



Education is Special

A Guide to Special Education in Maine

For General Information Only

1. Maine Parent Federation is not a legal services agency and cannot provide legal advice or legal representation. The information in this booklet is provided as a public service for general information only, and is not a substitute for legal advice about the facts of you or your child's particular situation. In addition, the law is always changing, through actions of the courts, legislature, and public agencies; such advice should be obtained from an attorney.
2. The contents of these materials were developed, in full or part, under a grant from the US Department of Education, #H328M140006, however those contents do not necessarily represent the policy of the US Department of Education, and you should not assume endorsement from the Federal Government. Project Officer, Carmen Sanchez



Contents

- pg. 3 Introduction to Special Education Regulations
- pg. 8 Purpose and Structure of the IEP/504
- pg. 19 Procedural Safeguards and Due Process



Introduction to Special Education Regulations

All public education is provided by the federal and state departments of education.

At the federal level, this is the **United States Department of Education**. This is commonly abbreviated to “ED”, which stands for “Education Department”. The official website can be found at www.ed.gov.



At the state level we have the **Maine Department of Education**. This is commonly abbreviated as MDOE. You can find the official website at www.maine.gov/DOE/Home.

Special education laws are regulated at the federal level by the **Individuals with Disabilities Education Act (IDEA)**, and at the state level by **Maine’s Unified Special Education Regulations (MUSER)**.

These laws are to ensure all children, regardless of disability, are entitled to a **Free and Appropriate Public Education (FAPE)** to meet their unique needs and prepare them for further education, employment, and independent living.



The **Individuals with Disabilities Education Act (IDEA)** is a federal law that provides federal financial assistance to state and local education agencies to ensure a Free and Appropriate Public Education via special education programs and related services to eligible children with disabilities. All public schools in the United States must follow IDEA in order to receive federal funding. Private schools are not covered under IDEA, do not receive this funding, and are not required to follow IDEA; however, they must still follow Section 504.



Section 504 of the Rehabilitation Act of 1973 is a federal civil rights law, not an education law. This law prohibits discrimination of people with disabilities at the federal level. This applies to ALL public and private schools, as well as colleges and universities who receive federal funding. Section 504 is very different from special education, and the conditions to qualify are generally more accessible than IDEA. People may qualify for a 504 plan, who don't necessarily need the services provide by an IEP. A 504 provides accommodations and modifications, rather than *specially designed instruction*. A 504 does not modify the curriculum provided.

Special education is mandated at the state level **by Maine's Unified Special Education Regulations** (MUSER), or Chapter 101. MUSER must meet or exceed the expectations put forth by IDEA. The basis of MUSER is IDEA, and when reading MUSER, you will notice normal and italicized text. The non-italicized text is the language of IDEA verbatim, *the italicized language* is where Maine law exceeds the federal law.

Student with disabilities are entitled to receive a **Free and Appropriate Public Education**.

Free	means there are not costs to parents, and the government pays for your child's education.
Appropriate	means those who qualify get an Individualized Education Plan, which provides special education, services, therapies, accommodations, and additional supports. Other students may receive a 504 that allows accommodations for equal access.
Public	means provided by the public school, and an IEP team decides on supports and services, however in some cases the government will pay to attend private school.
Education	can include specially designed instruction, counseling, therapy, related services.

A Free and Appropriate Public Education has been met once the student graduates with a regular diploma, or *ages out* at age 22.



The 4 Parts of IDEA

The Individuals with Disabilities Education Act is made up of 4 parts.

Part A

- Lays out the general provisions of the law
- Defines the terms used
- Provided for the creation of the **Office of Special Education Programs (OSEP)**
 - OSEP is responsible for administering and carrying out the terms of IDEA

Part B and B-619

- Lays out the educational guidelines for school children ages 3-21
- Declares states are required to educate students with disabilities
- Provides financial support for state and local school districts
- Part B-619 details the guidelines for children ages 3-5

Part C

- Recognizes the need for **early intervention (EI)** for young children with disabilities by providing guidelines concerning the funding and services for birth through 2 years old.
- Identifies who is responsible for **child find** at this age
- Indicates eligible services for families through part c of IDEA

Part D

- Describes national activities to improve the education of children with disabilities.
- Includes grants to improve the education and transitional services provided to students with disabilities
- Provides resources to support programs, projects, and activities which contribute to positive results for children with disabilities.

