



**New Jersey Consortium
for Immigrant Children**

NAVIGATING SPECIAL EDUCATION

SEPTEMBER 2023

**A SHORT GUIDE FOR
FAMILIES OF
MULTILINGUAL LEARNERS**

ABOUT THE NJCIC

Established in 2015, the New Jersey Consortium for Immigrant Children (NJCIC) has upwards of 130 members across 25 organizations in the state, including legal advocates for immigrant children and allied professionals in healthcare, mental health, and social work.

OUR MISSION

Our mission and vision at the NJCIC is to work with NJ's young immigrants and their allies to advance their full, fearless participation in our society.

We seek lawful status for immigrant youth and advocate for systemwide change in the areas of education, access to justice, and health equity – including increased access to mental health resources. Our ultimate goal is an NJ where every young immigrant has lawful status and the opportunity to advance, and where families can stay together and thrive.

ACKNOWLEDGEMENTS

We believe our best work is achieved through collaboration. Special thanks to Juan Castaneda, the NJCIC's 2023 Spring Policy Intern, and the Education Law Center for their feedback on this guide.

ABOUT THIS GUIDE


This project was produced and overseen by the NJCIC's Policy Director, Lady Jimenez-Torres.

The information in this guide is general, is not legal advice, and is not a substitute for help from a lawyer who knows the facts of your case. For more information, additional resources are available at the end of this guide.

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GENERAL TERMS AND INFORMATION

To the greatest extent possible, students with disabilities have the right to be educated with their nondisabled peers. This means they have the right to learn in the least restrictive environment.

There are 13 disability categories that make a child eligible for special education services, including physical, developmental, behavioral or emotional, and sensory disorders.

To ensure that a student with a disability makes educational progress, they receive special education services.

Special education is a continuum of support and services intended to meet the specific learning needs of a student with a disability. Because it is provided at no cost to the parent/student, it is referred to as Free Appropriate Public Education, or FAPE.

The support and services a student with a disability receives are documented in their Individualized Education Program, or IEP.

If a student qualifies for special education and English learner services, they must be offered both.

REFERRAL AND EVALUATION: AN OVERVIEW

INITIAL EVALUATION REFERRAL

You may request a free evaluation referral by the school at any time. Within 20 calendar days of your written request, a meeting must be held to decide whether an evaluation will be conducted and a written decision must be provided.

EVALUATION PROCESS

When an evaluation is recommended, it will be a comprehensive evaluation with multiple assessments. Evaluations must be done in the language most likely to show a student's knowledge and capacity.

AFTER THE EVALUATION

Once the evaluation is completed, a meeting must then be held to review findings and determine whether the student needs special education. If the student is classified as a student in need of special education services, an Individualized Education Program must be created and implemented within 90 days of receiving consent for initial evaluation.

YOUR RIGHTS

Parents have the right to be involved throughout the special education process. If there is a disagreement between the parents and the school or district, the parent has a number of options, including requesting mediation or filing a due-process complaint.

REFERRAL: IN DETAIL

A parent, guardian, or school staff member can **refer a student for an evaluation** by the school to see if they require special education. If a parent or guardian is initiating this request, it is best for the request to be dated and provided in writing. This request should be addressed to the principal or Director for Special Education Services of the school or district. If a school staff member is initiating the request, a parent or guardian must agree to the student being evaluated for special education.

Parents have the right to participate in meetings related to their child and must be informed of the meeting by written notice or other mode of communication in their native language.

What happens when a referral is made?

Within 20 calendar days of receiving a referral, the school or district must hold an **identification meeting** to decide whether an evaluation will be conducted. Parents/guardians have the right to participate in meetings related to their child and must be informed of meetings by written notice in their native language or other mode of communication.

What happens if a school does not respond to or denies your request?

If the district denies a request for the student to receive special education, they may refer the student for help from other sources, such as the local community or the state. If you disagree with the district's decision, you can request a free mediation or file a due-process petition, which is explained further in the "Recourse for Parents" section of this guide.

