

# TRANSITIONS TO SCHOOL:

FROM THE HOSPITAL

FROM THE REHAB FACILITY

AND FROM HOME...



developing an educational program  
to support the needs of a child  
with brain injury





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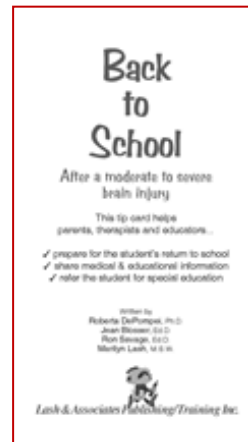


## A Note to Parents . . .

When your child sustains a brain injury, your world is thrown into turmoil. Your focus is on doing everything necessary to support your child and give your child the best chance to achieve success. This is never easy. It calls on your talents as an advocate and your resources and energy.

One area that presents many challenges for families is negotiating the education system to ensure that your child receives the education to which she or he is entitled. When a child sustains a brain injury, his or her participation and progress in the general education curriculum may be affected. You may need to seek **special education services**. This is a complex system. Much of the language is technical, and the process is set out in the law. It can be overwhelming.

This booklet is designed to give you basic information about the process of obtaining special education services for your child, and introduce you to the specific terminology used in the process. It is meant as a first step to get you started. The booklet is not meant as a substitute for legal advice or assistance.



*Back To School Tip Card*  
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This parent guide provides you with basic information about special education services and federal legislation developed specifically for children with disabilities such as **Individuals with Disabilities Education Act (IDEA 2004)** and **No Child Left Behind (NCLB 2001)**. In addition, this guide provides information on how to determine if your child requires special education services and how to go about obtaining services from your school district. Each step of the special education process is described in this booklet, as well as a list of your rights at each stage. Since policies and procedures change, please be sure to check with your school district to get the most current policies. It may be helpful to you to contact the NYS Department of Education and request a Parent's Guide to Special Education. This is available online at [www.vesid.nysed.gov/specialed/publications/policy/parentguide.htm](http://www.vesid.nysed.gov/specialed/publications/policy/parentguide.htm).



One person who can be extremely helpful to you is the Brain Injury Association of New York State's FACTS Coordinator who serves your region. "FACTS" stands for the Family Advocacy, Counseling and Training Services program of the Association. The FACTS Coordinator is a knowledgeable individual who can provide you with information about brain injury and community resources, as well as support. You can find out the name of the FACTS Coordinator in your area by contacting the Association or checking the Association's website at [www.bianys.org](http://www.bianys.org).

**LEARNet**

[www.projectlearnnet.org](http://www.projectlearnnet.org)

The Brain Injury Association of New York State, in conjunction with a team of expert consultants in the area of childhood brain injury received funding from the NYS Developmental Disabilities Planning Council to create a web-based resource for families and school staff to support children with TBI or other neurological impairments at home and at school. It is called **LEARNet**.

**LEARNet** is recognized across the state and beyond for its utility in providing educators and families with invaluable information designed to address the varied challenges presented by students with brain injury, to build capacity and competency of families and school staff, and to improve the outcomes for students with brain injury or other neurological impairments.

**LEARNet** is supported through the FACTS Program. Ask your FACTS Coordinator about it or go online to [www.projectlearnnet.org](http://www.projectlearnnet.org).





## WHAT HAPPENS TO A CHILD AFTER A BRAIN INJURY?



### **Recovery from brain injury is a process, not an event.**

Neurological improvements can occur for months or even years after the injury. Improvements can proceed indefinitely, but may slow over many years. However, even as improvements occur, new difficulties may emerge as the child faces new developmental challenges. Social and emotional difficulties resulting from brain injury can develop years later. Changes in a student's abilities are a key characteristic of brain injury.

Consequently, children with brain injury have particular needs that are not necessarily evident in other populations.

Children with brain injury are likely to spend more time in school than with any other service provider. Since no two students with brain injury are alike, developing an effective educational program can be especially challenging. Each injury results in a unique profile, depending upon the location and extent of the injury, and the age of onset.

A child with a brain injury may maintain prior intellectual functions in various academic skill areas, while experiencing significant gaps in other areas. Previously learned skills and information may return, while new learning may be impaired. Difficulties might not become apparent for months or even years after the injury. Problems in school may not be seen until new learning is required. Children injured at an early age may experience long-term school problems because they lacked an established knowledge base at the time of the injury.

You may see a clear contrast between your child's pre-injury and post-injury capabilities. Students may remember what life was like before the injury. This frequently leads to depression, anger, and frustration. These recollections may interfere with developing new learning strategies to compensate for cognitive and sensory deficits. For example, a student who previously (prior to the injury) learned effortlessly may resist needing to use notes, external cues, or technological supports. **Information sharing and planning between the school and the hospital or rehabilitation program should begin as soon as the child is admitted to a healthcare facility.**

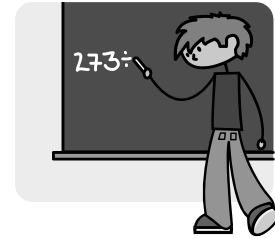


## HOW DO I KNOW IF MY CHILD NEEDS SPECIAL EDUCATION SERVICES?

Each child with brain injury has his or her own unique symptoms and challenges. Below is a list of potential difficulties that you might see in your child after a brain injury. These effects, individually or together, might be a reason to seek special educational services from your school district on behalf of your child.

