

SPECIAL EDUCATION TRAINING FOR PARENTS AND ADVOCATES

Disability Justice Program

New York Lawyers for the Public Interest, Inc.

(212) 244-4664

We are open remotely!

Introducing NYLPI

Our Mission

NEW YORK LAWYERS FOR THE PUBLIC INTEREST works to advance equality and civil rights, with a focus on disability rights, health justice, and environmental justice, through the power of community lawyering and partnerships with the private bar.

About NYLPI

The Disability Justice Program protects and promotes the civil rights of people with disabilities

The Environmental Justice Program provides organizing and legal assistance to low-income neighborhoods and communities of color that bear an unfair burden of environmental threats

The Health Justice Program works to achieve equal access to health care in low-income communities of color and immigrant communities in New York City

The Pro Bono Clearinghouse provides community groups and nonprofit organizations with free legal assistance

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Disability Justice

Protect and promote the civil rights of people with disabilities

- ◆ **Education**: Works to ensure that children with special needs receive the educational services to which they are entitled
- ◆ **Community Integration**: Works to ensure that people with developmental disabilities and mental illness are integrated into the community
- ◆ **Opportunity & Access**: Works to remove barriers to physical and programmatic accessibility of public and private entities for individuals with disabilities
- ◆ **Communication Access**: Works to ensure the removal of communication barriers for individuals with disabilities who are limited English proficient and deaf or hard of hearing

Training Agenda

Remote Learning During COVID19

I. Special Education

- a. Individuals with Disabilities Education Act (IDEA)
- b. Free Appropriate Public Education (FAPE)
- c. **Special Education during Remote Learning**

II. The Special Education Process

- a. Identification
- b. Referral
- c. Evaluations
- d. Eligibility Determination
- e. Individualized Education Program (IEP)
- f. Placement and service

III. Behavior Concerns

Training Agenda (*cont'd*)

IV. Corporal Punishment/ Physical Abuse

V. Verbal Abuse

VI. Due Process Rights

- a. Mediation
- b. Impartial Hearing
- c. Pendency

VII. Charter Schools

VIII. §504 Plans

IX. Private Schools

What is Special Education?

- Specialized instruction and related services *individually* designed to provide educational benefit
- It is not a place but a set of services to better address students' needs

What is the Individuals with Disabilities Education Act (IDEA)?

- A federal law that protects children's rights to a **Free Appropriate Public Education (FAPE)** in the **Least Restrictive Environment (LRE)**

Free Appropriate Public Education (FAPE)

Special Education and Related Services

- **F:** Free means at public expense
- **A:** Appropriate means appropriate *for your child*
- **P:** Public means under the direction of the new York City Department of Education
- **E:** Education means it covers all children in preschool and Grades K-12, as well as through the age of 21, where appropriate

Who is a Child with a Disability?

A student with an impairment who is in need of special education or related services as a result of his/her impairment, and meets one of the classifications under IDEA listed below:

- Intellectual Disability
- Hearing Impairment
- Speech or Language impairment
- Visual impairment
- Emotional disturbance
- Orthopedic impairments
- Autism
- Traumatic brain injury (TBI)
- Other health impairments (OHI)
- Specific learning disability
- Deaf/blindness
- Deafness
- Multiple disabilities

- A diagnosis may not be enough
- Classification should not determine placement or services but it does in some cases
- Students are served according to need, not classification
- The goal is providing FAPE in LRE

Who is Entitled to Special Education?

- Student has a disability and requires specially modified instruction
 - Includes students who do not have cognitive limitations (e.g. students with physical disabilities, mental disabilities, ADHD, bipolar disorder, etc.)

Education During Covid-19

- Return to school plan:

The most up-to-date information on the reopening plan is available online at schools.nyc.gov/returntoschool2020.

- For specific information about the proposed instruction models, visit schools.nyc.gov/school-year-20-21/return-to-school-2020/teaching-and-learning

- The City's proposed plan for reopening schools is a 'blended learning' model to accommodate social distancing. Students will be taught on-site in school for 1-3 days of the week and will learn remotely on the other days of the week.