EVALUATION: IN DETAIL

An evaluation is the process used to determine if your child has a disability that might qualify them for special education. It is important to request that the child be evaluated in all areas of suspected disability.

Each evaluation should include a comprehensive set of assessments by certified and/or licensed professionals. It must also be conducted in the language that is most likely to show the student's knowledge and capability, unless that is not possible.

If the school decides not to do an evaluation, they must decide what other supports are appropriate for the student and provide written notice of the determinations made.

If a parent disagrees with the evaluation, they can request an independent evaluation free of charge to be completed by a certified and/or licensed professional not employed by the school district.



Each evaluation must be conducted in the language that is most likely to show the student's knowledge and capability.

TIMELINE OF THE EVALUATION PROCESS

Once an initial referral is requested by a parent, guardian, or school staff member, within 20 calendar days the school district must hold an identification meeting to decide if an evaluation is needed.

If it is determined that the child needs special education at meeting, then an Individualized Education Program (IEP) must be developed. The IEP must be implemented no later than 90 days after receiving a parent(s) / guardian's original consent for evaluation.

If an evaluation is required, it must be done in a timely manner. A meeting must then be held to review the evaluation report, and the report must be provided to parents 10 days prior to the meeting.

The IEP must be assessed annually and formal re-evaluations need to be done every 3 years.

WHAT HAPPENS AFTER THE EVALUATION?

Parents have a right to receive the evaluation report 10 days prior to the eligibility determination meeting.

After the evaluation is conducted, an **eligibility determination meeting** will be held. During this meeting, the parents and school staff will review the evaluation report and a determination will be made whether the student qualifies for special education and related services. Parents have a right to receive the evaluation report 10 days prior to this meeting.

If the student is eligible, an **Individualized Education Program (IEP)** is developed. An IEP describes the student's current academic performance and lays out measurable goals and objectives with clear and timely benchmarks to measure progress. The IEP also describes what supports and services the student will be entitled to.

The IEP can be implemented immediately following the IEP meeting with parental consent, but no later than 90 calendar days after the school's receipt of parental consent for the first evaluation.

A student's IEP must be reassessed annually. A formal reevaluation must be conducted every 3 years but may be requested by a parent or guardian sooner.

WHAT IF YOU DISAGREE?

When a parent or guardian disagrees with any part of the referral, evaluation, and reevaluation process, the IEP, or the provision of special education and related services, they have certain protections under the law and different possible ways to resolve the disagreement.

Here are some ways to handle disagreements:

- **Meet with the teacher, principal, or other school administrator to share your concerns.** An IEP meeting can also be requested at any point during the year if you feel your child is not making progress with their program.
- **Meet with the IEP facilitator.** The IEP facilitator is part of a state-sponsored program and serves for free as a communicator, but not as an advocate, for discussion between the school and parents/guardians. Their goal is to foster effective communication between the parties and facilitate a mutually agreed-upon IEP for the student. Information about IEP facilitators can be found at https://www.nj.gov/education/specialed/policy/docts/FIEP_B_rochure.pdf.
- **Request a mediation with a third-party mediator.** You can request a free mediation by sending a letter or email to the New Jersey Department of Education. You can find a printable request at <https://tinyurl.com/bdcnysnj>. If needed, also include an interpretation request at the same time.
- **File a formal due-process petition.** You can file this petition by sending a letter or email to the New Jersey Department of Education (see pg 14 for address). If needed, also include an interpretation request at the same time.
- **Request a mediation and file a due-process petition at the same time.** If needed, also include an interpretation request at the same time.

WHAT IS A DUE PROCESS HEARING?

A due process hearing is a legal process in which the resolution of a disagreement between parents/guardians and the district is decided by an administrative law judge from the Office of Administrative Law. The district has 10 days to respond to the parent's/guardian's petition

Within 15 days of filing the due-process petition, the parent/guardian and district must participate in a resolution meeting, which is a meeting to see if the disagreement can be resolved, unless the parties agree in writing to waive the resolution meeting or agree to participate in a mediation instead.