### Memory Effects

- Inability to follow directions
- Difficulty with understanding, storing and retrieving new information
- Inconsistent or slow retrieval of known information

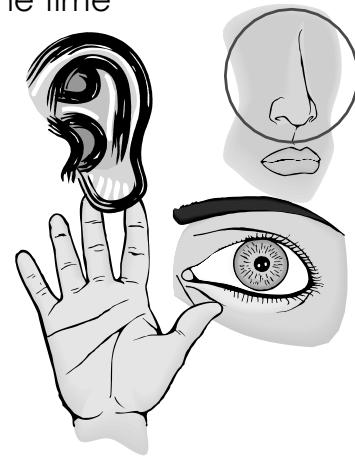


### Attention and Concentration

- Difficulty focusing and sustaining attention
- Inability to filter distractions in the classroom
- Difficulty in handling high stimulation (noise, light, feelings)
- "Overload" quickly with agitation or confusion
- Inability to process small amounts of information at one time

### Sensory Effects

- Double vision
- Impaired coordination of both eyes
- Partial loss of vision, loss of visual field
- Significant reading difficulties
- Hearing loss, ringing in ears
- Difficulty in correctly processing auditory information
- Changes in ability to taste and smell



### Psychosocial Effects

- Low self-esteem
- Denial
- Social isolation - having few or no friends
- Personal and family problems



### Behavioral Effects

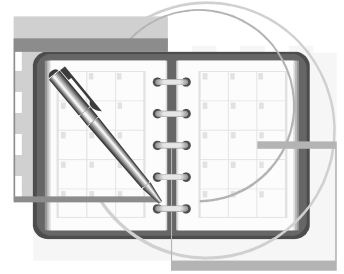
- Irritability
- Mood Swings



- Hyperactivity
- Apathy/Lethargy
- Emotional and behavioral outbursts and depression
- Fatigue

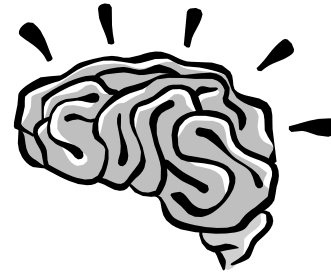
### **Executive Functions**

- Lacks self-awareness necessary to establish realistic goals
- Inability to modify behavior based on consequences
- Difficulty with planning and organizing
- Difficulty getting started with tasks
- Difficulty with problem solving
- Impulsivity or inability to inhibit inappropriate behaviors, emotions, statements
- Inability to predict the effects of one's own behaviors or the social cues of others



### **Motor and Physical Effects**

- Balance and walking difficulties
- Problems with strength, range of motion and coordination
- Fatigue and lack of endurance
- Seizures
- Headaches
- Difficulty maintaining body temperature
- Eating and elimination problems



### **Speech and Language Effects**

- Monotone or slow rate of speech
- Slurred speech
- Difficulty acquiring new vocabulary
- Difficulty naming objects and/or with word retrieval
- Comprehension of spoken language often deteriorates with high rate of speech, increase of information to be processed, abstractness of language spoken and from environmental interferences (e.g. busy classroom)
- Ability to verbalize, yet inability to transfer information to a written context

## **WHAT IS SPECIAL EDUCATION ALL ABOUT?**

Since the 1970's, there has been federal law guaranteeing special education services to children with disabilities. In 1992, the Individuals with Disabilities Education Act (IDEA Public Law 94-142) was enacted. IDEA mandated that special education and related service





programming be made available to all children with disabilities. The goal of this law was to guarantee that children with special needs are provided with free and public education in the **least restrictive setting**. This law has been updated several times over the past 30 years. The most recent revision of IDEA was passed by Congress in 2004. Each state follows federal regulations that help to define the meaning of the law including many of the important changes. These regulations provide guidance to states on how the law is to be interpreted and implemented in schools.

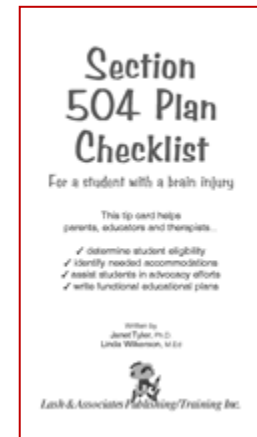
The No Child Left Behind Act of 2001 (NCLB, Public Law 107-110) was signed into law on January 8, 2002. NCLB aims to improve the quality of education provided to elementary and secondary school-aged children by ensuring high quality instruction, regular standardized measurement of student progress, and teaching strategies that are scientifically supported.

## WHAT IS A SECTION 504 PLAN?

Another means of accessing educational services is through a **504 plan**. "Section 504 of the Rehabilitation Act of 1973 requires schools to provide reasonable accommodations to allow an individual with a disability to participate." To qualify for a 504 plan, a student is only required to have a "presumed disability".

### Examples of a 504 plan include:

- Extended time on tests and assignments
- Note takers for lectures
- Alternate formats for exams (e.g. oral vs. written, a scribe for writing answers)
- Preferential seating
- Assistance with project planning
- Provision of audio taped books



*Section 504 Plan Tip Card*  
Lash & Associates  
[www.lapublishing.com](http://www.lapublishing.com)

## WHAT IS THE COMMITTEE ON SPECIAL EDUCATION?

Each local **Board of Education (BOE)** is required to create a **Committee on Special Education (CSE)**. Major duties include reviewing referrals, arranging and conducting evaluations, and recommending appropriate programs for children with disabilities called **Individualized Education Plans (IEP)**. \* For children ages 3-5, the Committee on Pre-School Special Education (CPSE) will serve the same purpose as the CSE. The CSE also reports to the BOE on



the status of special education and is responsible for notifying parents of meetings to review the child's program or placement. In city school districts having a population over 125,000 inhabitants, the BOE is required to appoint Subcommittees on Special Education to ensure timely evaluations and placements. Subcommittees must refer matters back to the main Committees to resolve parent and school disagreements.