Education During Covid-19

- Any New York City families may opt for all-remote learning for any reason, regardless of medical need.
- Families can now indicate if they'd like to choose remote-only instruction for the fall via a [DOE survey](#). The form should be completed by August 7th. Any parents who choose the blended learning model (in-person school on some days, remote on others) can switch to full-time remote instruction at any time. Parents who choose full-time remote instruction will have the opportunity to switch to blended learning on a quarterly basis.

Education During Covid-19

- If your child attends a DOE school, your child should have a Special Education Remote Learning Plan. This plan is based on your child's IEP.
- If you would like to discuss or request a change at any time, speak to your child's teacher and/or related service provider. specialeducation@schools.nyc.gov

Education During Covid-19

- You are able to access school personnel during this period (teacher, assistant principal, guidance counselor).
- If you do not know how to access the teacher or any staff contact information, you can contact the school's parent coordinator: <https://schools.nyc.gov/find-a-school>

What does the Special Education process look like?

In order for a student to receive special education services in New York City, the Department of Education (DOE) must go through six basic steps:

1. Identification
2. Referral and Consent
3. Evaluation
4. Eligibility Determination
5. IEP Development
6. Placement and Service

Who is involved in the special education process?

The **IEP Team**, which includes

- **The parent and/or legal guardian**
- **The child** (if appropriate), **AND:**
- **School-based support team,**
- **The District-level representative, OR**
- **The Committee on Special Education (CSE):**
for students in non-public and charter schools as well as students on home instruction

What are the different “systems” where a child can receive special education?

1. Public:

- Community Schools
- District 75
- District 79 (alternate schools and programs)

2. Charter

3. Non-public:

- Central Based Support Team (state-approved)
- Private (non-approved)

Evaluations

- DOE is required to evaluate your child every **3 years** (*also known as triennial evaluations*)
- You may also request an evaluation from the DOE
- There are different types of evaluations you can request from the DOE
- Once an evaluation is requested, DOE has *30 school days* to complete it
- Once the initial evaluations are completed, DOE must convene an Individualized Education Program (IEP) meeting
- DOE has *30 school days after the meeting* to implement any IEP that is developed as a result of the evaluation

What is an Individualized Education Program (IEP)?

- A legal document that discusses your child's educational needs and the services they are entitled to receive including:
 - **Disability Classification**
 - **Classroom size and setting**
 - **Educational supports, related services and accommodations**
 - **Goals and objectives**
- Reviewed and updated *annually*
- Parent/Legal Guardian is a member of the "IEP Team"
- Parent's signature on an IEP meeting attendance sheet does not indicate acceptance of the IEP, only proof of attendance

What should I do if the school is always calling me regarding my child's behavior?

Functional Behavioral Assessment (FBA)

- Determines why student engages in behaviors that impede learning and how the student's behavior affects his/her ability to learn
- Can be behaviors like focusing and hyperactivity
- Involves direct observation and information from the student, teacher(s), and/or related services provider(s)
- Requires parental consent, but the FBA process can begin following at least 2 attempts to obtain consent and 10 days after a consent form is sent home

Behavior Intervention Plan (BIP)

- BIP is based on the results of an FBA. This is a formal plan that is separate from but incorporated into the student's IEP.

Education During Covid-19

- Related services are being provided via teletherapy (videoconferencing) when possible and appropriate.
- If teletherapy is not appropriate, the provider will consult with you to discuss ways to support your child through remote learning. If you have any questions, please contact your child's related service provider.

What should I do if my child continues to be suspended? What are his/her rights?

- Students with disabilities can be suspended and are subject to the same rules as other students
- However, students may not be punished for actions that are the result of their disabilities

Suspensions and Expulsions (*cont'd*)

- Students with IEP's cannot be suspended for more than ten (10) consecutive days without notice because it is considered a change of placement.
- Students with IEP's cannot be *expelled* from school although they can be placed in alternative settings.
- Students with IEP's who are suspended for more than 10 consecutive days have a right to have their program and service continued while they are suspended.
- Repeated suspensions for fewer than 10 days can also be seen as a "change in placement." This means that you have the right to seek a due process hearing just as you do with any other disagreement about your child's IEP or placement.

Suspensions and Expulsions (*cont'd*)

If your child is being frequently suspended or otherwise disciplined, or the school keeps telling you that the student has serious behavioral problems, the school has a duty to provide a Functional Behavioral Assessment (FBA) and develop a Behavioral Intervention Plan (BIP), rather than just punish your child.