Maine Parent Federation receives part of its funding from the Office of Special Education Programs, which is made possible because of Part D of IDEA.



What does special education include?

As defined in IDEA “Special Education is **specially designed instruction** (SDI) provided at no cost to the parents, to meet the unique needs of a child with a disability.” Remember the term specially designed instruction, as this is a key part of special education.

IDEA states that children with disabilities should have access to a Free and Appropriate Public Education (FAPE). A Free and Appropriate Education is NOT limited to academics only. Instead, it includes aspects of the school day including unified arts, such as physical education, music, and art. When determined appropriate by the IEP team, access to specially designed instruction can also be received at home, or other places like hospitals.

A Free and Appropriate Education (FAPE) provide access to services and accommodations.

Services could include:

- Speech Therapy
- Occupational Therapy
- Physical Therapy
- Consultation from Specialists
- Counseling Services
- Extended School Year (ESY)

Accommodations could include:

- Extra time for all school work, including standardized tests
- Planned motor breaks throughout the day
- Preferential or flexible seating
- Taking tests verbally, rather than written
- Para-professional support (educational technician/instructional aide)

Accommodations are changes that remove the barriers to education. Accommodations do not change the material being covered, but change the environment and delivery methods to ensure students with disabilities have access to the same level of education as their peers.



Special education can also include instruction for:

Positive Behavioral Supports and Interventions (PBIS)

- These are methods used to identify and support behavior. This is intended to create a safe learning environment by allowing the child to feel safe, respected, engaged in learning, and involved in school life.

Behavior Plans

- Behavior plans can help reduce behavior problems by addressing the cause of the behavior.

Social & Emotional skills

- Social and Emotional skills are important to a child's well-being. A child's academic performance can improve greatly by identifying struggles, teaching empathy, and building positive connection with peers and educators.

Independent Living

- Independent Living skills are the skills that can help a person learn important life skills including, but not limited to: cooking, personal hygiene, financial management, and home management.

Transition Plans for adulthood

- It's important to create a transition plan in high school to prepare for life after graduation. Children's services and Adult's Services are very different from each other, and families often need support in navigating the new system. Check out our booklet and training on this topic!

Vocational Rehabilitation (VR)

- Often referred to as Voc. Rehab., or VR, is a series of services which helps people with disabilities prepare to find AND keep a job. .
<https://www.maine.gov/rehab/dvr/vr.shtml>



Purpose & Structure of the IEP/504

The **Individualized Education Program**, also known as the IEP is a document which ensures all children with disabilities have access to a Free and Appropriate Education. The IEP indicates special education services and accommodation which will be provided based on the student's unique and individual needs. Eligibility is determined by Maine's Unified Special Education Regulations (MUSER). The IEP is developed by the IEP team.



The IEP team meets at a minimum of once a year, although parents can request additional meetings throughout the year. Parents should always remember they are an equal member on the IEP team. You are both a contributor, and a learner.

How does the process begin?

Each school district is mandated to engage in Child Find. **Child Find** is a method in which the state identifies which students need access to special education services. The state requires that districts “find” and identify students who have disabilities. Referral can occur at any time and be made by multiple individuals. **Child Development Services** (CDS), parents, school personnel, and providers all have the authority to refer a student for special education eligibility.

A school district is tasked with finding children who qualify for special education in that district, and providing ANY child who lives in that district access to appropriate special education services. A child who is home-schooled or enrolled in private school (excluding Special Purpose Private



Schools) is still entitled to receive evaluation, but they are choosing to give up their access to special education services, as this only applies to public school education.

Diagnoses can be challenging to determine at a young age, instead “Developmental Delay” is often used as the qualifying diagnosis. Developmental delay can be used to qualify up to the age of 5. To determine whether a child has a developmental delay, the following areas must be considered:

- Cognitive development
- Physical development, including vision & hearing
- Communication development
- Social and emotional development
- Adaptive development

Birth to 2

From birth to 2 years of age, services and funding are mandated by Part C of IDEA. This part of IDEA recognizes the need for Early Intervention. At this age, an **Individualized Family Service Plan** (IFSP) is written for the child. An IFSP focuses on the child and family and the services that a family needs to help them enhance the development of their child.

