



**KNOW YOUR  
RIGHTS:**

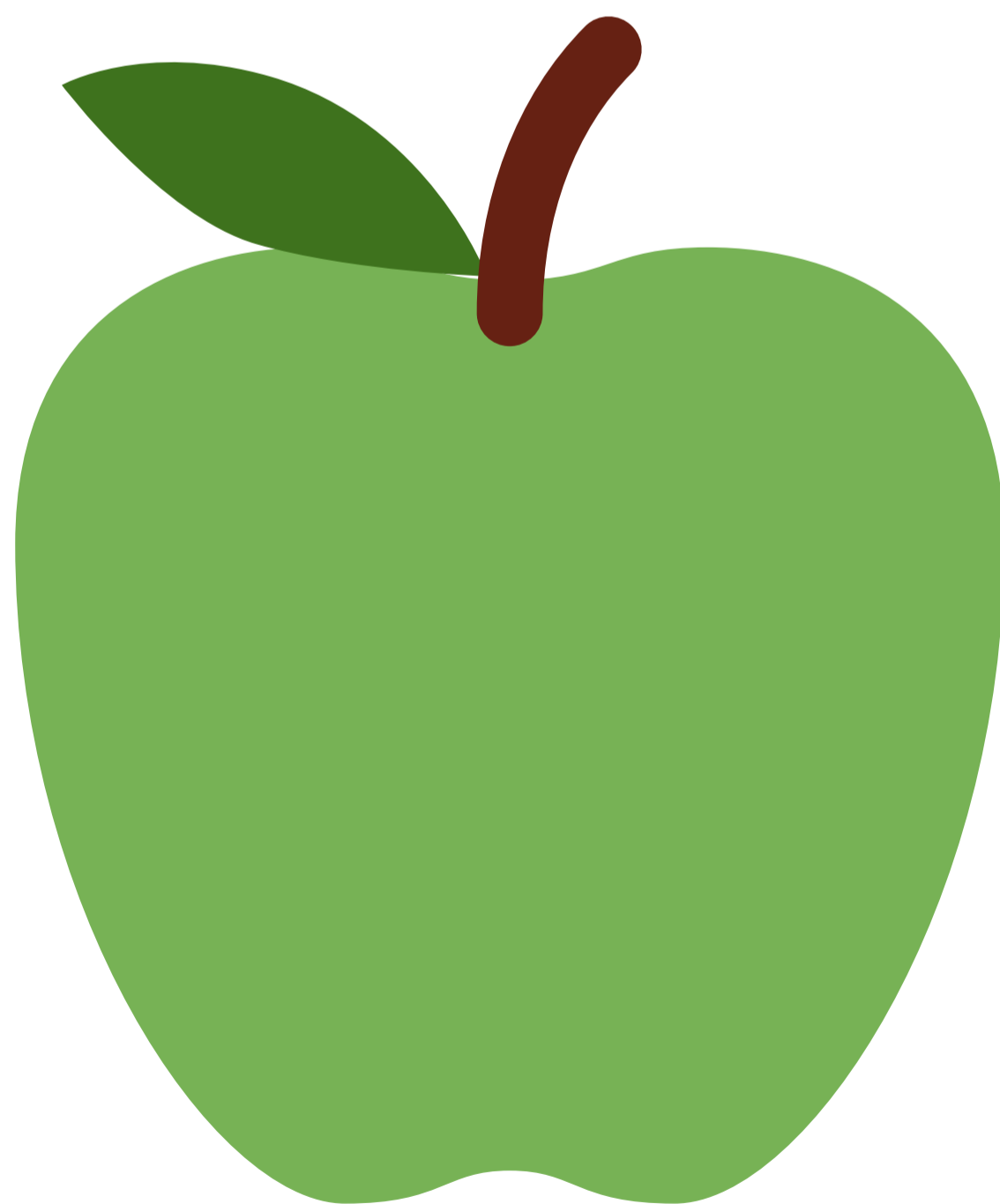
**A PARENT'S  
GUIDE TO  
SPECIAL  
EDUCATION IN  
NEW MEXICO  
PUBLIC  
SCHOOLS**

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# What is Special Education?