Suspensions and Expulsions (*cont'd*)

- If the student is being suspended, you have a right to a Manifestation Determination Review (MDR) to determine if the behavior for which the child is being disciplined results from his/her disability.
- Although our office does not handle suspension hearings, we can advise you about your rights to an MDR and help you to get the school to provide behavioral supports to your child to avoid future suspensions or discipline.

Corporal Punishment/ Physical Abuse

- Any act of physical force on a student for the purpose of punishment
- It does not include “reasonable force” to protect oneself, students, employees, or school property
 - Force is only reasonable when it is no more than what is necessary to stop the behavior
- DOE prohibits the use of corporal punishment on school property, school trips, school functions and in certain cases off-school property, if it presents a danger to the school-community.

Corporal Punishment/ Physical Abuse (*cont'd*)

1. You can report it to the principal at your child's school
2. You can contact the Office of Special Investigations (OSI)
3. You can call 311 or (212) 504-4115 (TTY)

Verbal Abuse

- It is language that makes fun of or embarrasses the student, or that can be expected to make a student fear for his or her safety or which could be expected to cause physical harm.
- This includes:
 - What was said to the student
 - What was overheard by the student
 - What was told to the student secondhand
- **Verbal abuse can be spoken or written.**

Verbal Abuse (cont'd)

What if my child is very young or their disability keeps them from understanding the meaning of what was said by staff and I learn about it? Is that still considered verbal abuse?

YES

Due Process Rights:

What if I do not agree with the IEP Team's Recommendations?

- I. Mediation
- II. Impartial Hearing
- III. Pendency

Mediation

- Parent or school can request mediation
- Participation in mediation is voluntary for all parties
- Requesting mediation does not keep you from asking for an impartial hearing later
- Mediation is confidential - nothing said in mediation can be used as testimony or evidence in a court proceeding
- Mediators must be neutral
- Mediation agreements are binding and legally enforceable
- The school-based support team must immediately meet to update the IEP to be consistent with any mediation agreement.
- You do not to be represented by an attorney

Mediation Centers in New York City

Bronx

Institute for Mediation and Conflict Resolution (IMCR)

384 East 149th Street, Suite 330
Bronx, NY 10455
(718) 585-1190
www.imcr.org

Brooklyn

New York Peace Institute

210 Joralemon Street, Suite 618
Brooklyn, NY 11201
(718) 834-6671
www.nypeace.org

Manhattan

New York Peace Institute

111 John Street, Suite 100
New York, NY 10038
(212) 577-1740
www.nypeace.org

Queens

Community Mediation Services (CMS)

89-64 163rd Street
Jamaica, NY 11432
(718) 523-6868
<http://mediatenyc.org>

Staten Island

New York Center for Interpersonal Development

130 Stuyvesant Place, 5th Floor
Staten Island, NY 10301
(718) 815-4557
www.nycid.org

Impartial Hearing

- An administrative proceeding, where an Impartial Hearing Officer (IHO) makes a decision based on testimony and evidence
- An impartial hearing is similar to a trial, but much less formal
- An IHO is equivalent to a judge
- An impartial hearing ends in a decision
- Requests for a hearing must be in writing
- The IHO can only give you what you ask for in your hearing request

Impartial Hearing (Cont'd)

- The IHO can only give you what you ask for in your hearing request
- You do not need to be represented by an attorney, but it is recommended
- Timelines do apply:
 - For when you can request the hearing
 - By when the hearing must be completed
 - For further information on the process, please refer to the Standard Operating Procedures Manual:
<http://schools.nyc.gov/NR/rdonlyres/5F3A5562-563C-4870-871F-BB9156EEE60B/0/03062009SOPM.pdf>
- ***Impartial Hearings are Adversarial, Time-Consuming and Costly***

What can I request at mediation or impartial hearing?

- **A new program:**
 - **Setting**
 - **Services**
- **An independent evaluation at the expense of the DOE**
- **Compensatory services**
 - **Tutoring**
 - issuance of P-3 letter or direct payment to service provider
 - **Other Services**
 - issuance of an RSA (“Related Service Authorization”)
- **Compensatory education**
 - Education provided to students after they turn 21

What is Pendency?

