

# Identifying and Evaluating Students For Special Education Services

A Self-Advocacy Fact Sheet from the Minnesota Disability Law Center

The **Individuals with Disabilities Education Act (IDEA)** is a federal law. The IDEA tells what the schools must do for students with disabilities. The information in this fact sheet is based on the most recent amendments to the IDEA, and to laws in the State of Minnesota. The information in this fact sheet is not legal advice. Every student is different, and the laws change all the time. Some of the laws may be different in other states.

\* Look at the end of this fact sheet for the meaning of terms printed in bold and italics, such as *child find*.

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The Individuals with Disabilities Education Act (IDEA) says that all states must have *child find*. This fact sheet is about child find. It tells how the state looks for students who might need *special education services*. It also explains how the students are tested.

## 1. What is *child find*?

School districts must try to find students who need special education services. Some students get good grades in school, but they still need special education services. Others are homeless, go to private school or are taught school work at home. The state must try to find all students who need help, no matter where they live or go to school. This process of finding out which students need special education is called child find. In Minnesota, child find begins at birth.

## 2. What is screening?

Screening is the first step in child find. The school screens all students to find the ones who might need special education. Screening can be any test or form or interview to look for disabilities. Based on the screening, some students will be referred for an *educational evaluation*. See Question #5 for more information about educational evaluations.

## 3. If the school wants to screen my child, do they need my permission?

No. School districts can screen students without permission. School districts screen students in many different ways. Sometimes, they give a written test to the whole class. They might watch children in the classroom, or the classroom teacher might meet with the special education teacher to talk about students. The school can do all of these things without your permission.

#### **4. What happens before a child is referred to special education?**

Sometimes, a teacher will notice that a student has trouble learning in the regular classroom. Or a student may behave in a way that makes it hard for the teacher to work with the class. If this happens, the teacher should do two *pre-referral interventions*.

They have to try, at least two different times, to help the student with learning or behavior. First, they have to plan the intervention they want to try. Then they try the intervention and write down what happened. If the two interventions do not help the child, then the teacher can suggest an educational evaluation.

Sometimes, a teacher thinks a student needs special education services as soon as possible. The school might ask you if they can do the evaluation right away. They cannot go ahead without your permission.

#### **5. What is an educational evaluation?**

Educational evaluations are also called *assessments*. This is when the school puts together information on a student to see if they need special education or *related services*. The educational evaluation may be used in many ways. For example:

- The information helps the school decide if the student has a disability that makes it hard for him/her to do well in school.
- It is used to show if the student qualifies for special education services.
- If the student does qualify for special education, the school will make a plan for his/her education. This plan is called an *individual education program (IEP, often called an individual education plan)* or an *individual family service plan (IFSP)*. The school needs the information from an evaluation to write the individual plan for the student.
- The information from the evaluation can be used to make sure the student is learning and making progress. It can also be used to change the IEP when needed.

#### **6. What does the educational evaluation do?**

First, the evaluation describes the student. It talks about the student's strengths and weaknesses. It looks at the student's development in many different ways. The goal is to learn all of the different ways that the student's disability gets in the way of learning.

Second, it figures out what the student needs in order to learn. By knowing the student's strengths and weaknesses, the school can figure out the best ways to help the student learn.

## **7. Can a student get special education services without an educational evaluation?**

No. A student must have a complete educational evaluation before the school can start special education services.

## **8. Who can ask for an evaluation?**

Anyone interested in the student can ask for an educational evaluation. This includes parents or guardians, doctors or nurses, teachers, case workers, or therapists.

## **9. How do I ask for an evaluation?**

Ask in writing. A form is attached to this fact sheet to help you write the letter. It is very important to keep a copy of your letter. Address your letter to the school principal.

## **10. What will the school do when they get my request?**

The school has 10 school days to answer you. They must answer in writing.