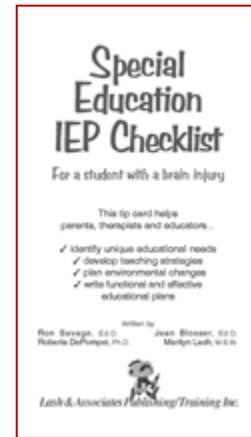
**The five required members of a CSE are:**

1. student's teacher;
2. school psychologist;
3. parent(s);
4. school district representative who is responsible for the implementation of any plans created; and
5. parent of another child with a disability residing in the school district called a parent advocate or parent representative.



**Other participants you may invite include:**

- your child - especially if you think that your son or daughter can help make decisions about himself or herself;
- friends or relatives;
- professionals from other agencies who know your child; and
- other school district personnel such as guidance counselors, educational evaluators, school nurses, school aides, social workers, school administrators, and other professional staff.



*Special Ed IEP Checklist*  
Lash & Associates  
www.lapublishing.com

In some cases, the child's parent or guardian of the child is unknown or unavailable. The district is then obligated to appoint an appropriate adult or a "surrogate parent" to ensure equal educational protection and support for the child in the parent's absence. The local board of education is required to maintain a list of adults who may be appointed as "surrogate parents".



## HOW DO THE LAWS DEFINE BRAIN INJURY?

Traumatic brain injury is listed as a disability that could qualify a student for special education and related services. IDEA applies to children with brain injuries caused by an external physical force, or by an internal occurrence such as stroke or aneurysm, with “resulting impairments that adversely affect educational performance.” The term includes children with open or closed head injuries, but does not include children with brain injuries that are congenital or degenerative or caused by birth trauma.

## YOUR CHILD'S RIGHTS

**Your child is entitled** to a free and appropriate education at no cost to your family. The education should meet the unique needs of your child.

**Eligibility to attend school** continues until receipt of a high school diploma or until the end of the school year in which the student turns twenty-one, whichever is earlier.

**If you enroll your child** in a nonpublic school, he or she is still entitled to free special education services if the local public school determines the need. Parents of children in private schools may request an evaluation to determine the need for special education by making a referral to their district CSE. Students with disabilities who are placed with other state agencies, such as the **Office of Mental Retardation and Developmental Disabilities (OMRDD)** or the **Office of Mental Health (OMH)** also are entitled to special education programs, as appropriate.

**You will be notified** whenever the school wishes to evaluate your child, wants to change your child's placement, or refuses your request for an evaluation or a change of placement. You should request notification in writing.

**You may request** an evaluation if you think your child needs special education or related services. If the referral is made by anyone other than the parent, the school must inform you.

**You should be asked** by your school to provide parental consent, meaning you understand and agree, in writing, to the evaluation and initial special education placement for your child. Your consent is voluntary and can be withdrawn at any time. In addition, schools must fully inform you of special education activities and must provide you with the date and time of meetings so you can participate.



## YOUR CHILD'S RIGHTS...continued

**You may request** a re-evaluation if you think your child's educational placement is no longer appropriate. The school must evaluate your child at least every three years. Your child's educational program must be reviewed at least once a year. You should monitor your child's progress and if he or she is not progressing, discuss it with the teacher and determine whether the program should be modified.

**You must be fully informed** by the school of all the rights provided by law to you and your child.

**You may participate** in the development of your child's Individualized Education Plan (IEP), or in the case of a child under school age, the development of an Individualized Family Service Plan (IFSP).

**You may have your child** educated in the least restrictive school setting possible. In other words, alternative programs should be considered only when the student's needs cannot be met within the regular school setting even with supplementary aids and services. The definition of the least restrictive environment has three components:

1. appropriateness of programs and services for meeting the student's needs;
2. student involvement with non disabled peers; and
3. closeness of school programming to home.

**All programs and services** offered in public school must be available to students with disabilities. Examples of these programs and activities include lunch, recess, art, music, and physical education.

**You have the right** to challenge any recommendation. You may request a due process hearing to resolve differences with the school that could not be resolved informally.

**Students with disabilities** must be offered equal opportunities to participate in the statewide testing program with their nondisabled peers. Alternative testing techniques, such as longer test time or alternative room arrangements, are available for students with disabilities and must be included in the student's IEP.



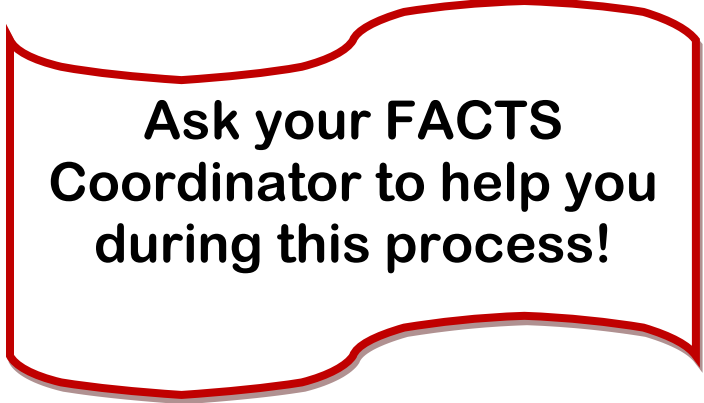
**New York State's educational system** requires that both general and special education staff work cooperatively to provide programs for students with disabilities. General education teachers who have students with disabilities placed in their classes are responsible for understanding the student's needs and modifying materials and instructional techniques to enable the student to benefit from instruction.

## SO . . . NOW WHAT DO I DO?

One significant piece of IDEA (2004), is that it allows teachers and parents to first modify teaching strategies with a student that is having educational difficulties BEFORE referring them for special education. These services are outlined below.

### PRE-REFERRAL SERVICES

Pre-referral services are designed to provide supportive instruction to your child before a referral for special education services. This is a “first step” towards improving your child's academic performance, and permits your child's teachers to determine whether there are factors to consider before going through the determination process.