- It is sometimes called the “**stay-put**” provision.
- During any due process proceeding, the child remains in the then-current placement
 - unless the parent/guardian and school agree on an alternative placement.
 - provides stability and consistency in child’s education.
 - prevents child from being moved unnecessarily before an agreement or order for a new placement is made.
- Triggered when hearing or mediation is timely requested and ends when the claim is fully adjudicated.

Charter Schools

Who is in charge of my child's IEP if my child is in a charter school?

- **DOE is responsible for *developing* the IEP.** This is done by the CSE. The charter school may take part in the process.
- Once an IEP is developed, the charter school is responsible for *carrying out* the IEP.
- To do this, charter schools may provide programs and services directly, through an outside provider, or by requesting that the CSE provide the program and services.
- **The IEP must be designed to meet your child's needs, not based on what the charter school can offer.**

Charter Schools

What if my child's Charter School is not meeting the students' needs?

- Students have the *same due process rights* as if they were enrolled at a DOE public school.
- Right to request mediation.
- Right to request an impartial hearing.
- Any mediation or impartial hearing would be against DOE.
- The charter school is not ultimately responsible for giving the student a FAPE under the IDEA. The charter school is responsible for complying with a law called Section 504.

Section 504 (§504)

A federal anti-discrimination law that applies to any school that takes federal money.

Section 504 can cover many areas including, but *not limited to*:

- Educational Services and Testing
- Extracurricular activities
- Physical Access
- Discipline

This applies to both public schools and charter schools.

You can always ask for a 504 plan instead of, or in addition to, an IEP. The school should have a Section 504 coordinator to whom they can direct you.

Section 504 (§504)

How do I request a 504 Plan?

- Every school – public or charter – **should have a Section 504 Coordinator**. This person should be knowledgeable about the school's Section 504 responsibilities as well as its policies and procedures regarding Section 504.
- You must ask a 504 plan in writing.
- Within 30 days of receiving your written request, the Section 504 Coordinator should put together a “504 team” and schedule an assessment meeting. The Coordinator must provide you with a written notice of the meeting.
- At this meeting, the team will decide whether or not your child is eligible for accommodations and what those accommodations should be. If your child is found eligible, the team, which includes you, must develop a 504 plan.
- If your child is not found eligible for accommodations, you can file a written complaint seeking review by the district’s central 504 coordinator: (718) 391-8116, or you can immediately file for due process.

Private School Placements

- **Non-public school settings are considered more restrictive environments than public school settings**
- The student is not automatically entitled to private school, even if you feel DOE has done something wrong
- There are four ways in which DOE may fund a child's education in a non-public school:
 - For state-approved schools
 1. Nickerson Letters (“P1”)
 2. Deferral to Central-Based Support Team (CBST)
 - For non-approved private schools:
 3. Carter (or Reimbursement) Hearing
 4. Connors (or Pre-reimbursement) Hearing

Nickerson Letters (“P-1”)

- **Nickerson Letters may be issued if a child does not receive school placement in accordance with his/her IEP**
 - within *65 school days* of receipt of consent to initial evaluation or referral for review, or
 - By August 15 prior to the start of school year

- **Limitations:**
 - Letters will expire within 30 days
 - Ends if you are offered an appropriate placement before finding a placement that accepts the Nickerson
 - Only good for one year
 - Only gets you an approved school
 - The list can be found at:
<http://www.p12.nysed.gov/specialed/appschools.html>
 - Approved schools may have very few seats available
 - Acceptance to schools are based on the availability and discretion of the school

Central Based Support Team (“CBST”)

- The IEP team has authority to put “*Defer to CBST*” on the IEP.
- CBST is responsible for student placement at an appropriate non-public State-approved school
- At this point, a CBST coordinator will be assigned to the matter.
- Stay in contact with the CBST coordinator
- Visit schools
- Approved private schools are not required to accept the child referred to them

Carter or “Reimbursement” Hearing

- If you place your child in a non-State-approved private school you must sign a contract with that school to pay the cost upfront
- **This means that if you lose at a hearing, you are responsible for the costs**
- Before you can win at a hearing, you must show :
 - DOE failed to offer appropriate public school program
 - Program provided by non-approved school is appropriate
 - The existence of equitable factors such as whether you, the parent or guardian, considered the DOE’s offer

Carter or “Reimbursement” Hearing (cont’d)

- The law says that the parent must give prior written notice of unilateral placement at least 10 business days prior to enrolling in private school,

OR
- Providing a “10-day letter” to the IEP team at the IEP meeting.