## **11. If I ask for an evaluation, can the school say no?**

Yes. But if they do, they must write a notice of refusal. A notice of refusal must:

- describe what you asked for, and why the school won't do it;
- describe other things they thought about doing for the student, and why they decided not to do those things;
- describe any test, record or report the school used to make its decision;
- mention all other information they used to make their decision;
- tell you who you can call to get help in understanding the letter; and
- include a form from the state that explains everything in the law that protects your rights in this process. The form is a "full explanation of procedural safeguards."

The letter has to be in your first language. Even if you can speak English, the letter should be in the language that is easiest for you to understand.

## **12. If the school decides to evaluate, then what happens?**

Before starting the evaluation, the school puts together a referral team. The team should include the parents. The team meets and goes over everything they know about the student. They talk about any test results. They get up-to-date information from parents, teachers, and anyone else who works with the student.

If the student is 14 or older, or in the 9<sup>th</sup> grade or above, the team should also talk about what the student wants to do when s/he finishes school. This discussion should include work, higher education, and other adult issues.

This meeting is where you can tell the school all about your child. You can ask questions and talk about any worries you have. It is a chance for the parents and teachers to help each other understand what the child needs.

The team decides what information is missing. They figure out what kinds of tests should be done. They think about what kinds of data will help them understand the student and how s/he learns.

The team plans everything about the evaluation. Then they send or give you an evaluation notice. This is the official notice that the school is going to evaluate your child.

### **13. What is in the evaluation notice?**

The evaluation notice must:

- fully describe the tests;
- give the reasons for the evaluation, and explain how the results will be used;
- describe anything else the school thought about doing, and why they chose to do this evaluation instead;
- describe the tests, records or reports the school used to decide to do an evaluation;
- include any other information about why the school decided to evaluate the student and how they will do it;
- tell you what agencies you can call for help in understanding the notice;
- say that the school won't do the evaluation until you give written permission; and
- include the state's Procedural Safeguards form.
- Just like a notice of refusal, this notice has to be in your first language.

### **14. How do I know if the evaluation the school wants to do is a good one?**

A good evaluation will use a lot of different tests and ways of getting information. It will use different sources to learn as much as possible about how the student learns.

It is usually best for a student to learn in a regular classroom with non-disabled students. The evaluation should help the team figure out the best ways for the student to learn and get along with other students.

**15. Are there rules about what kinds of tests to use? Can anyone give the tests?**

- Tests have to be in the student’s first language or best way of communicating.
- They cannot be easier for students of one race or culture than another.
- They have to be “validated,” which means that the tests have been used before and worked for this kind of situation.
- They must be “technically sound,” meaning they were designed for this kind of testing. The tests should explore many different things about the student (behavior, movement, development) and see how each of these things makes it harder or easier for the student to learn.
- All tests must be given by someone who has been trained to give the test. This person must follow the test instructions.

**16. Can the school just give my child an IQ test and nothing else?**

No. The school might use an IQ test, but that alone is not good enough. The evaluation must use more than one test to figure out what the student needs. It needs to explore many things, not just general IQ (intelligence quotient).

**17. Can the evaluation be just a test to see if the student has a disability?**

No. The evaluation must be very complete. The student may need special education services that other students with the same disability don’t need. The tests should look at everything, including overall health, seeing and hearing, school work, play, and getting along with others. The team has to know all of the different ways that the student might need extra help.

**18. Does the school have to think about the student’s disability when they give the tests?**

Yes. For example, if the student is blind, s/he should not be given a written test. If a student cannot talk, s/he should not be expected to give spoken answers. Each test should be set up to show what the student does well, and where the student needs help.

**19. How can I be sure the testing is the right kind?**

Don’t give permission for the evaluation until you feel comfortable with it. Ask lots of questions, and be sure you understand the answers. Here are some of the questions you should ask:

- What tests will be used?
- What information will the team get from each test? Will it give information to help the team

make a good educational plan?

- Is the test one that my child can do with his/her disability? If my child needs an interpreter to do well on the test, will the school get one?
- Who will give the tests? Has that person given this test to anyone before? Have they ever given it to someone with the same disability that my child has?
- Will all the tests be on the same day?
- Does my child know the person giving the test? Has my child ever seen this person at school?
- Where will the tests be?
- Will someone watch my child in the classroom and/or outside of school, and use that observation as part of the evaluation?
- If my child has a problem with behavior, will the evaluation include a *functional behavior assessment*?