**Ask your FACTS  
Coordinator to help you  
during this process!**

Pre-referral services come in several forms including (EIS) Early Intervening Services and (RTI) Response-to-Intervention.

**Early Intervening Services (EIS)** are designed to encourage school districts to provide additional support for struggling students **within** the general education classroom. These services are not the same as services which are provided to preschool students. The key to EIS is allowing school districts to use up to 15% of their federal special education funds to develop and implement services for school-aged children who have not yet been identified as needing special education services but require academic and behavioral supports to succeed in general education.



**Response-to-Intervention (RTI)** is a multi-step process that closely monitors how the student is responding to services and instruction within the classroom. IDEA 2004 encourages schools to begin using scientific, **research-based interventions** as part of an evaluation procedure to determine which students may have a disability that will require special education services. RTI eliminates the requirement for schools to determine that a student shows a “severe discrepancy” between intellectual ability (problem solving planning) and academic achievement (math, spelling, reading) in order to be identified as having a learning disability. The result of this process is that the student experiences more success in the classroom.

A determination may be made that a child needs special education services as an outcome of pre-referral services.

## MY CHILD NEEDS SPECIAL EDUCATION WHERE DO I START?

This process has 5 steps:

1. **Referral**
2. **Evaluation**
3. **Recommendation**
4. **Implementation**
5. **Annual Reviews**



### STEP #1 - REFERRAL

A referral must be made **in writing** by the parent or another professional. If the child is in a medical or rehabilitation facility, the child’s home school district is responsible for the provision of education while the child is in the hospital or rehabilitation facility. The family or attending physician should send a formal request to the principal of the home school district asking that the evaluation process begin.

For each child, a staff person from the school and the medical program should be identified to be responsible for the sharing of information. A formal process should be developed and agreed upon for the sharing of information between school and the medical facility. **It is important for you to be involved in and monitor the exchange of information at all times.** This can be extremely complex. The school staff, including the CSE, should specify the types of



information needed for effective planning. This might include reports and evaluations as well as actual video of your child that includes:

- a view of your child early in recovery and at time of discharge to demonstrate his/her changing condition; and
- a demonstration of physical, cognitive, behavioral, and educational practices used by hospital staff

School records should be sent to the medical facility so that staff can see the pre-trauma functioning.

When a child does not require extended hospital or rehabilitation care, or the difficulties become evident over time you may need to initiate a written referral to either the CSE or building principal in your child's school.



### **The written referral should include:**

- why you believe that an educational disability exists;
- any test results, records, or reports upon which the referral is based;
- a description of the attempts to address the child's performance prior to the referral or a statement of the reasons why no such attempts were made; and
- a description of the extent of parental contact or involvement prior to the referral.

## **WHAT ARE MY RIGHTS DURING THE REFERRAL PROCESS?**

You will receive written notification that your child is referred to the CSE. The notice will include a statement of your rights that pertain to the entire process.



For referrals to special education for the first time, the notice will:

**Inform you of your right** to consent or withhold consent for the initial evaluation or placement of your child;

**Request your consent** to the proposed evaluation;

**Advise you that during** an impartial hearing or appeal to the State Review Officer, your child will not be evaluated unless you and the Board of Education agree to do so; and

**Advise you that your child** will stay in the current placement during an impartial hearing or appeal unless you and the Board of Education agree to another placement.

**You must receive** procedural safeguards notice.

**You must receive** information about the proposed evaluation and how the CSE may use the information.

**You may inspect** your child's school files, records, and reports and make copies at a reasonable cost.

**You may attend** any meetings of the CSE.

**You may request** the physician's attendance at the meeting.

**You may bring** others to the meeting.

**You may submit** additional information for the CSE's consideration.

**You may obtain** an independent evaluation.

**You may obtain** an impartial hearing.

**You have the right to appeal** the decision from the impartial hearing to the State Review Officer of the State Education Department.

**You may receive** free or low cost legal services and a listing of where those services can be obtained.





**You may have your child** remain in the current educational placement during formal due process proceedings unless both parties agree otherwise

**You will be advised** that, as parents, you may be reimbursed for attorney's fees if you prevail in administrative proceedings or litigation.

If your child is being admitted to public school for the first time, he or she will be placed in the public school program until all such proceedings are completed.

All notices must describe other options considered and explain why the proposed action was chosen. All notices must be provided to you in a way that you can understand. If you do not understand any part of this notice, contact your building principal or CSE chairperson.

## **STEP #2 - EVALUATION**

The next step involves the evaluation of your child arranged by the CSE. This means that formal tests, observations and assessments will take place. You may ask what types of tests will be administered to your child and who will be administering these measures. You are encouraged to ensure that your child is evaluated by someone knowledgeable about brain injury. So, you may want to ask about what experiences the test administrator has with students with brain injury. You also will want to ask how your child's evaluation will differ from that of a student with other learning disabilities, mental retardation, or with a congenital condition. Tests for other populations may not be appropriate for a student with brain injury.

Evaluations must include:

- physical examination;
- individual psychological evaluation (when determined to be necessary by a school psychologist);
- social history; (i.e. birth, age appropriate milestones, living situation, peer relationships)
- observation of the student in the classroom; and
- appropriate educational evaluations and assessments relating to the areas of the suspected disability.



## WHAT ARE MY RIGHTS DURING THE EVALUATION PROCESS?

**You can give consent**, withhold consent or request an informal conference, regarding an initial evaluation. If you have questions about the purpose or type of evaluation proposed, or if you do not want your child evaluated, you may request an informal conference with the CSE, other professionals familiar with the proposed evaluation, person referring the child, and an advisor/advocate of your choice. The goal of the conference is to clarify concerns and unite the team of professionals and parents. If this informal process does not resolve your concerns, an impartial hearing may be requested.