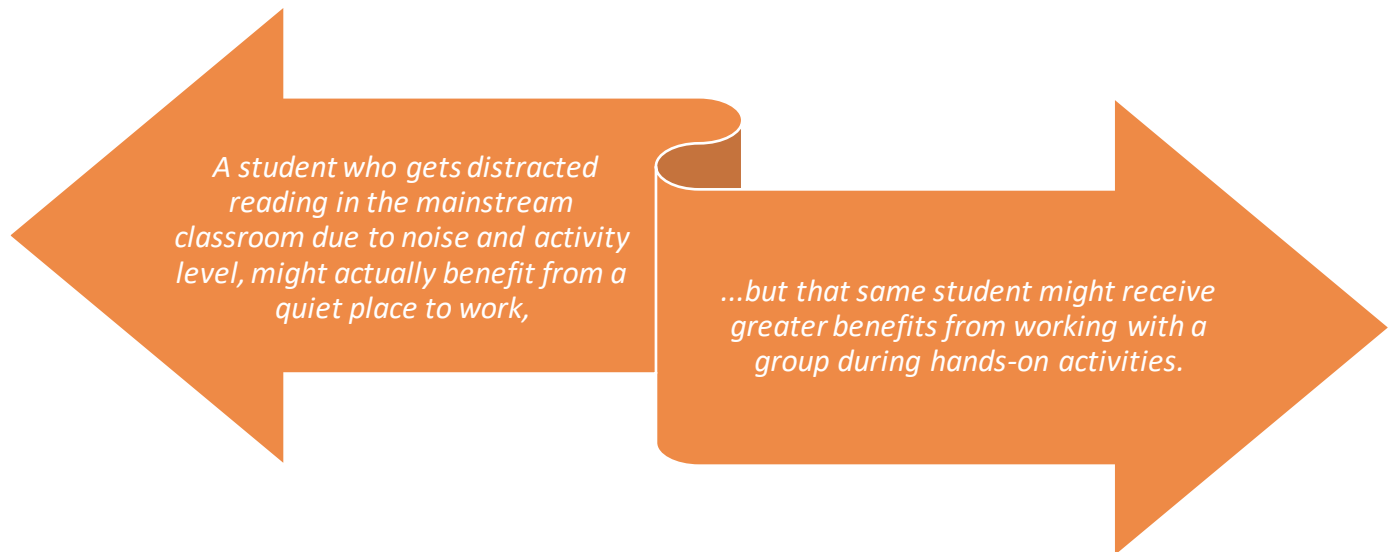
In Maine, early intervention is provided by Child Development Services.

Ages 3-5

Part B-619 of IDEA lays out the laws and educational guidelines for children ages 3-5. This part of the law states that once a child turns 3 years old, an **Individualized Education Plan** (IEP) will be put in place and the student will be placed in the *Least Restrictive Environment*. The IEP replaces the IFSP.



The **Least Restrictive Environment** (LRE) for a child is not just about where the education is taking place, it's also the who, and the how. It's a combination of location, programming, and practices. The Least Restrictive Environment for a child can change throughout the day depending on the subject matter, staff, or classmates. It's important to be able to identify the factors that allow a child to succeed, and use them to their benefit.



Inclusion in the regular education setting should always be at the forefront, and is a defining feature of IDEA. If a child can be satisfactorily educated with aids and services in the regular education setting, then that is the child's Least Restrictive Environment. If a child can receive a satisfactory education in the regular education setting with the use of supports and services, then those supports and services must be provided. An alternative placement should only be considered when a satisfactory education cannot be met in the regular education classroom, even with supports and services. The intent of placement is not that the child follows the services, but that the services follow the child.



Ages 5-22

Part B-619 also states that after the age of 5, “Developmental Delay” can no longer be used to qualify for special education services. Instead, eligibility is based on one or more of the *thirteen identified disabilities*.