## **20. What if I don't understand everything on the evaluation notice?**

Do not give permission until you understand everything. You have the right to ask for more information. You can ask for another team meeting. If you think the school is not doing the right thing, you can refuse to give permission. See Questions #41 and 42 for detailed information about problems with the school.

## **21. Can the school give the evaluation without my permission?**

No. The school must get your *informed consent* before doing a first evaluation. You can't just say it's okay. You have to sign the evaluation notice. If you don't sign, the school cannot do a first evaluation.

## **22. What is *informed consent*?**

Informed consent means:

- You get all of the information about the evaluation in your first language
- You understand all of the information and agree to it in writing
- You understand that you don't have to give consent. You can change your mind at any time.

Be sure to answer the notices. If you don't want to give permission, tell the school why. Make sure everything is in writing.

### **23. What happens after I give informed consent?**

The school district has 30 school days to do the evaluation. For babies (birth through age two), they have 45 calendar days to do it. If the evaluation takes longer than 30 school days, you can complain to the Minnesota Department of Education. For more information, see our fact sheet entitled *How to File a Complaint*.

### **24. What if I don't give consent?**

If you don't give your consent, that is the end of it. The school cannot make you give consent. They will not evaluate your child for special education.

### **25. What if I change my mind after the evaluation has started?**

If you change your mind, tell the school right away. Put it in writing. The evaluation has to stop.

### **26. Once the first evaluation is done, will my child ever get another one?**

If your child gets special education services, the school must do more evaluations in the future. All other evaluations are called reevaluations. The school will ask for your permission for reevaluations. They will give or send you a reevaluation notice. You have 14 calendar days to answer. If you don't answer after 14 days that will count as saying "yes." Then the school can go ahead with the reevaluation.

You should answer the notice. If you don't want to give permission, tell the school why. Put everything in writing.

### **27. How often should the school district do a reevaluation?**

At least once every three years. A parent or teacher can ask for a reevaluation sooner than three years. If you ask for one, the school has to do it.

### **28. What if the IEP team decides that a reevaluation isn't necessary?**

Once your child starts getting special education services, the *IEP team* makes the decisions about evaluations. When the three years are up, the IEP team might feel they don't need any new information. They can decide not to do a reevaluation. Instead, they may decide to review the records and look over how the student is doing in school. They write an evaluation summary report with this information.

The school must tell you if they want to skip a reevaluation. They must say why. If you say no, they have to do the reevaluation. Remember: the reevaluation is not just to decide if the student should get special education. Evaluations are good because they often find new information about the student.

**29. Can the IEP team decide that a student no longer needs special education?**

The school district can't just stop giving special education services. The IEP team has to get a reevaluation to show that the student no longer needs special education.

**30. Does someone from the school district have to do the evaluation?**

No. The school may decide that they don't have the right staff or equipment to do some part of the evaluation. When this happens, they must find someone who can do it right, and pay them to do it.

**31. Can I ask for an evaluation to be done by someone who does not work for the school district?**

Yes. There are two different ways to do it. If the school does an evaluation and you disagree with it, you can ask the school for an *independent educational evaluation*. Or, you can arrange and pay for an "outside" evaluation.

**32. If I want an independent educational evaluation, what do I do?**

Tell the school you disagree with their evaluation. Ask in writing for an independent educational evaluation. You and the school will meet to decide who will do it. The school will pay for it. When the evaluation is done, you and the school will meet with the evaluator to go over the results.

**33. What happens if I ask for an independent educational evaluation and the school says no?**

The school must put their answer in writing. They must give all of their reasons for saying no.

**34. If I arrange and pay for an outside evaluation, does the school district have to do what the evaluator says?**

The IEP team must read the evaluation results and discuss them. They don't have to do everything the evaluator recommends, but they must consider all of the information in the report.

**35. If the team decides my child needs a special test, who pays for it?**

The school district pays for any test that the team decides the student needs. The district will set the test up and pay for it.