**You may request** information from the school district on specific areas of educational need.

**You can provide information for the evaluation (e.g., neuropsychological evaluations or any other evaluations that might not necessarily be required by CSE but would assist in providing a more complete picture your child's needs). This information must be considered by the CSE in its recommendations.** An evaluation must be completed, with recommendations, within 30 school days from the time of your consent, or within 40 days of the referral, whichever is earlier.

**You may receive** a list of resources where independent evaluations can be obtained. You, as the child's parent, may decide that the evaluation conducted by the CSE is not appropriate, or you may disagree with the results of the evaluation. In these instances, you have the right to obtain an independent evaluation. The chairperson of the CSE should be informed (preferably in writing) of your concerns about existing evaluations when you request an independent evaluation. A school district may limit the cost, the qualifications and the geographic location of the independent evaluators upon proper notice to the parent.

**You must receive** information in your dominant language or mode of communication

**You must have** your child's confidential records protected according to Federal requirements protecting the privacy rights of students. You have the right to review your child's records and make copies at reasonable cost. If you feel that any of the information in your child's record is inaccurate or misleading, or violates the privacy or other rights of your child, you may request that the information be changed. If the school refuses your request, you have a right to request a hearing to challenge the questionable material



**Your child must be** assessed in all areas related to the possible disability. This includes physical functioning, psychological functioning, behavioral functioning, cognitive functioning etc.

In addition, all tests and other assessment procedures must use:

- material that is non-biased and administered in your child's dominant language or other mode of communication unless it is clearly not feasible to do so;
- appropriate methods for assessing various skills of children with impaired sensory, manual or speaking skills, and the method of testing should not interfere with your child's ability to demonstrate skills or knowledge;
- more than one specialist in the evaluation, including at least one teacher or other specialist with knowledge in the area of the suspected disability; and
- trained personnel to administer tests who are appropriate for analyzing deficits.

### **STEP #3 - RECOMMENDATION**

The CSE must develop an initial recommendation within 30 days of parental consent to evaluate the child or within 40 school days of receipt of the referral, whichever is earlier.

When formulating its recommendation, the CSE, you, and others will discuss the evaluation and any additional information that has been submitted. The first issue that will be decided is whether your child has an educational disability. If the CSE determines that your child is not eligible for special education, it means that they do not think that your child's educational difficulties are the result of a disability. If your child does not require special education, the CSE will forward copies of the recommendation to you, the building administrator, and the Board of Education. It will state the CSE's findings and may recommend other educational services such as speech and language therapy.

If your child is considered to be eligible and requires special education, the recommendations will be included in an Individualized Education Plan (IEP) or an Individualized Family Service Plan (IFSP) for children under school age. The IEP (IFSP) will be sent to the local Board of Education for approval. You will receive a copy for your records.



The information in an IEP (IFSP) must:

- identify the disability;
- describe your child's strengths and areas of need;
- list goals that your child should reach in one year;
- include short-term instructional objectives that represent a series of skills to be mastered or major accomplishments to be gained that will lead toward reaching the annual goals; and
- recommend a program and appropriate class size, and indicate the extent to which your child will participate in regular education.



Each school district must offer a variety of programs and services to meet the differing needs of students with disabilities. This is called providing a continuum of services. Fiscal or staffing problems do not determine the type of service or program availability. A range of programs must be available to allow equal opportunity for instruction in the least restrictive setting.

## Examples of Programs and Services

### General Education Classes and Services

Students who are identified as having an educational disability must have access to mainstream educational classes and services whenever appropriate. If your child has skills in math that would enable him/her to be in a regular math class, that math class would become part of your child's educational program. Other services offered to students receiving general education include: speech and language improvement services, short-term counseling, English as a second language, or bilingual education.

### Declassification Support Services

These services are provided to students and their teachers to assist the students when they are ready to move from special education programs and services to full-time general education. These services include: psychological services, behavioral services, social work services, non-career counseling, and other appropriate support services.

### Transitional Support Services

These include consultation and/or training and may be provided to staff who work with students with disabilities as the students move into a less restrictive setting.



### **Related Services**

These services are provided in conjunction with academic classes to assist students with disabilities in their total education program. These services include: speech therapy, behavioral therapy, counseling, audiology, psychological services, physical therapy, occupational therapy, counseling services, and other support services. The type, frequency and duration of the service is included in the IEP.

### **Consultant Teacher Services**

These services allow students with disabilities to stay in full-time regular education programs and receive help from a special education teacher. Direct consultant teacher services are specially designed individualized or group instruction provided by a special education teacher to a student in a general education class. Indirect consultant teacher services provide consultant services to general education teachers to help them modify the learning environment or instruction to meet the needs of students with disabilities in their classes.

### **Resource Room Instruction**

This service provides specialized supplementary instruction in an individual or small group setting. Resource Room instruction must be provided for a minimum of three hours per week and for a group of students with similar academic, social, physical and management needs. The amount of time, the frequency, and the type of instruction is indicated on the IEP.

### **Special Class Instruction**

If needed, special class instruction must be provided daily as indicated on the IEP. Students must be grouped together for special class instruction based on the similarity of their needs. They may have the same educational disabilities or differing disabilities, but their individual instructional needs must be similar.

### **Specialized Equipment and Adaptive Devices**

These could include desk or chair adaptations, auditory equipment, reading, writing, and speech augmenting technology.

### **Testing Modifications**

These modifications include flexible scheduling, flexible setting, and lengthening the allotted time.

### **Alternative Settings for Child's Educational Program**

In addition to your local public school district, there are other options.



