



K-12 EDUCATIONAL ADVOCACY MANUAL

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SECTION 1: SUSPENSIONS AND SCHOOL DISCIPLINE

INTRODUCTION

Students who get out-of-school suspensions are more likely to get held back, get suspended again, and get involved in the juvenile or criminal justice system than their peers. One study showed that students who have been suspended are **five times** more likely to drop out of school than students who have never been suspended. Because black students and students with disabilities are disproportionately impacted by suspensions, youth in foster care are particularly at risk.

As a result, it is very important for agency staff to understand the laws that govern suspensions in New York City and New York State, including those that apply to students with Individualized Education Programs (IEPs) and 504 Plans. In recent years, the New York City Department of Education (DOE) has amended its Discipline Code to be more protective of students' rights. Under the current rules, there are many opportunities to advocate for behavioral supports for students, as well as restorative practices and progressive discipline aimed at repairing harm and shortening suspensions so that students can transition back into school more seamlessly when a suspension does take place.

Charter schools have their own discipline policies, which may differ substantially from the rules that govern regular district schools. School districts outside of New York City also have their own policies and procedures. Tips for supporting students who attend charter schools and schools outside of New York City are included at the end of this section.



A. LEGAL FRAMEWORK

In a case from the 1970's called *Goss. v. Lopez*, the U.S. Supreme Court held that students facing a suspension from any kind of public school have the right to basic due process, including notice and an opportunity to be heard. This basic principal applies to all public schools across the country, as well as charter schools and private schools that are publicly funded. New York State Education Law [§ 3214](#) requires school districts to hold a fair hearing, conducted by the superintendent, if they are seeking to suspend a student for more than 5 days.

In New York City, DOE schools must follow the procedures in [Chancellor's Regulation A-443](#) when seeking to suspend a student. Schools can only discipline students for behavior that violates the DOE's [Discipline Code](#). Schools have lots of discretion when disciplining students and may choose from a range of responses, depending on the student's grade, developmental level, and the alleged behavior. For all but the most serious behavior, discipline could mean anything from a meeting between the student or parent and teacher to a suspension of up to 20 days. Schools do not have to suspend students for most infractions. Depending on the behavior, the school can offer behavioral supports and interventions instead of or alongside disciplinary action, if some form of discipline is needed.

The IDEA, State Special Education Law, and Section 504 of the Rehabilitation Act give additional protections to students with disabilities during suspensions and other disciplinary proceedings. These laws apply to all publicly funded schools in the state, including charter schools. Detailed information on these laws follows in [Section 1E: School Discipline and Suspensions for Students with Disabilities](#) of this manual.

B. TYPES OF REMOVALS

Under state law, there are three ways a school district can legally remove a student from class for disciplinary reasons: teacher's removals, principal's suspensions, and superintendent's suspensions. Charter schools may use different terms when discussing disciplinary removals. For more information on discipline in charter schools, refer to [Section 1F: Discipline for Students in Charter Schools](#).

TEACHER'S REMOVALS

A teacher can remove a student from their class for 1 to 4 days if the student is very disruptive or substantially interfering with classroom instruction. The teacher must tell the principal about the removal the same day. The principal then must attempt to call the parent and tell them about the removal right away, but no later than the next day.

Parents can request an informal conference with the principal to discuss the incident, which must be scheduled within two days. The teacher and other school staff can participate in the conference as well, to discuss what took place and recommend appropriate interventions.

During a teacher's removal, the student must receive alternative instruction, including classwork and homework assignments, in another location in the school. They should continue to attend any classes they have not been removed from.

Whenever you learn about a student being removed from the classroom, it's a good idea to consider requesting a conference, especially if there are behavioral supports the school can put in place that might help the student and prevent the need for future classroom removals or more serious disciplinary action.

Depending on the incident, you might ask the school to implement restorative practices, such as peer mediation, conflict resolution, or a restorative circle; or you could request a behavior contract the school develops with you, the student, and their parent or foster parent. If the student has longstanding behavioral challenges, a special education referral or re-evaluation, Functional Behavioral Assessment (FBA), or updated Behavior Intervention Plan (BIP) may be needed. Pages 13-17 of the [Discipline Code](#) explain in detail the interventions and restorative practices schools are expected to offer students.