**Special education** refers to specially designed instruction and related services that meet the unique needs of a child. There are several laws that govern special education.



# Special Education Laws

The **Individuals with Disabilities Education Act (IDEA)** is a federal law that ensures students with disabilities receive a free appropriate public education that is tailored to their individual needs. Under IDEA, eligible students with disabilities ages 3 – 21 receive specially designed instruction based on their written individualized education program (IEP).

## Important vocabulary from IDEA:

IEP = individualized education program. An IEP is a written statement for each child with a disability that is developed, reviewed, and revised in a meeting.

LRE = least restrictive environment. To the maximum extent possible, children receiving special education services are to be with their non-disabled peers in general education settings.

FAPE = free appropriate public education. Included in every FAPE are due process rights that enable parents to receive required notices, review their child's records, and challenge IEP decisions.

# Special Education Laws, Continued...

**Every Student Succeeds Act (ESSA)** replaced the No Child Left Behind Act (NCLB) in 2015. It is a federal law that directs the nation's education programs that both the federal government and states maintain. ESSA requirements and standards apply to special education programs and services.

**Section 504 of the Rehabilitation Act (Section 504)** covers students who have a physical or mental disability that substantially limits one or more major life activities. Some students who do not qualify for special education services under the IDEA may still receive services under Section 504 if they are considered a "qualified individual with a disability."

# Special Education Laws, Continued...

**Family Educational Rights and Privacy Act (FERPA)** is a federal law that protects the privacy of student educational records and applies to all schools that receive federal funds. FERPA gives parents certain rights over their child's educational records and generally requires that schools get permission from parents before releasing any information from a student's records. These rights transfer to the student when they turn 18.

**Americans with Disabilities Act (ADA)** is another federal law that protects people from discrimination on the basis of disability. All public schools must comply with the ADA and thus cannot discriminate against individuals with disabilities.

There are also state laws and regulations implemented by the **New Mexico Public Education Department** and the **Bureau of Indian Education**.

# The Student Assistance Team (SAT)

The SAT Process often functions as the first step to a special education referral. It can also help students who are at-risk academically and/or behaviorally, but who will not eventually qualify for special education services.

By law, the **SAT includes the student's teacher, school counselor, school administrator, and the student's parent.** N.M. Stat Ann. § 22-2C-6 (1978). Other important adults can attend, but it is important that they sign a confidentiality agreement. As appropriate, the student can attend. SAT is legally required for these situations:

- Student has an immediate and obvious disability
- Student is referred to Gifted Education
- Student has been or is in danger of being retained (must follow NMAC requirements)
- Student has been exited from Special Education
- Student has been restrained two or more times in a 30-day period minimum

However, even if these requirements are not present, the school may still proceed with the SAT process if the student would benefit from referral.

# The SAT Process

The SAT process includes targeted, supplemental, and individualized support for students who are at-risk academically or behaviorally. It can also be used for students who are exceeding expectations and need additional support.

The SAT designs an individualized **Academic Intervention Plan (AIP)** or **Behavioral Intervention Plan (BIP)** that the classroom teacher and/or others implement in the regular education classroom. **Interventions** are changes made to enable the student to meet grade-level standards in the regular education classroom.



# SAT Timeline

## Referral

If a teacher or parent recognizes a student is at-risk academically or behaviorally, a teacher will refer that student for SAT.



## Initial SAT Meeting

The school notifies the parents about the SAT meeting. The SAT (which includes the student's parents) gathers all available data about a student, hypothesizes a possible cause for the issue. If your student has been referred for behavior, the school will conduct a Functional Behavior Assessment.

## SAT Intervention Plan

Once the SAT has formed a hypothesis about what is causing the student to struggle, the entire team (including parents) meets to consult available resources and brainstorm ideas for what targeted interventions will help the student meet grade-level expectations. A SAT Intervention Plan is created.



SAT Tip: Ask to see an example of the intervention(s) your child's teacher has implemented and their results.



## Monitoring SAT Interventions

The classroom teacher will monitor your child's progress and gather data about their response to the interventions chosen for the SAT Intervention Plan. There must be a minimum of 9 weeks of data and 4 to 5 data points to determine how the student has responded to the interventions. The data will usually be shown by graph at the follow up meeting.