If special services needed by your child are not offered in your own district the local district can arrange for your child to participate in necessary programs and services in neighboring districts. In addition **Board of Cooperative Educational Services (BOCES)** programs provide a variety of occupational, academic and special educational programs and services. Local public schools may contract with BOCES to provide programs or services not offered in the local school district. BOCES supervised programs may be located in a central BOCES facility and/or may be housed in local public schools.

- Students whose needs require temporary instruction at home or in a hospital setting, can receive instructional services in either of these settings. Instruction must be a minimum of five hours per week at the elementary level and ten hours per week at the secondary level. Because home and hospital instruction is highly restrictive, the continuing need for such services should be assessed frequently.
- School districts may place students in private schools, special act schools, or Children's Residential Project programs approved by the State Education Department that meet the student's individual needs. These schools may be located in-state or out-of-state and may have day and/or residential components. Students are placed in private programs because they cannot be adequately served in the public sector.
- State-operated and State-supported Schools for the Deaf, Blind and Severely Emotionally Disturbed are available for students with educational needs that require a placement in a school with a special focus.

## WHAT ARE MY RIGHTS DURING THE PROCESS?

**Parental opportunity for involvement** is assured before, during and after the CSE meeting. You may receive a notice about the CSE meeting in two ways,

1. Your school district may choose to notify you of the date, time, location, and persons expected to attend a CSE meeting, at the same time they send you the notice of their recommendation to the Board of Education.
2. The school district may send you a notice of the CSE meeting at a later time, though you must receive that notice five days before the meeting of the CSE. The notice of the meeting will include: information about the date, time, location, and persons expected to attend the meeting; an invitation for you to participate in



the development of the recommendation; and a statement regarding your right to bring other people to the meeting

**If you cannot attend the meeting**, you must be given the opportunity to reschedule or to participate in other ways such as through telephone calls or written reports.

**After the CSE meeting, you will receive** a notice describing the CSE recommendation. If it has been recommended that your child receive special education services, you will receive a copy of your child's IEP and information about the tests, reports and other factors used to make the recommendation. All notices must describe any other options considered and explain why the proposed action was selected.

**You will receive information** about your due process rights.

**Once the recommendation is made**, the Board of Education must provide an appropriate education program within 60 days of the Committee's recommendation. Notice of the placement must be provided, including information about the due process rights listed above.

## **STEP #4 - IMPLEMENTATION**

Arranging for programs and services may take up to 30 school days from the date of the recommendation, but must not take longer.

## **WHAT ARE MY RIGHTS DURING THE IMPLEMENTATION PROCESS?**

**Your consent to an initial placement** is required before your child's program can be provided.

**The CSE is responsible for making** all arrangements necessary to implement the program.

**Building administrators are responsible** for coordinating the details of the scheduling. They manage the special education programs, supervise personnel who provide instruction, oversee the provision of alternative testing techniques, facilitate home-school communication, and provide support to students, teachers, and parents.

**Transportation personnel are involved** in scheduling transportation to accommodate your child's program and placement. Special transportation, as indicated on your child's IEP, is also arranged at this time.





**If at any point you disagree with the program, or feel a change in programming is warranted, you may request a CSE meeting to review the program.** You also maintain your right to challenge the recommendation by requesting an impartial hearing.

## STEP #5 - ANNUAL REVIEW

The CSE conducts the annual review. The purpose of the annual review is to discuss yearly progress and make recommendations to continue, change or end the program. Based on this review, the CSE will revise the IEP, as needed, and make a recommendation to the Board of Education.

### WHAT ARE MY RIGHTS DURING THE ANNUAL REVIEW PROCESS?

**You are notified** of the annual review by the CSE.

**You may decide** to have your child participate at this meeting.

**You may invite** others to accompany you to the annual review.

**The mandated members** of the CSE must be in attendance.

**Following the annual review** you will be notified of the recommendation to continue, modify or end your child's program. This notice will also explain the test, reports and other factors used to make the recommendations.

**The projected date** of the annual review is specified on the IEP. However, a CSE review may be requested prior to the annual date by the parents or a school administrator. If this occurs, the next review must be conducted within one year of the current review, thereby setting a new annual review date.

After the Board of Education makes its decision and arranges for your child's placement, you will receive another notice which will inform you of the Board's decision and state your due process rights.

## STEP #6 - RE-EVALUATION

A triennial evaluation occurs every three years to provide current assessment information for students in special education. Updated information is provided through re-examining many of the areas previously tested in the initial evaluation. The purpose of this re-examination is to determine individual needs and continuing eligibility for special education. This information





must be discussed at a CSE meeting.

## WHAT ARE MY RIGHTS DURING THE RE-EVALUATION?

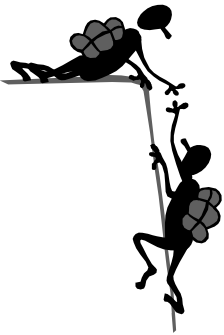
The re-evaluation **must be** conducted within three years of the initial evaluation and every three years thereafter until the student no longer receives special education.

Parents **should receive** the following notices:

- notice of the proposed evaluation;
- notice of the CSE meeting, to discuss the evaluation and to develop recommendations;
- notice of the CSE recommendation to the Board of Education; and
- notice of the Board of Education determination.

Parents **continue to have** the right to provide information; request an independent evaluation; disagree with the school district; and the right to an impartial hearing.

## HELP . . . IT'S NOT WORKING !



Due process describes procedures used to protect your child's right to a free, appropriate public education in the least restrictive setting. Many of your rights have been listed above in the discussion of the steps to securing special education services for your child.

**You have the right to be fully informed** about the actions to be taken. This includes receiving notices of all meetings and evaluations. All

communication should be in your dominant language and you have the right to examine and obtain copies of your child's records, at a reasonable cost.