The 13 Identified Disabilities under IDEA

- autism
- deaf-blindness
- deafness
- emotional disturbance
- hearing impairment
- intellectual disability
- multiple disabilities
- orthopedic impairment
- other health impairment
- specific learning disability
- speech or language impairment
- traumatic brain injury
- visual impairment (including blindness)

A student’s diagnosis must *negatively impact* their ability to access their education in the general curriculum. This means a student is not automatically entitled to support services simply because they have a diagnosis. The school will perform the appropriate evaluations and determine whether the disability impacts the student’s ability to access their education in the general curriculum. Schools **DO** have the right to deny the request for support services if the disability does not negatively impact the student.

Evaluations

After a child is identified by Child Find, the school will complete evaluations. Schools have 45 school days after receiving the signed parental consent to complete the evaluations and hold an IEP meeting to review the evaluations. The results from the evaluations will be used to decide the child’s eligibility for special education. The IEP team will determine whether the child qualifies for special education services. After the child is determined to be eligible, the IEP team will put together an IEP immediately. The school then has 30 school days to implement the IEP.



School days do not include breaks, snow days, or professional development days. School days are the days school is in session.

For children birth – 2 years and receiving services through Child Development Services, CDS has 60 calendar days to complete evaluations.

The Initial IEP

At the **initial IEP** meeting, the child's strengths, weaknesses, and needs are discussed. Team members are encouraged to bring in any additional concerns in order to determine if additional evaluations need to be completed. The purpose of this meeting is to discuss the student's current Present Level of Performance (PLOP), academically, and their functional performance such as dressing, eating, social skills, behavior skills and mobility skills.

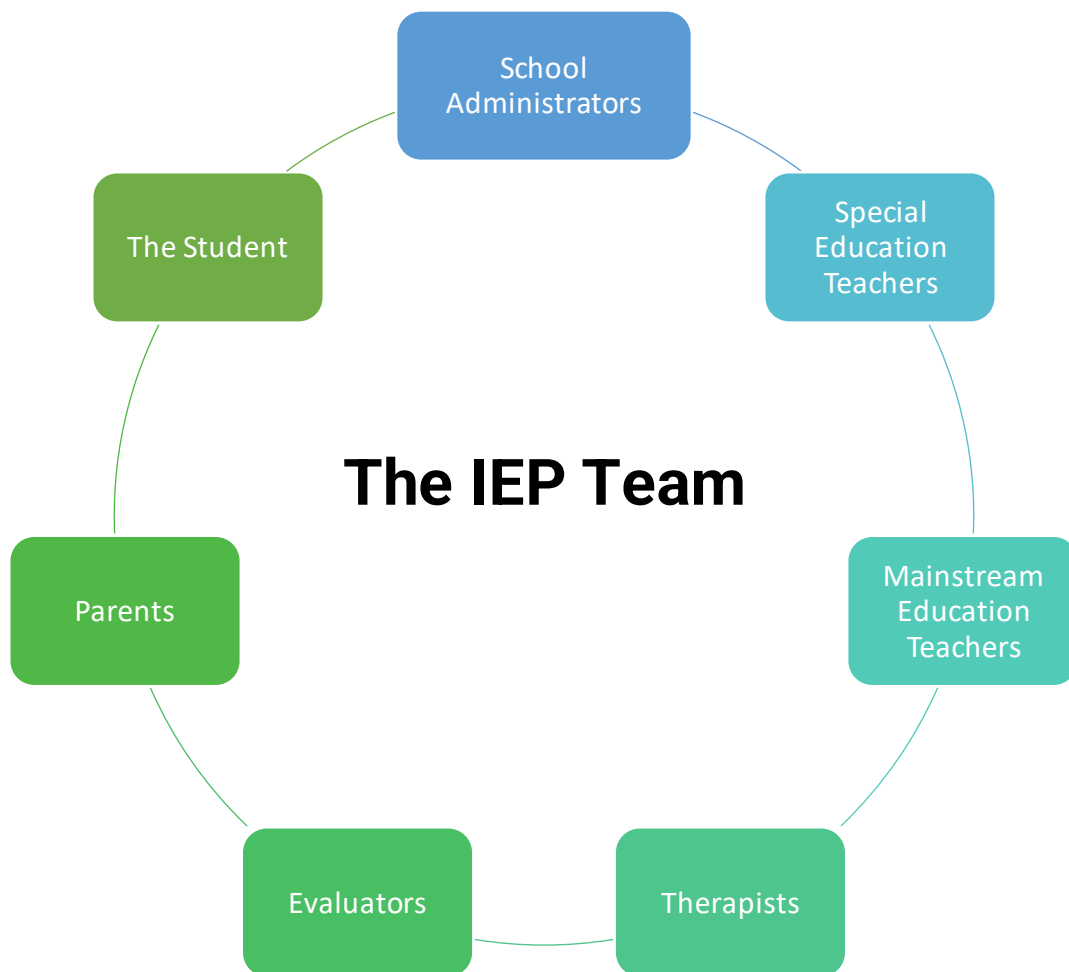
Present Level of Performance or PLOP is a statement in the IEP to describe your child's academic achievement and functional performance. It's a description the child's current performance. PLOP is used as the foundation for the rest of the IEP.