Connors or “Pre-reimbursement” Hearing

- **If you are not able to afford the cost of tuition, this process also requires an Impartial Hearing**
 - **Please note the following:** You may need to give proof of financial need which prevents you from paying the costs of tuition upfront
 - You must show that without payment, your child will be denied the appropriate education
 - You must have a written contract with the school obligating you to pay tuition costs
- **The requirement to give prior notice for *Carter* cases also applies in *Connors* cases**

Contact Information

- For Community Superintendents and Family Support Coordinators:

<http://schools.nyc.gov/NR/rdonlyres/4E7E1D37-41DE-4AA5-98BC-9DA9E29DCE19/0/CommunitySuperintendentsandFSCs.pdf>

- For High School Superintendents & Family Support Coordinators:

<http://schools.nyc.gov/NR/rdonlyres/B8A232BD-F41E-4F2B-A704-7CE4DB6EE170/0/HighSchoolSuperintendentsandFSCs.pdf>

- For an Impartial Hearing:

Impartial Hearing Office

131 Livingston Street - Room 201

Brooklyn, NY 11201

Phone: (718) 935-3280

Fax: (718) 391-6181

New York Special Education Resources

- New York City Department of Education: <http://schools.nyc.gov>
- Family Guide to Special Education Services for School-Age Children: [http://schools.nyc.gov/NR/rdonlyres/DBD4EB3A-6D3B-496D-8CB2-C742F9B9AB5C/0/Parent Guide for Students with Disabilities Updated Web.pdf](http://schools.nyc.gov/NR/rdonlyres/DBD4EB3A-6D3B-496D-8CB2-C742F9B9AB5C/0/Parent%20Guide%20for%20Students%20with%20Disabilities%20Updated%20Web.pdf)
- Standard Operating Procedures Manual: <http://schools.nyc.gov/NR/rdonlyres/5F3A5562-563C-4870-871F-BB9156EEE60B/0/SpecialEducationStandardOperatingProceduresManual.pdf>

Education during Covid-19

- CSEs are shifting to a remote practice, but you can still get direct support from a Committee on Special Education staff member – please see schools.nyc.gov.

Resources During COVID19

- General information

<https://www.schools.nyc.gov/>

- New York Lawyers Resource Guide

<https://nylpi.org/resource/special-education-remote-learning-information-contacts-resources-links/>

- INCLUDENYC parent center

<https://www.includenyc.org/>

New York Special Education Resources (Cont'd)

- Impartial Hearing Office Information & Forms:
<http://schools.nyc.gov/AboutUs/hearing2.htm>
<http://schools.nyc.gov/NR/rdonlyres/257381F6-B1EE-4451-A2B9-9C4D51833054/0/DPCRequestForm.pdf>
- Wright's Law:
<http://www.wrightslaw.com>
- NYLPI Fact Sheets:
<http://www.nylpi.org/factsheets-resources/>

List of NYLPI Fact Sheets

- Least Restrictive Environment (LRE)
- Mediation
- Obtaining Assistive Technology (AT)
- Pendency
- Private School Placement
- School Visit Checklist
- Section 504 Accommodation Plan
- Impartial Hearings
- Special Education Supports for Children with emotional or behavioral needs
- Transition process (life after school)
- Parents' Rights to language services
- Child find
- How to report verbal or physical abuse by DOE staff
- Transparency
- Students' Rights in Charter Schools
- Section 504 in Charter Schools
- Questions to Ask in Charter Schools

Questions?

Please Contact:

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www.nylpi.org

INTAKE HOURS

Mondays – Fridays, 10am – 3pm

TIPS

- **Keep a notebook.**
 - Record all phone conversations and in-person conferences and meetings
 - Keep all the papers you received from the DOE, including emails, 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, hand-delivery with receipt, email.**
- **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

Thank You

Gracias

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Mèsi

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Grazie

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