PRINCIPAL'S SUSPENSIONS

A school principal may suspend a student for 1 to 5 days. When considering a suspension, the principal needs to tell the student what they are accused of doing and give the student a chance to tell their side of the story. The principal must hold a conference with the parent **before** suspending a student, unless the student poses a "continuing danger...or an ongoing threat of disruption to the academic process."

Schools must notify parents of a proposed suspension by phone immediately and in writing within 24 hours.

The written notice must include:

- the reasons for the suspension;
- the date, time and place of the suspension conference;
- the length of the suspension;
- a statement of the student's rights; and
- if the student is being suspended prior to the conference, how the student will get alternative instruction during the suspension.

As with a teacher's removal, ***students are entitled to academic instruction during a principal's suspension.*** Instruction can take place during regular school hours, after school, or at another school site.

A student cannot be removed from their classroom or kept out of school unless the school follows the procedures outlined in [Chancellor's Regulations A-443](#) and/or state law. Telling a student that they are suspended, or worse – telling the student to “go home and cool down for a few days” after a fight or other incident in school – is not proper procedure or sufficient notice of a suspension. Schools are required to inform parents of the suspension immediately, and within 24 hours in writing. If a student tells you that they've been suspended but there's no written notice, then there's no suspension. Contact the school immediately to find out when and where the student will receive alternative instruction, and have them send you and the parent the written notice immediately by email or fax. If you don't get a response, or if school staff tell you the parent will receive a letter in the mail shortly, you can let them know that you'll be advising the student to return to school in the meantime. ***No student should sit at home without any educational instruction.***

We often hear about letters being sent to the wrong address or schools calling numbers that are out of service. When doing your school visits, ***make sure that schools have updated contact information for birth and foster parents in their records.*** Ask schools to contact you about any removals or suspensions, especially if they can't reach the parent. If you have formed a positive relationship with school staff before the suspension, it's more likely they will reach out to you proactively in these situations.

PRINCIPAL'S SUSPENSION CONFERENCES

Schools must hold a principal's suspension conference either ***before or within 5 days of issuing a principal's suspension.*** The principal and a witness to the incident must attend the conference. During the conference, the parent can question people involved, present their own evidence, and discuss a plan to support the student going forward. After the conference, the principal will decide if the suspension was justified and must give the parent a copy of their decision in writing. If the student has already served the suspension and the principal decides to dismiss it, the suspension won't appear on the student's record.

Parents have 10 school days to appeal the decision to the Superintendent. Although the student will have served the suspension well before you get a decision back on the appeal, you may want to appeal the suspension if the school failed to follow the proper procedures and you want to make sure they do it correctly next time, or if you or the student is very concerned about the suspension appearing on their record.

The DOE must provide an interpreter at teacher removal and principal's suspension conferences for parents whose preferred language is not English. If you know a parent will need an interpreter, request one in advance for the conference.

Parents and students should attend the conference and must be invited; however, if one or both were invited but are not present, the conference can go forward without them. [Chancellor's Regulation A-443](#) does not differentiate between birth or foster parents, and in most situations, you should encourage both to attend the meeting. Unless there is some order in effect that prohibits their attendance, birth parents have a right to be invited to conferences. If the student has an IEP and their special education services might be discussed during the conference, it's a good idea for the person who makes special education decisions for the student to participate in that part of the conference at least.

Make sure that schools have updated contact information for birth and foster parents in their records.

TIPS FOR PREPARING FOR A PRINCIPAL'S SUSPENSION CONFERENCE

Check the [Discipline Code](#) to see if a principal's suspension is actually allowed for the infraction the student is supposed to have committed.

Look for lower-level infractions that better describe the behavior and may be more appropriate. Only infractions involving seriously violent or criminal behavior require a suspension.

- For many infractions, you can argue for **supports and interventions**, like a behavior contract or mediation, instead of a disciplinary response.
- For most infractions, you can advocate for a **behavioral consequence that does not involve a suspension**, such as a restorative conference, community service, or lunch time or afterschool detention within the school building.