When the IEP team determines it's necessary to perform evaluations, it is the school's responsibility to conduct the evaluation, and hold the IEP meeting to discuss the results within 45 school days. Again, school days are the days school is actually in sessions, so 45 school days can be much longer than 45 calendar days.

For children birth – 2 years and receiving services through Child Development Services, CDS has 60 calendar days to complete evaluations.

Parents should always receive the results of these evaluations at least 3 days before the IEP meeting. If a parent receives new information regarding the results of evaluations less than 3 days before the IEP meeting, then they may request the meeting to be rescheduled until they have had ample time to review and prepare.





The IEP team must meet annually to revise and update the student's IEP. This is the minimum set by IDEA. The purpose of the annual IEP team meeting is to:

- Review evaluations, and determine the Present Level of Performance (PLOP)
- Measure the progress towards the student's goals, and adapt accordingly
- Allow parents and teachers the opportunity to provide updates on the student
- To consider changes to services and modifications

Remember, you as the parent are an equal member of the team!



Transitioning to Kindergarten

A successful transition to kindergarten will include coordination and collaboration between Child Development Services (CDS), you as the parent, and the new school. In the spring before kindergarten, CDS will contact the local school to schedule a transition meeting. CDS staff will notify parents and providers of the logistics and purpose of this meeting.

CDS will provide the new school with the most recent IEP, evaluations, and assessments. The Transition IEP meeting is to prepare for the change of services provided from CDS to the new school. The new school will facilitate this meeting, complete observations in the preschool setting and the team will decide if any additional evaluations will be needed.

The Triennial IEP

In addition to the annual IEP meeting, the team must meet every 3rd year for the Triennial IEP Meeting. This is a very important meeting, as it is held to assess if the student's needs have changed, and whether or not they are still eligible to receive special education services. Often times, in this meeting there are additional team members such as a school psychologist, who bring new data. This information will help inform the team write appropriate IEP goals for the child.

Triennial IEP meetings can be hard for parents as it is often a time to reflect on the areas which are challenging for their child, rather than highlighting their strengths and accomplishments. In order to continue qualifying for special education services, necessary attention must be paid to the challenges. This is to prove there is a need for special education services.



Planning for the IEP Meeting

The school should send the **Advance Written Notice** 7 days prior to the meeting. This document states the reason for the meeting, and includes a list of who will be present at the meeting.



Parents should remember they have the right to invite additional people to the meeting, but as a best practice should always notify the team of anyone they plan to bring. On the other hand, if you plan to bring a legal representative or record the meeting, you *must* inform the school. The school has the right to cancel that meeting if a parent brings a legal representative and has not given the team notice. The meeting may be rescheduled for another day/time when the school can also have legal representation present.

We encourage parents to compile a list of prioritized concerns to discuss at the meeting. Plan to discuss your top 3 concerns, and think about possible solutions or outcome. Bring in data to assist in the requests you're making. This can include progress reports and evaluations from any outside therapists, counselors, or other service providers.

Narrowing your priorities down to the top 3 will not only help the meeting to run efficiently, but you may also find that several of your other concerns all under the "umbrella" of your top 3 priorities. Come prepared with written questions, and articulate any information you would like to share with the school that could help shape your child's plan.

We recommend picking out available dates to reconvene the IEP meeting in the event you run out of time. Picking out dates in advance will help to take the pressure off yourself to get everything accomplished in one sitting. View this meeting at part 1 of 2. It's also helpful to avoid scheduling the meeting for longer than 2 hours to avoid exhaustion and frustration.