**36. Who pays for medical evaluations?**

Sometimes, the team will decide that they need certain medical tests or information. The school district has to pay for the tests. Or, if the student has already had that test and the results are in



his/her medical records, the team can use those results instead of doing a whole new test.

The school district might ask to use your medical insurance to pay for medical tests. You do not have to say yes. If you say no, then the school has to pay for the tests. The tests should not cost you anything, not even a co-pay or higher insurance premiums.

**37. If a student has a certain medical diagnosis, does s/he automatically get special education services?**

No. The medical diagnosis says what disability or condition the student has. It does not say if the student qualifies for special education. For example, two students might have attention deficit disorder (ADHD). One might need special education because of the ADHD, but the other might not.

A medical diagnosis often means that the student should have an educational evaluation. The evaluation is set up just for that student, and will look carefully at his/her needs. The team will look at all of the results of the evaluation – not just the medical diagnosis – to make a decision.

**38. What happens after the educational evaluation?**

When the evaluation is done, all of the results are put into a report called the evaluation summary report. The school district must give you a copy of this report. The report will be discussed at the team meeting.

The summary report should give the results of all the tests. It should tell what the results mean, and how they apply to the student's education. It must describe the student's present level of performance in all of the areas tested. Finally, it must say if the team thinks the student needs and will get special education or related services.

If the team decides that the student qualifies for special education, then the student must have an IEP written for them every year after that. For more information on the IEP, see our fact sheet entitled *IEPs for Students with Disabilities*.

**39. What if the evaluation summary report says my child doesn't need special education?**

The school may decide that the student is not eligible for special education. You have a right to disagree with this decision. See Questions #41 and 42.

If you agree with the decision, then you and the team decide if the student qualifies for a **504 accommodation plan**. For more information on a 504 accommodation plan, see our fact sheet entitled *Rights Under Section 504 of the Rehabilitation Act of 1973*.

#### **40. What should I do if I don't agree with the school on any of these issues?**

As soon as you begin to have trouble, call the Minnesota Disability Law Center. We may have an advocate who can help you. Even if we can't give you an advocate, we can give you advice about your case.

The most important thing is to keep good records. Save all notices from the school. Make copies of anything you send to the school and keep your copies. Go to all meetings and answer all notices. Keep all of your paperwork together.

If you talk to someone from the school on the phone, keep a phone log. Write down the day and time of the call, and the name and title of the person you talked to. Write down what was said. Keep this with your other papers. Whether or not you have an advocate, these records will help your case.

#### **41. What else can I do to help my child?**

Even without an advocate, there are steps you can take to help your child.

- Ask for a ***conciliation conference***, which means one or more meetings where the school staff and parents try to settle the problem. If you ask for a conference, the school must make it happen within ten days. You and the school must agree about when and where the conference will be held. After the conciliation conference ends, the school must mail you a written notice, saying what they are going to do.
- You can contact your local special education director and ask for ***mediation***. A mediator is a person who has special training to help families, teams and school districts settle their differences and agree on how to help the student. Mediation is voluntary, which means that neither you nor the school has to go. At the end of the mediation, the mediator will write an agreement that says how the school district agreed to help the child.
- You have the right to file a complaint, or to request a ***due process hearing***. If you decide to file a complaint, see our fact sheet entitled *How to File a Complaint*.

Most important, don't give up.

#### **\*\*\*\* Definitions \*\*\*\***

***504 accommodation plan*** – The plan a school has to make to help a student with a disability who does not qualify for special education.

***Child find*** – The process of finding students who might need special education services.

***Conciliation conference*** – A meeting or series of meetings between school staff and parents to settle a problem about the student's education.

***Due process hearing*** – When a person files a complaint, the next step is a due process hearing. A hearing officer will listen to both sides of a conflict, and give a written decision

***Educational evaluation*** – A series of tests to find out how a student’s disability affects their ability to learn, and to figure out what the student needs to get a good education.

***Free appropriate public education (FAPE)*** – This is the main idea behind the IDEA. Every student, whether or not they have a disability, has a right to an education, free of charge, which fits the student’s special needs.