## Follow Up SAT Meeting: Continue, Exit or Evaluate

Based on a student's low rate of progress or other factors, the team may consider initiating referral for a comprehensive multidisciplinary evaluation to determine whether a student is eligible for special education services, a Section 504 Accommodation Plan. The SAT Intervention Plan may also be continued or stopped based on the student's progress.

# Initial SAT Meeting: Parent Rights

Attend: The school must notify you of your student's SAT meeting so that you can attend.

Reschedule: You can ask to reschedule the meeting if you are not available at the suggested time.

Permission: You can give or deny permission for additional screening.

Interpreter: You can ask for an interpreter.

Participate: You can give suggestions for interventions for the classroom teacher to implement.

Refuse: As a parent, you can refuse the school's offer for Tier II SAT interventions. This should be done in writing and addressed to the school.

# **SAT Process: Parent Rights to Request Special Education Evaluations**

Request: You may request an initial special education evaluation at any time.

Explanation: If the public agency (school district or state charter school) agrees with the parent that the child may be eligible for special education services, the public agency must evaluate the child. If the public agency declines the parent's request for an evaluation, the public agency must issue a prior written notice in accordance with 34 CFR Sec. 300.503.

Challenge: You can challenge this decision by requesting a due process hearing. (NMAC 6.31.2.10).

# End of the SAT Process:

Based on a student's low rate of progress or other factors, SATs may consider initiating referral for a comprehensive multidisciplinary evaluation to determine whether a student is eligible for special education services, a Section 504 Accommodation Plan, or an alternative program that may better meet their needs.

The SAT Intervention Plan may also be continued or stopped based on the student's progress.

Remember, at any point you have the right to request that your child be evaluated for special education.

# SAT Resources

New Mexico Public Education Department, The Student Assistance Team (SAT) and the Three-Tier Model of Student Intervention, Revised Fall 2009

New Mexico Public Education Department, New Mexico Multi-Layered System of Supports (MLSS), Student Assistance Team (Supplemental Manual), 2021

New Mexico Public Education Department, Multi-Layered System of Supports & the Student Assistance Team, 2021

# Evaluation and Eligibility for Special Education

If the SAT refers a student for evaluation or a parent requests an evaluation and the school agrees, then the student must receive a complete and comprehensive evaluation to determine if the student has a disability and is eligible for special education.

The evaluation must be completed within 60 days of when the parent provides consent for the evaluation.

If the school disagrees with a parent's request for an evaluation, they must provide an explanation for their refusal.