After the IEP Meeting

The school must send the **Prior Written Notice** within a reasonable time. The Prior Written notice documents the minutes of the IEP meeting, detailing who was present, what was discussed and what determinations (changes) were made. It is important for parents to closely review the document for any inaccuracies, and address those inaccuracies with the school as soon as possible. Prior Written Notices will be sent prior to the new IEP being received and implemented.



After the IEP is held, parents should receive an updated copy of the IEP within 21 school days. Any IEP changes must be implemented within 30 days of the previous IEP meeting.

Transitioning to Adulthood

An IEP requires a transition plan while a 504 does not. However, the parent may request that the school provide a transition plan for a student with a 504 plan.



Transition planning is required to be in the IEP by the time the student enters 9th grade or turns 16; whichever occurs first.

An IEP ends when a young person graduates with a regular diploma or ages out on their 22nd birthday. By law, a Free and Appropriate Public Education (FAPE) has been achieved. The individual is no longer covered under the special education law, IDEA.

While an IEP ends when a FAPE is achieved, the individual is still protected by the civil rights laws, "The Rehabilitation Act of 1973", and the "Americans with Disabilities Act (ADA)". These laws prohibit discriminations and provide for accommodations.



What should I know about a 504?

Section 504 of the **Rehabilitation Act of 1973** also states a disability should not inhibit a person from receiving a Free and Appropriate Public Education (FAPE). This is a civil rights law and is not a part of special education. This law prohibits discrimination on the basis of disability in public and private activities and programs that receive federal financial assistance.

Some student with disabilities may not need the services of an IEP, but may benefit from receiving accommodations to their school day that allows equal access to the general curriculum. A 504 does not include access to specially designed instruction, or the modification of the curriculum, but rather changes the method by which it is delivered/received to give the student full access. A 504 is a blueprint for how the school will support a student with a disability and remove the barriers to accessing their education.

Schools are not required to invite parents to participate in developing the plan or making small changes to it, however most schools do include parents. Schools must notify parents if they are performing evaluations or identifying new diagnoses. Parents have the right to see all their child's records, and if they have a dispute about the process have the right to complain.

Unlike an IEP, there is no standard for or document for 504 plans. Instead, each school has the ability to develop their own plans. To do this, each school has a **504 Coordinator**. The 504 Coordinator is responsible for preventing discrimination against students, employees, and others while ensuring compliance with Section 504 and ADA.



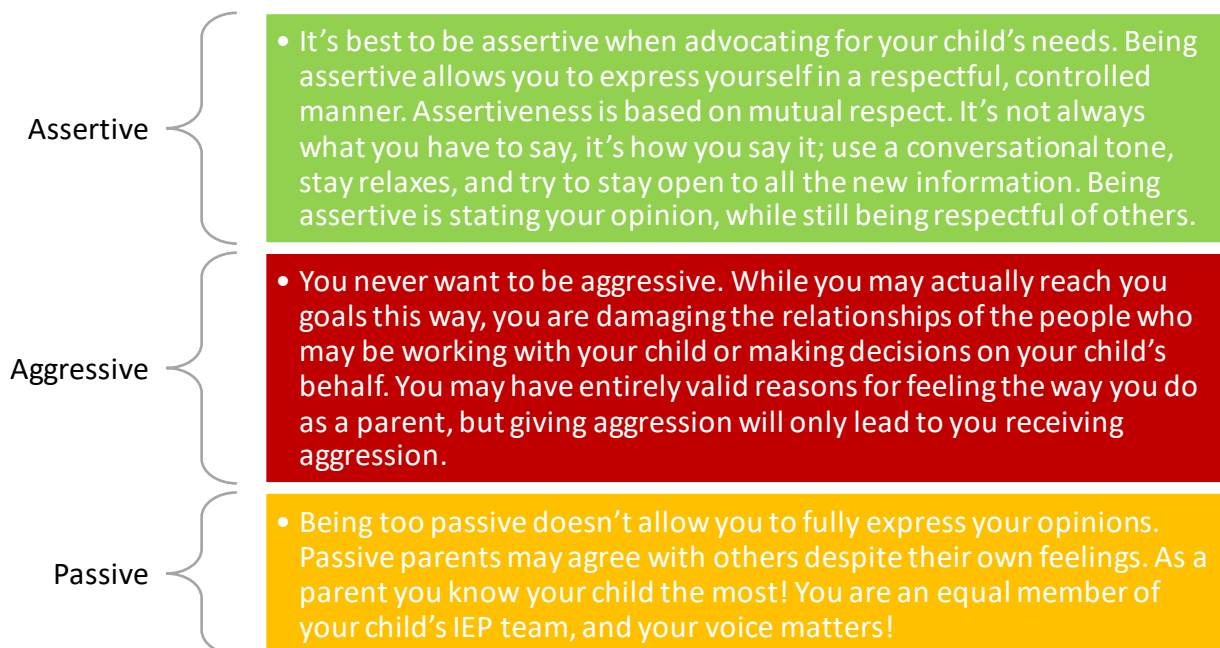
	IEP	504
Which law is responsible?	Individuals with Disabilities Education Act. This is the special education law.	Rehabilitation Act of 1973. This is a civil rights law.
Which department ?	OSEP- Office of Special Education Programs	OCR- Office of Civil Rights
Eligibility Requirements	Developmental delay, or if over age 5, one of the 13 qualifying disabilities. Disability must negatively impact ability to access general curriculum.	Has a disability that significantly impacts one or more major life activities.
What is included?	Special education services, accommodations, and related services.	Accommodations and modifications. DOES NOT include specially designed instruction.