SUPERINTENDENT'S SUSPENSIONS

For more serious behavior, **a principal may ask the Superintendent to suspend a student from school for 6 to 20 days.** A NYC public school can only seek a longer suspension of up to one year in limited circumstances, such as sexual assault, distribution of illegal drugs, causing serious physical injury to another person, or bringing a gun to school. **Suspensions longer than 20 days require approval** from the Chancellor or a high-level designee within the DOE.

Before they can ask for a superintendent's suspension, the school must investigate the incident. This involves interviewing the accuser and any witnesses, and asking them to write statements about what happened. The school may ask the accused student for a statement, but the student doesn't have to give one. The school must forward the information to the Superintendent's office, which will decide if the school may proceed with the suspension.

A school district cannot finalize a superintendent's suspension without first holding a hearing, proving the charges against the student, and deciding that the suspension is warranted. In New York City, that hearing is usually scheduled for 5 days after the suspension. If the student is removed from class before the hearing, they are entitled to alternative instruction pending the suspension hearing and decision.

Once the school gets permission from the Superintendent to move forward with the suspension, **the school must notify the parent** of the superintendent's suspension immediately. **The Superintendent's office will then mail a written notice to the parent, which they should receive within 24 hours.** The school may also hand-deliver the letter to the parent if they pick the student up at school, send the letter home with the student, or fax or email it to the parent or agency representative.

THE WRITTEN NOTICE MUST INCLUDE:

- ✓ The reason for the suspension, the date and time of the incident, and the charges against the student
- ✓ Where the student should report for alternative instruction (*if they were removed from class before the hearing*)
- ✓ The date, time and location of the suspension hearing
- ✓ A list of possible witnesses
- ✓ Information about the parents' and students' rights, and places to contact for help

ALTERNATE LEARNING CENTERS (ALCS)

Students facing a superintendent's suspension will probably be assigned to an Alternate Learning Center (ALC). ALCs are located inside other schools, DOE offices, and community organizations and provide academic instruction and counseling to students on a superintendent's suspension.

Students will be marked absent if they don't attend, so it's important for students to report to the ALC and complete their work during a suspension. The name and address of the ALC will appear on the suspension notice.

If the school informed the parent that the student is facing a superintendent's suspension, but the parent never received the suspension notice, contact the school immediately to find out which ALC the student should report to. The DOE automatically mails out suspension notices to the parent and address listed in the DOE's computer system, and this information is not always up-to-date, so the parent may not receive the letter. It's also possible the school told the student they were suspended before they got authorization from the Superintendent's office, and the suspension may have been denied.

IN ANY CASE, NO STUDENT SHOULD BE SITTING AT HOME WITHOUT ACADEMIC INSTRUCTION.
if the school cannot provide an alternative instruction site, the student should return to school immediately.

HOW TO RESPOND TO A SUPERINTENDENT'S SUSPENSION

Whenever you learn from a student, parent, foster parent or case planner that a student is facing a superintendent's suspension, there are a few basic steps to take. Once you have the information you need, you'll be better equipped to decide how to approach the suspension hearing.

STEP 1: GET THE SUSPENSION NOTICE.

The suspension notice is a critical document because it tells you **when the hearing will be, what the charges are, and where the student should report to school in the meantime**. If the student has an IEP, the suspension notice will also include a date for the Manifestation Determination Review (MDR) and suspension plan meetings (see below for more information on suspensions for students with disabilities). If the school cannot produce a suspension notice, then the suspension is probably not "official" and the student should return to school immediately.

STEP 2: GET THE 'SUSPENSION PACKET' FROM THE STUDENT'S SCHOOL.

The suspension packet is different from the suspension notice letter. The packet should include all written statements from the student and any witnesses, the occurrence report, the student's academic records, and any other evidence the school plans to use at the hearing. The suspension notice states that parents have the right to review this information before the hearing, but schools rarely give parents the packet before the hearing unless they specifically request it; instead, the parent will get the packet at the hearing office, right before the hearing. In order to prepare properly, request the suspension packet from the school as soon as possible. If the school refuses to provide the packet, let the suspension hearing office know.

STEP 3: REVIEW THE PAPERWORK.

Read the charges as they appear in the suspension notice. At the suspension hearing, the school needs to prove that the student did what the charges say they did and that a superintendent's suspension is warranted.