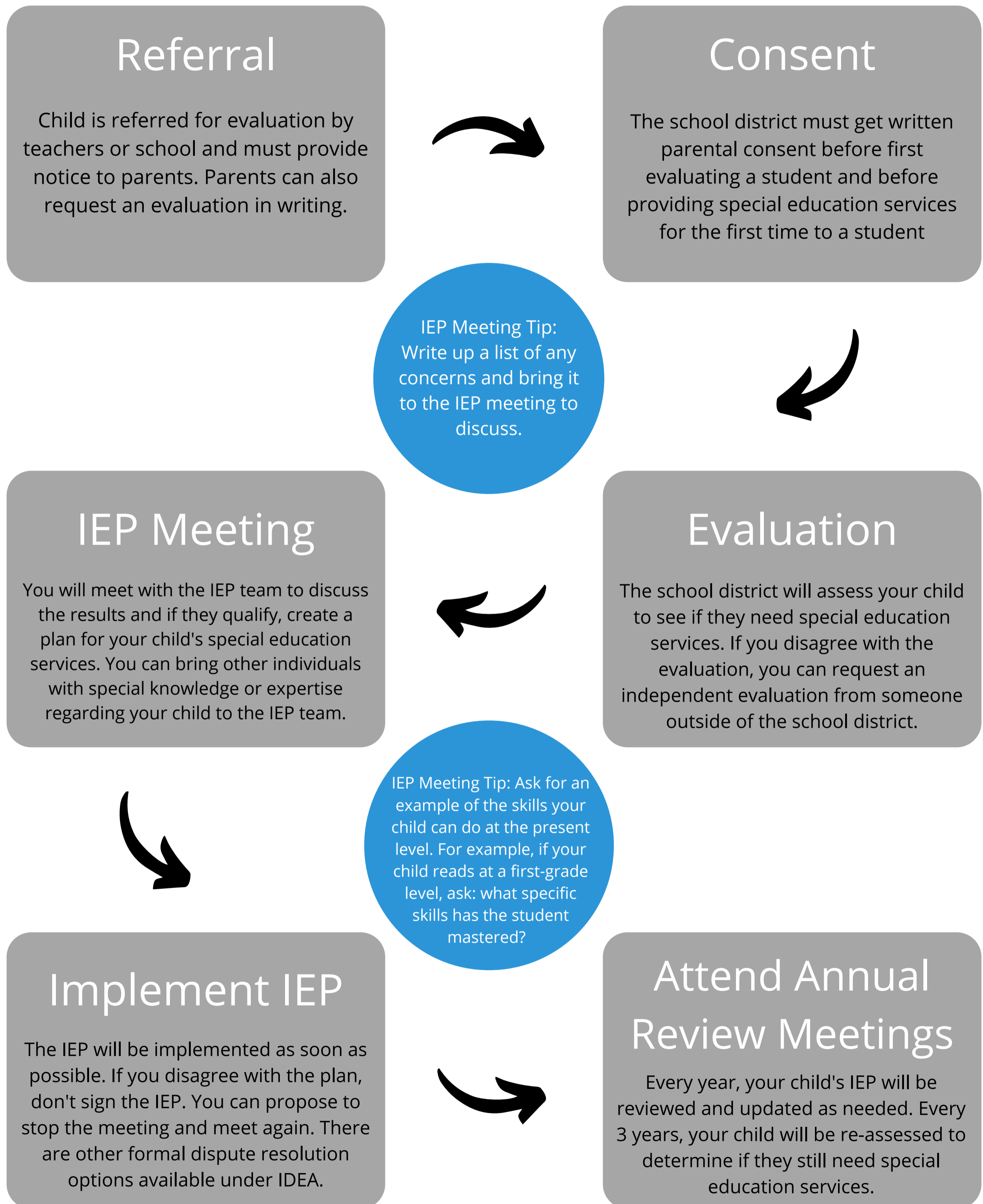
Evaluation Tip: If you request an evaluation, make sure it is in writing and keep track of when the request was made and who it was made to. See the Appendix for examples letters.

# Individualized Education Program (IEP)

An IEP is a written plan describing and explaining how a student's special education program and related services will be provided. The school district must convene an IEP team meeting, including parents, to develop the student's IEP within 30 calendar days of an eligibility determination finding that the student needs special education and related services.

The IEP must be implemented as soon as possible and reviewed at least once a year at an IEP team meeting. Parents or the school can request to convene an IEP meeting for the student more than once a year if needed.

# IEP Timeline





# Requirements of an IEP

Generally, an IEP must include:

- (1) A statement of the student's present levels of educational performance, including how the child's disability affects the child's involvement and progress in the general curriculum;
- (2) Measurable annual goals;
- (3) A statement of specific special education services, related services, supplementary aids and services, and program modifications and supports for school personnel;
- (4) An explanation of the extent, if any, the child will not participate in regular education classes;
- (5) Date for the initiation and the anticipated duration, frequency, and location of the services and modifications included in the IEP;
- (6) Modifications in the administration of state or district-wide tests;
- (7) Objective criteria for determining whether the measurable goals are being achieved;
- (8) A description of the type of placement needed to implement the IEP in the least restrictive environment.

# IEP Renewal and Exit

Students with IEPs are re-evaluated at least once every three years to determine continued eligibility for special education services.

If the student still meets eligibility criteria, the IEP development process renews.

After re-evaluation, if it is determined that the student no longer meets eligibility criteria, they will exit from the special education program and no longer have an IEP. However, students who formally qualified for special education services may qualify for accommodations under Section 504 or be referred to the SAT process again.

IEP Meeting Tip: Takes notes while you participate in the IEP meeting. When you get a copy of the IEP at the end of the meeting, make sure your notes match what is being submitted for your student's IEP. Make sure you read the IEP carefully before you sign it.