Procedural Safeguards & Due Process

Under the Individuals with Disabilities Education Act (IDEA), you and your child have legal protections during the evaluation and IEP process. These protections are called Procedural Safeguards. The school must provide you with a copy at least once every school year. This document outlines the legal rights and protections parent have when working with the school under IDEA and Maine's Unified Special Education Regulations. It DOES NOT address the structure of the IEP, rather it sets the rules for proper procedures to be followed. Knowing and understanding your rights as a parent can help you to be an effective member of the team.

Are you an Assertive, Aggressive, or Passive parent?



Addressing Disputes

Sometimes when implementing the rules of IDEA into a real-world IEP, violations can occur. If you suspect a violation has occurred, you can file a complaint with the Maine Department of Education.



A **Complaint** may be filed to the Maine Department of Education by either a parent or organization that alleges there was a violation of IDEA within the school. A *Complaint Investigator* is assigned, and they will examine the proposed violation. The Complaint Investigator will decide whether or not the school has violated IDEA. There is no appeal process for the complaint, and if either party is unhappy with the ruling, they may proceed with mediation and/or due process.



Mediation is another process of resolving a conflict, in which both parties (parents and the school) agree to participate. A *third-party mediator* is assigned, and both the parent and school personnel present their perspective. Both sides participate in discussion about ways to resolve opposing views. Each party might need to make compromises, but this is often an effective way to help everyone reach a common ground. There is no appeal process for mediation, and the agreement is considered to be legally binding, however if an agreement cannot be met, parties may move forward with Due Process.



A **Due Process** hearing is the last method by which a dispute may be resolved. A written complaint requesting due process may be filed to the Maine Department of Education by either the parent or the school district. If both parties do not choose to resolve the dispute in mediation, a resolution meeting will be required. A *hearing officer* will be assigned to the meeting and they are tasked with the responsibility of determining if a violation has occurred and how the violation must be remedied. There is an appeal process if the finding is not acceptable to both parties involved.



Key Terminology

- United States Department of Education
- Maine Department of Education
- Individuals with Disabilities Education Act
- Free and Appropriate Public Education
- Section 504 of The Rehabilitation Act of 1993
- Americans With Disabilities Act
- Maine's Unified Special Education Regulations
- Office of Special Education Programs
- Early Intervention
- Child Find
- Specially Designed Instruction
- Accommodations
- Individualized Education Program
- Child Development Services
- Least Restrictive Environment
- Present Level of Performance
- Triennial IEP
- Advance Written Notice
- Prior Written Notice
- Transition Planning
- Procedural Safeguard Notice
- Complaint
- Complaint Investigator
- Mediation
- Third Party Mediator
- Due Process
- Hearing Officer



Notes



Notes



Check out all our booklets!





Please Stay Connected!