If you haven't already, talk to the student about what happened. Did they do what the school is accusing them of? Perhaps there is a different way of looking at what happened, or a less serious charge that would be more appropriate. Think about what happened leading up to the incident. What happened after the incident?

Next, review the written statements and occurrence reports in the suspension packet. Note any inconsistencies between the statements. Do the statements match the charges? Do they say that the student did the things they are being accused of, or do they point to a different student or a different version of events? Did the student admit to the charges in their own witness statement?

You'll also want to look at the records cover sheet, which shows the student's prior suspension history, any behavioral or guidance interventions the school has attempted so far, and how long of a suspension the school is recommending for the student. *If the school is seeking immediate reinstatement or a 6-to-10-day suspension, for example, your response may be very different than if they are recommending an extended suspension of 21 days or more.*

OPTIONS: ADJOURN, PLEAD NO CONTEST, OR PROCEED WITH THE HEARING

At the hearing, the parent will have the option to adjourn, go ahead with the hearing, or plead no contest.

When a student pleads no contest, they neither admit to nor deny the charges; instead, **they give up their right to a hearing, and the charges against the student will be sustained**. The Hearing Officer will not consider any evidence related to the specific incident, but can review other documents submitted by either party when deciding the length of the suspension. Based on the information you've gathered so far, consider what makes the most sense for the student in each case. *If the student is facing a suspension of longer than 10 days, it's almost always a good idea to reach out to Legal Aid, Project Achieve, or another advocacy organization for advice.*

TIPS WHEN SEEKING LEGAL REPRESENTATION

If the student is represented by **Legal Aid** in their Family Court case, they may be able to represent the student at the hearing, unless there is some kind of conflict (*for example, they also represent another student involved in the incident*).

If the student is represented by **Lawyers for Children**, they also may be able to represent the student at the suspension hearing. Depending on the circumstances, **Project Achieve** may be able to represent the student, regardless of who represents the youth in Court.

When considering legal representation for the student, keep in mind:

- the charges against the student
- the minimum and maximum response allowed under the Discipline Code, and
- the length of suspension that the school is recommending

If the student is only facing a maximum 10-day suspension, it may not make sense to adjourn the hearing so a lawyer can attend; by the time the hearing takes place, the student will be ready to return to school. If the student admitted to the charges in their witness statement, there may not be much an attorney could do anyway. However, if there is conflicting evidence and a good chance you can get the case dismissed, you may want to request a short adjournment to get representation, especially if that would empower or reengage the student or parent, or if there are concerns about getting the suspension off the student's record.

If the student is facing more serious charges, representation could be crucial. Even if the evidence against the student is strong, you may be able to advocate for a shorter suspension and additional supports for the student. If the student was also arrested for the incident that led to the suspension, you will definitely want to speak to their attorney before proceeding with the hearing, since evidence from the suspension hearing could be used in court.

After reviewing the evidence from the hearing, the Hearing Officer will decide to dismiss or sustain the charges against the student. The Hearing Officer will call, email, or mail the parent the decision **within 2 school days**. If they sustain the charges, the decision will include the length of the suspension. You can ask the Hearing Officer to call or email you the decision as well.

Within 5 days, the parent will receive a letter with the hearing officer's full findings.

If the student contested the charges:

they can **appeal the suspension** to the Chancellor within 20 school days from the date of the decision.

If the student pleaded no contest but does not agree with the length of the suspension:

they can withdraw their plea and go forward with a full hearing.

C. SUPERINTENDENT'S SUSPENSION HEARINGS

THE HEARING

The suspension notice will include the date, address and time of the suspension hearing. All hearings are scheduled for 8:30 am, and people are typically seen in the order in which they arrive, so try to arrive early. The hearing itself should not take more than an hour or 2, and the amount of time you spend at the office will in part depend on how busy it is that day.

Parents have a right to an interpreter at the hearing if they speak a language other than English. Call ahead to request one for the parent or student if their preferred language is not English. The hearing process can include a lot of technical terms, so it's best to request an interpreter rather than trying to translate yourself or having another agency staff member do it.

Before the hearing begins, you will have a Pre-Hearing Conference. At the Pre-Hearing Conference, the Hearing Officer will inform the student of their rights during the hearing. The Hearing Officer will also explain the options to adjourn, plead no contest, or proceed with the hearing.

