing the service until after the IEP is changed, and they cannot change the IEP 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.

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 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 is sometimes simple and sometimes 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.

Q: How do I request an impartial hearing?

A: 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.

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