If the disagreement is not resolved within 30 days of filing the due-process petition, the case is transferred to the Office of Administrative Law for a hearing. They must complete the due-process hearing and mail a decision within 45 days unless the judge grants an extension.

Under the law, while a due-process request is pending, children must remain in their current special education program unless the parent/guardian and district agree otherwise. This is known as “**stay-put.**”

Legal fees for a parent can be reimbursed within certain limits if the hearing is found in your favor.



DUE-PROCESS TIMELINE

Due-process hearings can be requested to resolve disputes between parents/guardians and school districts. The school district has 10 days to respond to a parent's/guardian's original complaint.

Within 15 days of filing the complaint, the parent/guardian and school district must have a resolution meeting to try and resolve the issue.

If the issue is not resolved within 30 days of filing the complaint, the case is transferred to the Office of Administrative Law for a hearing.

After the case is transferred and the hearing is complete, a decision must be mailed within 45 days unless a judge grants an extension.

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A school district should never ask you or your child about your family's immigration status or for a social security number.

STUDENT RIGHTS

- Right to access education regardless of race, ethnicity, or immigration status.
- Right to access language acquisition programs, including English as a Second Language, Bilingual Education, or Dual-Language Immersion. If a student is classified as a Multilingual Learner based on an English proficiency assessment and other factors, these programs should be offered in conjunction with any special education services recommended in a student's IEP.

PARENTAL RIGHTS

Communication regarding meetings related to your child's special education needs to be in your primary language.

- Right to communication regarding meetings related to your child's special education needs in your primary language.
- A school or district should never ask about a family's immigration status or for a social security number.
- Right to participate in your child's special education evaluation process and subsequent planning and development of the child's IEP every year, including with an interpreter provided by the school district, if needed.
- Right to hire an attorney or work with an advocate who is familiar with the special education system.

RESOURCES

NONPROFIT ORGANIZATIONS

- Education Law Center (Northern and Central NJ counties)
 - (973) 624-1815, ext. 300
- Disability Rights New Jersey (Trenton and South NJ counties)
 - (609) 292-9742
- SPAN Parent Advocacy Center
 - (800) 654-7726 (in NJ) or (973) 642-8100
 - info@spanadvocacy.org
 - <https://spanadvocacy.org>

PUBLIC/OFFICIAL ORGANIZATIONS

- City's school district administrator or superintendent
 - <https://homerom5.doe.state.nj.us/directory/pub.php>
- Special Education Ombudsman
 - (609) 376-9060
 - specedombsman@doe.nj.gov
- Division of Civil Rights - Department of Justice
 - <https://civilrights.justice.gov/report/>
- Office for Civil Rights - Department of Education
 - <https://ocrcas.ed.gov/>
- For Due Process requests or other correspondence
 - Director - Office of Special Education
 - New Jersey Department of Education
 - P.O. Box 500 Trenton, New Jersey 08625-0500
 - Or you may email your request to:
osepdisputeresolution@doe.nj.gov

ADDITIONAL SOURCES OF INFORMATION

Information on parental rights during the special education process:

<https://www.nj.gov/education/specialed/parents/>

Guide to the Individualized Education Program:

[https://www.rwjbh.org/documents/csh/kohls/NJ-Parent-IEP-Reference-Guide-English\(1\).pdf](https://www.rwjbh.org/documents/csh/kohls/NJ-Parent-IEP-Reference-Guide-English(1).pdf)

Further information on the evaluation process:

<https://www.elc-pa.org/wp-content/uploads/2021/08/getting-a-special-education-evaluation.pdf>

In-depth guide for special education in New Jersey:

https://edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20TL.pdf

Further information about the special education process in New Jersey:

https://www.state.nj.us/humanservices/clients/family/special/12_SpecialEducationFactSheet.pdf