**You have the right to participate** in all decision-making processes regarding your child's educational needs.

**You have the right to consent or withhold consent** throughout the entire referral, evaluation, recommendation, implementation, and review process.

**You have the right to an independent evaluation** if you disagree with the evaluation performed by



the school district. The school district must pay for the independent evaluation unless they initiate a hearing and the hearing officer determines that the district's evaluation is appropriate. If that is the case, you can still have an independent evaluation, but not at the school district's expense.

**You have the right to challenge** school decisions about your child throughout the process.

**You have the right to file a complaint** with the Office for Special Education Services (OSES) if you feel that any of the laws or regulations regarding special education have been violated. Your complaint must be in writing and should be directed to:

**Manager, Special Education Policy & Quality Assurance  
Vocational and Educational Services for Individuals with Disabilities  
One Commerce Plaza, Room 1624  
Albany, New York 12234**

You cannot file a complaint if your complaint is unresolved at another level (e.g., impartial hearing has not yet been concluded). If you file a complaint, you must receive a written response indicating that your complaint will be investigated and resolved within sixty days. Once the investigation is complete, you will receive a written response from the OSES. The letter must itemize each allegation and the findings on that allegation.

If you are still not satisfied with the results of the investigation, you may file an appeal with:

**Office of Special Education Programs  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-2640  
Telephone: 202 - 205-8824**

- You have the right to bring an attorney or others knowledgeable about special education to represent you at the hearing.
- You have a right to receive a list of individuals and agencies that provide free or low cost legal services.



- You may also be able to receive reimbursement for attorney's fees incurred in special education disputes, in which you prevail.

In some school districts, special education mediation is available at no cost. Mediation is a process in which you and a representative of the school district meet with an independent third party who assists in reaching agreement about issues or concerns regarding the recommendation of the CSE or action of the Board of Education. In many cases, special education mediation has been successful in improving parent-school district communication, while avoiding an adversarial relationship.

**You have the right to appeal** the decision of an impartial hearing officer to the State Review Officer and to seek judicial review of the State Review Officer's decision regarding your appeal. Your local board of education is required to maintain a list of partial hearing officers.

## IMPARTIAL HEARING



An impartial hearing is a formal procedure used to resolve disagreements. It has been established as a mechanism to hear both sides of an issue and fairly resolve the dispute through a third party.

Requests for an impartial hearing must be made in writing and should be made as soon as you decide that your child's needs are not being met and the problems cannot be informally resolved. Some of the reasons for parental requests for a hearing are:

- disagreement with the recommendation of the CSE or BOE;
- failure by the CSE to evaluate a child and make its recommendation within 30 school days of consent;
- failure to implement the CSE's recommendation within 30 school days;
- failure of the BOE to review, at least annually, the child's program or failure to reevaluate the child every three years; and
- disagreement with the special education provided.

The impartial hearing is an administrative proceeding. Although it is similar to a court



proceeding, the rules are relaxed. The hearing may be open or closed to the public. The decision is up to you. The people listed below are involved in an impartial hearing.

**Impartial Hearing Officer** - this person must be independent and not employed by the school district, or have any personal or professional interest that would interfere with their objectivity.

**Parents** - are involved throughout the process unless they choose otherwise.

**Student** - may attend as determined by the parent. An 18-year-old or emancipated minor may make his/her own decision regarding requesting an impartial hearing or attending the hearing.

**Representative of the School District** - may be the CSE chairperson or it may be an attorney.

**Representative for the Parents** - may be an attorney, advocate or other representative, whom you can hire at your own expense.

**Guardian ad litem** - can be assigned if the hearing officer feels that your interests are inconsistent with or opposed to those of the child, or that the interests of the child would be best protected by someone else. In the event a guardian ad litem is assigned, the hearing officer must assure that your due process rights are preserved throughout the hearing.

**Witnesses** - both parties may request that witnesses provide relevant information. Parents may ask the hearing officer to issue subpoenas to compel a witness to attend a hearing or to produce documents that they are unable to present or obtain voluntarily.

**Stenographer** - may be employed to record the proceedings. A tape recording of the hearing can also be used.

**Interpreter** - may be present if needed.

The Board of Education also can initiate the impartial hearing process. The following are some examples of when this might happen.

- Parents do not consent to the initial evaluation and the referral has not been withdrawn by mutual agreement.



- The school district wants to establish that its evaluation is appropriate to avoid paying for an independent evaluation.
- Parents withhold consent to the initial recommendation for special education.
- Parents withdraw consent to an evaluation or to a proposed placement.

After the parents and Board of Education have explained their respective positions to the hearing officer, the hearing officer must write a decision. A copy of the decision must be mailed to you and the Board of Education within 45 calendar days of the date that the Board of Education received your written request for a hearing. The hearing officer's decision is final unless either you or the Board of Education appeals the decision to the State Review Officer. If the decision of the impartial hearing officer is appealed to the State Review Officer, the decision of the State Review Officer is final, unless the matter is taken to a court of law. Information about the process of appealing to the State Review Officer will be included in the impartial hearing officer's decision.

The Individuals with Disabilities Education Act authorizes courts to award reasonable attorney's fees to reimburse an attorney who represents the family if they prevail in an administrative proceeding and/or court proceeding regarding the education of a child with a disability pursuant to the Act.

## Resources

### **NEW YORK STATE AGENCIES**

New York State agencies provide a wide range of services to individuals with disabilities. Some of the agencies listed below have special programs for persons with brain injury and their families. You will also find information about financial assistance, educational/vocational resources, advocacy, and legal counseling.

#### **State Education Department; Office of Vocational and Educational Services for Individuals with Disabilities (VESID)**

Special Education Policy and Quality Assurance

New York State Education Department

One Commerce Plaza, Albany, NY 12234 • Toll Free: 800-222-5627 • Telephone: (518)474-2714

Website: [www.nysed.gov/](http://www.nysed.gov/) (then click on VESID)



VESID promotes educational equity and excellence for students with disabilities, and advocates for the rights and protections to which they are entitled.