The hearing will be held in a small room with a table in the center. The student, parent, and anyone supporting the student will sit on one side of the table, the school will sit on the other side, and the Hearing Officer will sit at the head of the table. The Hearing Office will make an audio recording of the hearing.

ADJOURNING THE HEARING

Parents can call ahead and adjourn, or postpone, the hearing if they cannot attend and need to reschedule for another date.

You also may want to adjourn the hearing if:

- you need more time to prepare for the hearing
- you are seeking representation from an attorney or advocate
- you are trying to get advice

Keep in mind that if you adjourn the hearing, the student will remain at the ALC or suspension site in the meantime. If the school adjourns the hearing, the student can return to school until the new hearing date.

PLEADING NO CONTEST

If the student or parent does not want to fight the charges, they can plead "no contest." Pleading no contest doesn't mean the student is admitting to the charges, but they will not have a hearing about them, and the school will not be able to put any evidence about the charges into the record. Both sides can submit evidence that goes toward "disposition," or the ultimate consequence of the suspension.

The Hearing Officer will decide the length of the student's suspension based on the charges themselves and any other documents in evidence that are unrelated to the incident, which could include:

- academic records like report cards or attendance
- information about prior behavioral incidents
- letters in support of the student that you submit for the youth

Parents can plead no contest on behalf of a student by calling the Hearing Office before the day of the scheduled hearing, and they often do, sometimes without fully understanding their rights. ***It's usually best to attend the hearing in person even if the student pleads no contest, so you can put documents into evidence and argue on the student's behalf about the disposition.***

You may want to plead no contest if you agree that the student did what the charges say and you do not want to challenge the charges.

If the student admitted to the charges in a written statement, it will be very difficult to argue otherwise, and pleading no contest may be a good idea.

It also might make sense to plead no contest if the details of the infraction are particularly bad and you don't want them to get in front of the Hearing Officer.

If you plead no contest in person on the day of the hearing, be sure to request a dispositional phase of the hearing in front of the Hearing Officer. Find more detailed information about the dispositional phase of the hearing on [page 14](#).

AFTER A NO CONTEST PLEA, the parent will get a call or letter from the DOE saying how many days, if any, the suspension will be. *If the suspension seems too long, the parent can call the hearing office and withdraw their no contest plea.* The no contest plea *must be withdrawn within 7 days of the date on the letter or within 3 days from when they get the letter*, whichever is later. The hearing office will then go ahead and schedule a new date for the hearing.

PROCEEDING TO HEARING

If the parent decides to go forward with the hearing, there will be two parts: **the fact-finding phase** and **the dispositional phase**. If the parent pleads no contest, the hearing will proceed directly to the dispositional phase.

THE FACT-FINDING

During the fact-finding, the Hearing Officer will decide if the school has shown that the charges against the student are true. The school has the burden of proof and must go first. The parent or student's representative will be able to question the school's witnesses and then present their own witnesses and evidence. The Hearing Officer may question anyone who testifies.

OPENING STATEMENTS

Each side will have the opportunity to make an opening statement, but it is not required. Neither side can present evidence during their opening statement; rather, *they should summarize what they believe the evidence presented during the hearing will show.*

THE SCHOOL'S CASE

TESTIMONY FROM THE SCHOOL'S INVESTIGATING STAFF MEMBER

The first person to testify will likely be the person from the school who was in charge of **investigating the suspension** (*often the "investigating dean" or an assistant principal*).

The investigating school staff member should have **talked** to everyone who witnessed the incident and should have **asked for written statements** from everyone, including the student. Students cannot be forced to write a statement, and you can advise students not to give written statements in these circumstances. The investigating staff member is also the person who should have notified the parent about the superintendent's suspension.

After the staff member describes their investigation, the parent or student's representative will have a chance to question them.

PARENT / STUDENT REPRESENTATIVE RESPONSE TO TESTIMONY

1. You may want to ask questions about whether the proper procedures were followed, especially when it comes to submitting written statements from people who did not appear at the hearing.

If the investigator did not watch the witness write the statement and cannot personally attest that they did, then the statement cannot be “authenticated” and it cannot be used as evidence at the hearing.