# IEP: Parent Rights to Notice

The school district must give the parent Prior Written Notice before it takes any action to identify, test, or place the student in special education for the first time and before it makes any changes to the student's special education and related services or placement.

When a student with a disability turns 18, the rights under the IDEA transfer to the student unless a court has appointed a legal guardian for the student. The school district is required to provide notice to the parent of this transfer or educational rights at the annual IEP team meetings when your student is 14 and older.

Parents have a right to have IEP information in their native language.

# IEP: Parent Rights to Consent

The school district must have written parental consent before evaluating a student and before providing special education services for the first time to a student.

Once the student has an IEP for special education services, consent will be requested before any reevaluations.

The school district is also required to obtain consent for use of your public benefits and insurance or private insurance to pay for your student's special education services.

Parents also have the right to withdraw their consent at any time.

If the parent has requested a change, and the school district refuses, the school district must inform the parent in writing of the basis for the refusal.

# IEP: Parent Rights for Requesting an Evaluation

A parent can request an evaluation of their child for special education services at any time. Your child can be evaluated, even while other interventions are taking place.

The school district must respond to a parent's request for evaluation with a prior written notice. If the parent disagrees with the school district's response, there are processes in place to help resolve disagreements, such as mediation or due process hearings.

If a parent disagrees with an evaluation completed by the school district, they have the right to request an Independent Educational Evaluation and have their student evaluated by someone who does not work for the district. If the evaluation meets certain conditions, the school district must pay for it, unless the district proves in a due process hearing that its evaluation was appropriate.

# **IEP: Parent Rights for IEP Implementation and Meetings**

If a student is determined to be eligible for special education services, the school district is required to formulate, with parent input, an IEP for the student within 30 calendar days of the eligibility determination. The IEP must be implemented as soon as possible after it is completed.

Parents must be afforded reasonable notice of all IEP meetings and an opportunity to participate in all IEP meetings with the entire IEP team.

Parents have the right to be involved in all meetings regarding any decision related to the IEP or their child's special education needs and placement.

Parents also have the right to include other individuals with special knowledge or expertise regarding the child in the IEP team meeting.

Parents must receive a copy of the IEP.

# IEP Resources

New Mexico Public Education Department Special Education Division, Special Education Procedural Safeguards for Students with Disabilities and Their Families Required Under IDEA Part B, Revised December 2020

New Mexico Public Education Department Special Education Division, Policies and Procedures for the Provision of Special Education Services for Students with Disabilities and Gifted Students, Revised May 2014

# Section 504

If your child does not qualify for an Individualized Education Plan (IEP), they may still be eligible for special services and protections under Section 504 of the Rehabilitation Act as an individual with a disability. Students who qualify for Section 504 services do not automatically qualify for special education under IDEA and vice versa.

If your child has persisting issues, you may want to speak with your child's doctor and ask for testing. Often pediatricians can refer children for a neuropsychological and/or psychological evaluation.

If the doctor's evaluation reveals that your child has a mental or physical health impairment that substantially limits major life activities, your child is entitled to a 504 Plan.



# Section 504, Continued...

Major life activities include: caring for oneself, walking, seeing, speaking, learning, breathing, sleeping, standing, lifting, reading, concentrating, thinking, communicating, working, helping, eating, bending, operation of a bodily function.

Some examples of disabilities that could substantially limit a major life activity and may require a 504 plan: HIV/AIDS, allergies, arthritis, asthma, ADD/ADHD, cancer, cerebral palsy, previous heavy drug/alcohol use, epilepsy, obesity, orthopedic impairment, formerly receiving special education services, special healthcare needs, temporary disability, Tourette syndrome, traumatic brain injury, parent with a hearing impairment.

See: <https://webnew.ped.state.nm.us/wp-content/uploads/2018/03/Section504.pdf> for examples of possible accommodations under a 504 plan.

# Section 504 Accommodations Plan

Students who qualify for 504 plans receive general education but receive accommodations to help meet their educational needs.

After the school makes a Section 504 identification determination that your child qualifies, the school will hold a meeting to create an accommodations plan.