### **Office of Mental Retardation and Developmental Disabilities (OMRDD)**

44 Holland Avenue , Albany, NY 12229 • Telephone: (518)474-8652 •

Website: [www.omr.state.ny.us](http://www.omr.state.ny.us)

OMRDD serves individuals with developmental disabilities resulting from traumatic brain injury sustained before the age of 22. OMRDD operates district offices known as Developmental Disabilities Service Offices (DDSOs) throughout New York State.

### **New York State Department of Health (DOH)**

Bureau of Long Term Care Brain Injury Program Office of Medicaid Management

1 Commerce Plaza, Albany, NY 12260 • (518)474-6580 • [www.health.state.ny.us](http://www.health.state.ny.us) (web site)

Provides many essential services for individuals with brain injury and administers the Home and Community Based Services TBI Medicaid Waiver.

### **Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD)**

401 State Street, Schenectady, NY 12305 • Toll Free: 800-624-4143 • Telephone: (518)388-1281

Website: [www.cqcapd.state.ny.us](http://www.cqcapd.state.ny.us)

Serves people with mental disabilities and their families by providing independent oversight of the quality and cost effectiveness of services provided by all mental hygiene programs in New York State. The Commission provides legal and non-legal advocacy services to persons with disabilities to assist them in obtaining the services and protections of federal and state laws. This organization's mission is to ensure that people with disabilities have every opportunity to be productive and participating citizens through access to emerging technology and information, legislation, and state policy development.

## **OTHER RESOURCES:**

### **Brain Injury Association of New York State**

10 Colvin Avenue , Albany, NY 12206

Telephone: (518)459-7911 • (518)482-5285 fax • Toll Free Family Help Line: (800) 228-8201

Email: [info@bianys.org](mailto:info@bianys.org) • Website: [www.bianys.org](http://www.bianys.org)

**LEARNet** LIVING EDUCATION AND RESOURCES NETWORK

The Brain Injury Association of New York State  
www.projectlearn.net.org

**Lash and Associates Publishing/Training** 708 Young Forest Drive, Wake Forest, N.C. 27587

Telephone: (919)562-0015

Website: www.lapublishing.com

**Parent to Parent of NYS** Statewide Office 500 Balltown Rd., Schenectady, NY 12304

Telephone: (518)381-4350 • Toll Free: (800) 305-8817

Website: www.parenttoparentnys.org

**Children's Law Project** Legal Aid Society of Northeastern NY

55 Colvin Avenue, Albany, NY 12206

Toll-free: (800)462-2922 • Telephone: (518)462-6765

Website: www.lasnny.org

**Families Together in New York State, Inc.** 737 Madison Avenue, Albany, NY 12208

Toll free information & referral line (888) 326-8644 • (518)432-0333 • (518)434-6478 fax

Website: www.ftnys.org • Email: info@ftnys.org

**Resources for Children with Special Needs** 116 E. 16th Street 5th Floor, New York, NY 10003

Telephone: (212) 677-4650 • (212) 254-4070 fax

Website: www.resourcesnyc.org

**National Information Center for Children and Youth with Disabilities (NICHCY)**

P.O. Box 1492, Washington, DC 20013

Telephone: (800)695-0285 (voice/TTY) • (202)884-8441 fax

Website: www.nichcy.org

**National Early Childhood Technical Assistance Services (NECTAS)** Campus Box 8040, UNC-

CH, Chapel Hill, NC 27599-8040 for shipping: 517 S Greensboro Street, Carrboro, NC 27510

Telephone: (919) 962-2001 • Fax: (919) 966-7463

Website: www.nectac.org • E-mail: nectac@unc.edu

**National Center for Learning Disabilities** 381 Park Avenue South Suite 1401 New York, NY 10016

Telephone: (212)545-7510 • Fax: (212)545-9665 • Toll-free: (888)575-7373

Website: www.ld.org



## United States Department of Education

Parents Page "My Child's Special Needs"

<http://www.ed.gov/parents/needs/speced/edpicks.jhtml?src=In>

**PACER Center, Inc.** 8161 Normandale Blvd. Bloomington, MN 55437

Phone (800)537-2237 or (952)838-9000

Website: [www.pacer.org](http://www.pacer.org)

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## About the Brain Injury Association of New York State

Established in 1982, the Brain Injury Association of New York State works tirelessly to help meet the needs of individuals with brain injury and their families, and to educate the public and policy makers about brain injury and prevention. Major programs include:

**BRAIN INJURY INFORMATION AND RESOURCES CLEARINGHOUSE:** The Association has an extensive collection of information and resources of interest to consumers, professionals, advocates, providers, media, educators, and the public. Included are a toll-free family helpline, website, LEARNet educational resource, publications, local chapters and support groups, mentoring, resources and programs for injured service members and veterans and their families, a speakers bureau, and educational programs.

**FAMILY ADVOCACY, COUNSELING, AND TRAINING SERVICES PROGRAM (FACTS):** This statewide comprehensive family support program serves individuals with a brain injury sustained before age 22, and their families. FACTS Coordinators link individuals and their families with information, resources, advocacy, and emotional support.

**PREVENTION:** Prevention is the only “cure” for brain injury. Programs include concussion management in sports and recreation, violence prevention, helmet safety, motor vehicle safety, pedestrian safety, and activities that promote behaviors that reduce the risk of brain injury.

**PUBLIC POLICY:** The Brain Injury Association of New York State is an educational resource to policy makers and agencies on the federal, state, and local levels.

(Revised 2008, J.Avner/K.Weller)