2. You also want to make sure that any witness statements, or other evidence testified to at the hearing, is related to the charges at hand.

You may object if:

- The school tries to put unrelated information into evidence during the fact-finding phase or bring up other times the student got in trouble. The Hearing Officer will ask the witness or DOE representative to stop discussing unrelated incidents.
- You may also object if the school tries to put into evidence any witness statements or other documents that they did not share with you before the hearing. Remember, the parent has the right to see all the evidence against the student before the hearing.

3. When it's your turn to question the school's witnesses, think about how you can show the school is incorrect or does not have enough evidence to prove the events that led to the suspension.

- Is the witness missing any information?
- Is there something the witness did not or could not see, because they were out of the room or blocked by someone else, for example?
- Does everything the witness says make sense?
- Does the witness's testimony match what they wrote in their written statement, or are there discrepancies? Does it corroborate or conflict with what another school witness might have said?

REMINDER:

The school must have an eyewitness to the events testify at the hearing in order to prove their case.

A written statement from an eyewitness is not enough, nor is testimony from someone who was told what happened by someone else.

If there is no eyewitness testimony, ask the Hearing Officer to dismiss the charges for insufficient evidence.

The one exception to this rule is if the student confessed to the charges, either in a written statement or verbally to a school staff member who testifies at the hearing.

If the student has an IEP, be sure to read the IEP and any Behavior Intervention Plan (BIP) or recent evaluations carefully before the hearing. Look for a connection between the incident and the youth's disability.

- Were all the student's services in place on the day of the incident?
- Was the school following the BIP?

If not, ask the witnesses questions that get at this information, which will be relevant during the dispositional phase of the hearing.

THE STUDENT'S CASE

At the hearing, it's the school's responsibility to prove the charges against the student. The Hearing Officer will only uphold the suspension if the school can show that the student did what the school says they did.

- The parent has the choice of whether they want to put on any witnesses.
- The parent has the right to present witnesses on their child's behalf, including other students and school staff.

Be sure to talk to any potential witnesses at least a couple of days before the hearing. You want to learn exactly what they saw and what they will say at the hearing so you know if they would be a good witness for the student.

WITNESSES PRESENTED ON BEHALF OF THE STUDENT

- 1. If a witness you need refuses to come to the hearing, the parent or their representative can ask the Hearing Office for a subpoena.**

A **subpoena** is a legal document that says the witness must come to the hearing and testify.

You need to request subpoenas at least two days before the hearing and can do so by calling the Hearing Office.

- 2. If you are asking another student to testify, the student's parent must give permission, even if there is a subpoena.**

You can also ask any witness who can't come to the hearing in person to write a statement describing what they saw. Make sure you are present when the witness writes the statement, and that the statement is hand-written, dated, and signed in front of you.

THE STUDENT AND THEIR PARENT SHOULD DECIDE WHETHER THE STUDENT WILL TESTIFY AT THE HEARING.

It is not required, and the fact that the student may not testify cannot be used against them. Some students will want to testify to tell their side of the story.

Just remember, if the student does testify, the school and Hearing Officer will be able to cross examine them.

If the student was also arrested for the incident at issue in the suspension hearing, speak with the student's attorney in the criminal case to get their advice. The student's testimony will be recorded and may be used in a future court case.

PROCEDURAL VIOLATIONS

If the school failed to follow proper procedures, such as calling the parent, providing written notice within 24 hours, arranging alternative instruction, or providing the suspension packet in a timely manner, **the parent may want to testify about those procedural violations.**

CLOSING STATEMENTS

At the end of the fact-finding part of the hearing, each side will have the chance to make a closing statement. You cannot present new evidence in your closing statement. Rather, the closing is an opportunity to summarize everything that came up at the hearing that supports the student's side of the story or shows the school didn't present enough evidence to prove the charges.

You may want to discuss:

- any statements or testimony that contradicted each other
- a lack of information about or gaps in what actually happened, and
- procedures that the school didn't follow correctly during the investigation or following the suspension.

THE DISPOSITIONAL PHASE

After all the witnesses have finished testifying and each side has had the chance to make a closing statement, the Hearing Officer will begin the “**dispositional phase**” of the hearing.