The 504 Accommodations Plan will identify your child's specific need, accommodations that address the need, who will implement the accommodations, and criteria for evaluating success. This plan must be reviewed annually.

504 Plan Meeting Tip: Bring medical documentation of your child's health impairment and any other information from your child's doctor with you to the meeting.

# Section 504: Parent Rights

Notice: Parents must receive the Notice and Consent for 504 Evaluation in writing.

Consent: Parents have the right to consent or withhold consent for their child to have a 504 evaluation, but it must be in writing. If a parent does not consent, school districts may use due process hearing procedures to override a parents' denial of consent for an initial evaluation.

Consent: Written parental consent is also required for the student's initial Section 504 placement.

Explanation: Parents have a right to have any evaluation and placement decisions affecting their children explained to them.

Appeal: Parents have the right to review their child's educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

Participate: You can be a part of the Section 504 Team that creates the Accommodation Plan.

# 504 Resources

U.S. Department of Education Office of Civil Rights, Protecting Students with Disabilities, Frequently Asked Questions About Section 504 and the Education of Children with Disabilities, 2020

U.S. Department of Education Office of Civil Rights, The Civil Rights of Students with Hidden Disabilities Under Section 504 of the Rehabilitation Act of 1973, 2020

New Mexico Public Education Department, Guidelines for Educators and Administrators for Implementing Section 504 of the Rehabilitation Act of 1973 — Subpart D, March 2010

# Educational Records: Parent Rights

**Access:** Parents have the right to access their child's educational records. This includes the right to obtain copies of records.

**Amend:** If a parent believes the student's records are incorrect or violate privacy, they may request an amendment of the record.

**Destroy:** Parents or adult students have the right to request destruction of personally identifiable information collected by the school district when it is no longer needed for the student's education.

# Other Resource Organizations

Native American Disability Law Center:  
<https://www.nativedisabilitylaw.org/> and  
[Parent's Guide to Special Education](#)

Education for Parents of Indian Children with Special Needs (EPICS): <https://www.epicsnm.org/>

Disability Rights New Mexico: <https://www.drnm.org/>

Parents Reaching Out:  
<https://parentsreachingout.org/education/special-education/>

New Mexico Public Education Department Special Education Bureau: <https://webnew.ped.state.nm.us/bureaus/special-education/>

U.S. Department of Interior Bureau of Indian Education:  
<https://www.bie.edu/landing-page/special-education>

# Appendix

The following documents are available as a resource for communicating with school districts or the New Mexico Public Education Department.

With gratitude, they are included in this guide with permission from Native American Disability Law Center and come for their resource:

Parent's Guide to Special Education.

# SAMPLE LETTERS

SAMPLE LETTER #1  
REQUEST FOR INITIAL EVALUATION  
(please keep a copy for yourself)

Your Name  
Your Address  
Your City, State and Zip Code  
Your Phone Number

Date

Special Education Director  
School District  
Address  
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I believe my child may have a disability and is in need of special education services. I am requesting a full and comprehensive individual evaluation of my child.

I understand that the evaluation must be completed within 60 calendar days from the date I have signed consent for evaluation. Please consider my signature below to constitute consent for evaluation.

I look forward to hearing from you soon.

Sincerely,

Parent's Signature



SAMPLE LETTER #2  
REQUEST FOR REEVALUATION  
(please keep a copy for yourself)

Your Name  
Your Address  
Your City, State and Zip Code  
Your Phone Number

Date

Special Education Director  
School District  
Address  
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I am writing to request that the school system conduct a complete reevaluation of my child. I believe a reevaluation is necessary in order to obtain a better understanding of my child's current academic and functional abilities, and to draft an appropriate educational program.

I look forward to hearing from you soon.

Sincerely,

Parent's Signature

SAMPLE LETTER #3  
REQUEST FOR INDEPENDENT EDUCATIONAL EVALUATION  
(please keep a copy for yourself)

Your Name  
Your Address  
Your City, State and Zip Code  
Your Phone Number

Date

Special Education Director  
School District  
Address  
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I have received and reviewed the district evaluation of my child. I disagree with the evaluation and request an independent educational evaluation at public expense.

