

Pre-School Special Education

Frequently Asked Questions



Self-Advocacy Series



Pre-School Special Education

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This advocacy guide is intended to assist families of children with disabilities to navigate the pre-school special education process in New Jersey.

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**Advocating and advancing
the human, civil and legal rights
of people with disabilities**

Disability Rights New Jersey

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What laws govern pre-school special education services?

The Individuals with Disabilities Education Act (IDEA), a federal law, and its implementing regulations in the Code of Federal Regulations, can be found at 20 U.S.C. § 1400, *et seq.* and 34 C.F.R. § 300.1, *et seq.* The New Jersey Administrative Code is the governing regulations in New Jersey for pre-school special education services. It can be found at N.J.A.C. 6A:14-1.1, *et seq.*

What are the eligibility requirements for pre-school special education services?

To be eligible for pre-school special education services, a child must be between three and five years of age and have a 33% delay in one area or a 25% delay in two or more of the following areas: physical, cognitive, communication, social/emotional, and adaptive. In addition, the child must require special education and related services. N.J.A.C. 6A:14-3.5(c)(10)

To ensure implementation of an individualized education program by my child's third birthday, when must I notify the district about my child?

An IEP must be implemented by an eligible child's third birthday when the district receives notice at least four months prior to the child's third birthday. School districts have 120 days from referral to conduct evaluations and

implement an IEP of an eligible student. N.J.A.C. 6A:14-3.3(e)

If I disagree with a determination of ineligibility what are my options? Can Part C services continue while I challenge the determination?

A family may request an independent evaluation, mediation, or a due process hearing when there is a disagreement regarding eligibility. Under current law, Part C services do not continue while families challenge a determination of ineligibility for pre-school services. Families may request, in writing, independent evaluations from their school districts under N.J.A.C. 6A:14-2.5(c). The district may agree or disagree with the request and must respond within 20 days. However, if the district denies a request for an independent evaluation, it must file for a due process hearing and justify the sufficiency of the district's evaluations to a judge. Once the evaluation is complete, a meeting will be held to review the results and the school district can accept, reject or accept in part the independent evaluation under N.J.A.C. 6A:14-3.4(i). Families may file for mediation or a due process hearing through the New Jersey Department of Education.

Must I agree to all services within the IEP to have a plan implemented for my child?

An initial IEP may not be implemented unless a parent signs the proposed IEP and consents to implementation.

Written consent is not necessary for subsequent IEPs. If a parent does not file for mediation or due process within 15 days of receiving a new IEP, the IEP becomes effective and the district may implement the plan without written parental consent.

What placement options are available to students eligible for pre-school special education services?

School districts are responsible for providing a continuum of educational placement options for students with disabilities including pre-school students. If school districts do not operate an inclusive pre-school program within district, the law does not require the district to create one. However, the district must contract with private pre-school programs and other community programs such as Head Start or child care centers when appropriate to implement an individualized education program. See 71 Federal Register 46589

If you reside in an Abbott district, there is universal preschool for all three and four year olds. Abbott districts are those districts identified by the New Jersey court system and the New Jersey Legislature as disadvantaged school districts receiving additional state funding for educational services and must provide additional services including universal preschool for three and four year olds. There will be public pre-school programs available to consider as a placement for a special education pre-school student. If you reside in an Early Childhood Pre-school Aid (ECPA) district, there are public pre-school

programs for four year olds. These programs can also be considered for a special education pre-school student.

What types of services are available to pre-school students with disabilities?

Pre-school students with disabilities are entitled to all services necessary to meet a student's unique needs and receive a free appropriate public education. This includes but is not limited to: speech therapy, physical therapy, occupational therapy, social skills instruction, curriculum modification, behavioral services, extended school day, and extended school year. It may be appropriate for a student to receive some or all of these services depending upon the student's individualized needs.

Are extended school year services available to pre-school students with disabilities who become eligible for services during the summer months?

The IDEA and implementing federal and state regulations require that all students with disabilities be considered for extended school year services. It does not exempt students turning three during the summer months. However, not all students will be eligible for extended school year services. If through its evaluations the school district does not have enough information to determine whether an extended school year would be appropriate, it must seek information from other sources such as family, early intervention providers and medical providers to make

such a determination. Furthermore, the district must also consider the severity of the disability, the family's ability to create an appropriate educational environment, the child's rate of progress, the child's ability to interact with nondisabled peers, and similar factors when making the determination regarding extended school year services.

Are there additional discipline protections for pre-school students with disabilities?

Yes, New Jersey provides additional protections to pre-school students with disabilities. According to N.J.A.C. 6A:14-2.8, a school district may not suspend or expel pre-school students with disabilities under any circumstances.

Is there transition for pre-school students with disabilities?

Yes. By June 30th of the last year a student is eligible for pre-school special education services, the district must conduct a re-evaluation of the student to determine continued eligibility for special education services and what services will be necessary for the following year. N.J.A.C. 6A:14-3.8(g)

What dispute resolution options are available?

Families may file a request for a complaint investigation, mediation or due process hearing through the New Jersey Department of Education. Model forms may be found on

the New Jersey Department of Education's website at www.state.nj.us/education under Special Education.

What is mediation?

Mediation is an opportunity for families and the school district to resolve disputes through discussions that take place with an impartial individual. The parties discuss areas of agreement and disagreement in an attempt to reach a compromise. If a compromise is reached, the agreement is written down and signed by all parties. It is enforceable in a hearing. Everything discussed in the mediation is confidential and may not be used against the party later. Mediation is a voluntary process for all parties.

What is a due process hearing?

The due process hearing is a forum for families to resolve disputes in a formal setting. The hearing is a trial at which evidence is presented and witnesses are examined before a hearing officer. Please refer to N.J.A.C. 6A:14-2.7 for the formal requirements and time frames. Families may appeal the decision to state or federal court.

What is a complaint investigation?

The request for a complaint investigation is filed with the New Jersey Department of Education and may be filed by any individual or entity alleging a violation of law. The New Jersey Department of Education is responsible for conducting an investigation and issuing findings of facts.

Complaints must be resolved within sixty calendar days of the Department's receipt of the request.

Are advocacy organizations available to assist families?

Yes, the following advocacy organizations are available to assist families of pre-school age children with disabilities:

Disability Rights New Jersey
210 S. Broad Street, 3rd Floor
Trenton, New Jersey 08608
1-800-922-7233 (NJ only)
609-292-9742
609-777-0187 (fax)
609-633-7106 (TTY)
www.drnj.org

Education Law Center
60 Park Place, Suite 300
Newark, New Jersey 07102
973-624-1815
973-624-4618 (TTY)
www.edlawcenter.org

Rutgers School of Law
Special Education Clinic
123 Washington Street
Newark, New Jersey 07102
973-353-5561

ARC of New Jersey
985 Livingston Avenue
New Brunswick, New Jersey 08902
732-246-2525
732-214-1834 (fax)
www.arcnj.org

Statewide Parent Advocacy Network
35 Halsey Street, 4th Floor
Newark, New Jersey 07102
1-800-634-SPAN (NJ Only)
973-642-8100
973-642-8080 (fax)
www.spannj.org

Center for Outreach and Services for the Autism
Community (COSAC)
1450 Parkside Avenue, Suite 22
Ewing, New Jersey 08638
1-800-4-AUTISM
609-883-5509 (fax)

Disability Rights New Jersey (DRNJ), the State's federally funded designated protection and advocacy system for people with disabilities, is a statewide non-profit organization that advocates and advances the human, civil and legal rights of persons with disabilities. DRNJ's mission includes the empowerment of people with disabilities through information to assist them in self-advocacy.

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