The dispositional phase will determine how long the student will be suspended for if the Hearing Officer decides the charges against them are true. The school and the parent can make a recommendation about the length of the suspension.

POSSIBLE DISCIPLINARY RESPONSES

The [Discipline Code](#) lists the maximum suspension lengths for different infractions.

Depending on the charges and the student’s grade, the school may recommend:

- Immediate reinstatement. This means the student would return to school right away.
- Suspension for 6 to 10 school days
- Suspension for 11 to 15 school days
- Suspension for 16 to 20 school days

Superintendent’s suspensions for more than 20 school days are only allowed when mandated by law or for infractions that involve seriously dangerous or violent behavior.

A suspension of more than 20 days requires approval by the Senior Executive Director of the DOE’s Office of Safety and Youth Development or another designee of the Chancellor or Superintendent.

These dispositions include:

- An extended suspension for 21–39 school days
- An extended suspension for 40–180 school days with an automatic review for early reinstatement
- A one-year suspension with an automatic review for early reinstatement after 60 school days
- Expulsion (*Expulsions are extremely rare in NYC DOE schools and only an option for students who do not have an IEP and are over 17 years old.*)

REMEMBER: Any DOE suspension for longer than 20 days is unusual under the current Discipline Code.

Feel free to reach out to Project Achieve if you believe a student’s suspension is excessive. In some circumstances, they have been able to advocate with the DOE to reduce the length of a student’s suspension, even after the Hearing Officer issues their decision.

STRATEGIES FOR DISPOSITION

After the school makes its recommendation, the parent or youth’s representative can state their recommendation, which will most likely be “immediate reinstatement.”

At that point, the school will submit the student’s education records to the Hearing Officer.

These records may include grades, report cards, attendance, and information about the student’s disciplinary history, including any previous suspensions.

- During this part of the hearing, the school is not allowed to submit or discuss anything about the incident that led to the youth’s current suspension.
- Furthermore, just as with the evidence presented during fact-finding, the parent has the right to see these records before the hearing. ***If the school tries to give the Hearing Officer something negative about the student that it never disclosed to the parent, you should object.***

Next, the parent or student's representative may submit any materials to the Hearing Officer that show the student in a positive light. Like the school, you cannot use any evidence that discusses the current incident during this phase of the hearing.

You may want to submit:

- Letters from teachers, coaches, or mentors outside of school who know and can discuss the student's strengths
- Evidence like certificates or awards from school, afterschool, or summer programs
- If the student is engaging in therapy, substance abuse counseling or other treatment outside of school, and those efforts are relevant to the charges at issue in the hearing, you can submit letters from the student's clinician that describe the student's symptoms and treatment, and why treatment is more likely to positively impact the youth's behavior in school than a punitive approach like a lengthy suspension.

SCHOOL CONSIDERATIONS

- 1. When determining the appropriate response to the student's behavior, schools must consider whether there was any effort to address the situation using preventive methods, whether positive behavior supports and restorative practices can adequately address the behavior, and whether they have been tried before.**

If the school did not offer the student behavioral supports prior to the suspension, point that out to the Hearing Officer, and ask for an order that the school implement those practices rather than extending the student's suspension.

- 2. Schools are also required to consider the student's age and maturity, whether they have an IEP or BIP, and the social/emotional needs of everyone involved, including the student's family situation.**

If the student has developmental delays or trauma-related regression that makes them act younger than their actual age, bring that to the Hearing Officer's attention.

- 3. You may also want to mention any recent changes to the youth's living situation, such as:**

A change in foster homes, failed trial discharge, separation from siblings, or other loss that is likely impacting the student's behavior and may be a mitigating factor in the disposition.

For more information on all the factors schools must consider, see [page 28](#) of the [Discipline Code](#).

- 4. Parents can request a school transfer as part of the disposition, if it is in the student's best interests to change schools once their suspension is over.**

As with any school change, you will need to weigh the potential benefits of a transfer against the detrimental impact school mobility can have on a student. *There is no guarantee that the Hearing Officer will grant the transfer.*

- 5. You can also ask that the suspension be expunged from the student's record at the end of the school year.**

- 6. Finally, you can ask the Hearing Officer to recommend positive interventions for the student, such as counseling, peer mediation or conflict resolution, or special education interventions, such as a re-evaluation or updated FBA and BIP.**

- 7. If you suspect that the student may have a disability, request expedited evaluations.**

See [page 25](#) for more information on expedited evaluations for students suspected of having a disability.