Please send me a copy of the written criteria under which independent evaluations must be conducted and a written list of independent evaluators I can consider.

I understand the school must pay for the independent evaluation unless it requests a hearing to prove that its evaluation was appropriate.

I look forward to hearing from you soon.

Sincerely,

Parent's Signature

SAMPLE LETTER #4  
REQUEST FOR IEP MEETING  
(please keep a copy for yourself)

Your Name  
Your Address  
Your City, State and Zip Code  
Your Phone Number

Date

Special Education Director  
School District  
Address  
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I am requesting that an IEP meeting be held as soon as possible to review and, if necessary, revise my child's IEP. Please contact me at your earliest convenience so that the meeting can be scheduled at a mutually agreeable date and time.

I look forward to hearing from you soon.

Sincerely,

Parent's Signature

SAMPLE LETTER #5  
REQUEST TO REVIEW RECORDS  
(please keep a copy for yourself)

Your Name  
Your Address  
Your City, State and Zip Code  
Your Phone Number

Date

Special Education Director  
School District  
Address  
City, State Zip Code

Dear Special Education Director:

I am the parent of (name of student), a student who attends (name of school). I am writing to arrange a time to review my child's educational records, including all documents that are collected, maintained or used by the school district. I would like to make copies of some of the records. I will let you know which records I would like to copy after I review them all.

I look forward to hearing from you soon.

Sincerely,

Parent's Signature

# New Mexico

New Mexico Public Education Department  
Special Education Complaint Form  
*(Use of this form is optional)*

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Date: \_\_\_\_\_

**Please complete all information and mail to:**

New Mexico State Special Education Director  
New Mexico Public Education Department  
Special Education Bureau  
120 South Federal Place, Room 206  
Santa Fe, NM 87501

I. **Public Agency or School District serving the child:** \_\_\_\_\_

II. **Complainant and Student Information:**

a. Complainant(s) Name(s): \_\_\_\_\_

b. Address (or available contact information): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

c. Phone number (s): HM \_\_\_\_\_ Work \_\_\_\_\_

Cell \_\_\_\_\_ FAX \_\_\_\_\_

d. Alleged violation of state or federal special education law with respect to specific child: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e. Student's Name: \_\_\_\_\_

f. Address (or available contact information): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

g. Grade: \_\_\_\_\_ School: \_\_\_\_\_

District: \_\_\_\_\_

III. **Representative Information (if applies):**

a. Are you using an:  
Attorney \_\_\_\_\_ Advocate \_\_\_\_\_ Other Representative \_\_\_\_\_

b. If using other representative, please identify:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone number(s): HM \_\_\_\_\_ Work \_\_\_\_\_

Cell \_\_\_\_\_ FAX \_\_\_\_\_

IV. **Details Concerning Complaint:**

a. Complainant, please describe the nature of the problem the child or children are experiencing and the facts relating to the complaint: (Who? What? Where? Why?) **Attach any documents that support your position.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

b. Does the complaint allege violations that occurred in the last year?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please provide specific dates:

\_\_\_\_\_  
\_\_\_\_\_

c. Describe how this complaint could be resolved (to the extent known):

\_\_\_\_\_  
\_\_\_\_\_

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**V. Signature and Date:**

\_\_\_\_\_  
Signature of Complainant

\_\_\_\_\_  
Date

**VI. Mediation:**

Federal law requires that the State make mediation available to the parties in response to a Formal Complaint. Mediation is offered at no cost to the parties. Mediation is encouraged and may be beneficial in resolving your concerns. Mediation is voluntary, and both parties must agree to mediate the dispute. You may request mediation now by signing below or at any time during the complaint investigation process.

I request mediation: \_\_\_\_\_ I decline mediation: \_\_\_\_\_

\_\_\_\_\_  
Signature of Complainant

\_\_\_\_\_  
Date

THE PARTY FILING THIS COMPLAINT MUST FORWARD A COPY OF THE COMPLAINT TO THE SCHOOL DISTRICT OR PUBLIC AGENCY SERVING THE CHILD AT THE SAME TIME THIS COMPLAINT IS FILED WITH THE SPECIAL EDUCATION BUREAU.