***Functional behavior assessment*** – A test that looks at a student’s behavior to figure out what types of things are causing problems.

***Individual education program (IEP - often called an individual education plan)*** – IEP can mean either the IEP document or the IEP meeting. The document, which describes the educational plan for a student with a disability, is written at the meeting.

***Individual family services plan (IFSP)*** – A written plan that describes the early intervention services a school district will give to a child before the child reaches school age. Basically, an IEP for infants and toddlers.

***IEP team*** – A group of people (including the parents and special education teacher) who are involved in a student’s education. This team decides on an education plan for the student, and writes the IEP document.

***Independent educational evaluation*** – An evaluation that is not done by the school district.

***Informed consent*** – Written permission given after the parent understands all of the information, and understands that consent is voluntary and can be taken back at any time.

***Mediation*** – A voluntary meeting between two parties who are having a disagreement. A trained mediator helps the two parties come to an agreement.

***Pre-referral intervention*** – An attempt by the classroom teacher to help a student solve problems with learning or behavior. The teacher must try this before referring the student for an educational evaluation.

***Related services*** – Extra services that students with disabilities need in order to get FAPE, such as a bus with a lift or speech therapy.

***Section 504*** – A section of the 1973 Rehabilitation Act. This section says that public schools must help students with disabilities, even if the student does not qualify for special education.

***Special education services*** – Special planning for the extra help or equipment a student with a disability needs to get an education.

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**Contact Information:**

**Minnesota Disability Law Center (MDLC)**

430 First Ave. North, Suite 300

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Preparation of this Fact Sheet was financed in part by grant number 90DNO133 from the US Department of Health and Human Services, Administration on Developmental Disabilities, Projects of National Significance, under provisions of Public Law 106-402. The content of this Fact Sheet does not necessarily reflect the position of policy of the Administration on Developmental Disabilities or the Minnesota Department of Administration.

*Note to parents:*

This is a form to help you write your own letter. Wherever you see **this type of print**, replace the print with your information. See the sample letter below.

**Your name**  
Your address  
**Your city, state and zip code**

**Date**

Principal **Name of school principal**  
**Name of school**  
**School's address**  
**School's city, state and zip code**

Regarding: **Student's first and last name**

Dear **Ms. or Mr. Principal's Last Name**:

I request that the school district conduct an educational evaluation of **student's first and last name**. I would like to know if **student's first name** qualifies for special education services or Section 504 accommodations. I want the evaluation to address my concerns about **student's first name's** education.

My concerns are: **all of your concerns about your child's education**.

*Examples:*

*trouble with school work (math or taking tests or finishing homework)*

*problem behavior (following school rules or paying attention)*

*social skills (speaking, writing, expressing feelings or making friends)].*

I would like a team meeting to discuss my concerns and make plans for the educational evaluation. Please send me a notice of the meeting. When the evaluation is complete, please be sure that I get copies of the evaluation summary report. I would like to get the copies at least one week before the meeting where the team discusses the results and develops the educational plan.

Sincerely,

Your first and last name

***Sample Letter:***

Tom Smith  
1927 Oak Street  
Anytown, MN 55000

October 4, 2004

Principal Mary Brown  
Anytown Elementary School  
1736 Main Street  
Anytown, MN 55000

**Regarding: Taylor Smith**

Dear Ms. Brown:

I request that the school district conduct an educational evaluation of Taylor Smith. I would like to know if Taylor qualifies for special education services or Section 504 accommodations. I want the evaluation to address my concerns about Taylor's education.

*My concerns are:*

*Taylor can't figure out how to do her math homework  
Taylor doesn't get along with her science teacher, and is often in trouble.  
Taylor doesn't seem to be making friends with other students.*

I would like a team meeting to discuss my concerns and make plans for the educational evaluation. Please send me a notice of the meeting. When the evaluation is complete, please be sure that I get copies of the evaluation summary report. I would like to get the copies at least one week before the meeting where the team discusses the results and develops the educational plan.

Sincerely,

Tom Smith