D. AFTER THE SUSPENSION HEARING

After the hearing, the Hearing Officer will determine whether the school has proved the charges and what happens next.

- ***Within 2 school days*** of the hearing, the parent should receive notice that the charges were either dismissed or sustained, and, if the charges were sustained, how long the suspension will last.
- ***Within 5 school days***, the Hearing Office should mail the parent a letter explaining the Hearing Officer's full decision.

If the parent doesn't hear back within these timelines, contact the Hearing Office and the student's school; the student should be able to return to school while you are waiting for the decision.

If the charges are dismissed, the student can return to school immediately, and all records of the suspension must be removed from their school record.

If the charges are sustained, the student may be reinstated in school immediately or suspended for a particular length of time.

The decision letter will explain how long the suspension will last and when the suspension will be removed from the student's record. Sometimes suspensions are removed when a student matriculates into a new school, such as the transition from middle school to high school. In other cases, the charge will remain on the student's record until they graduate or otherwise leave DOE schools. The suspension will not appear on the student's report card or transcript. The suspension may become relevant if the student is suspended again.

RETURNING FROM A SUPERINTENDENT'S SUSPENSION

Schools must hold a "welcome back" restorative circle for every student returning from a superintendent's suspension. *These circles provide a space for students, parents, and school staff to express themselves, actively listen to one another's perspectives, and develop a plan to help the student transition back into the school community.*

While all NYC middle and high schools are expected to implement these restorative justice practices, the approach will be new to many schools. Reach out to the **Superintendent's Office** for help if a school is struggling to implement restorative practices or other positive behavior supports for one of your students. Contact information for the Superintendent is available on the school's webpage on the DOE website, under the Superintendent and District Contacts tab.

ALTERNATE INSTRUCTION

Students are entitled to academic instruction at a grade-appropriate level during a suspension and pending a suspension hearing. Students must continue to receive homework, classwork, and teacher-led instruction and have the opportunity to earn academic credit.

Under no circumstances should a school suspend a student without giving them an alternate site to attend classes.

Students are entitled to take any city and state-wide tests, including their Regents exams.

Students should begin attending the alternate site as soon as they receive notice of the suspension or they will be marked absent.

If the student receives an extended suspension following the hearing, they most likely will continue to attend the suspension site they were assigned to prior to the hearing.

If attending the suspension site results in a travel hardship, contact the suspension hearing office; students can sometimes get a transfer to a site closer to home.

Depending on the student's grade and whether or not they have an IEP, they may be able to get busing to the suspension site. Remember that the Office of Pupil Transportation (OPT) takes at least 5-7 school days to set up busing.

APPEALING A SUSPENSION DECISION

A parent may appeal the Hearing Officer's decision if:

- The evidence does not support the decision
- The suspension is excessive in length, or
- The school failed to follow the proper procedures during the suspension process.

The first step in appealing the decision is to request the transcript of the hearing from the Hearing Office.

A parent or representative for the student can ask for the transcript at the end of the hearing or at any time after the hearing by calling the Hearing Office. Once you have the transcript, you can use it to help write your appeal. You may only discuss the evidence that was presented at the hearing in your appeal; you cannot submit new evidence. Use the evidence in the record to explain why the Hearing Officer's decision was wrong or why the suspension is too long under the circumstances.

The appeal should be in the form of a letter to the Chancellor. It must be mailed within 20 school days of the date you received the full decision from the Hearing Office, or 10 school days after you received a copy of the transcript, whichever is later.

Appeals should be addressed to:

Office of Legal Services
New York City Department of Education
52 Chambers Street, Room 308
New York, NY 10007

You should receive a response to your appeal within 15 school days. Feel free to reach out to Project Achieve if you have questions about appealing a superintendent's suspension.

E. SCHOOL DISCIPLINE AND SUSPENSIONS FOR STUDENTS WITH DISABILITIES

The federal Individuals with Disabilities Education Act (IDEA), which governs special education services across the country, gives extra protections to students with disabilities facing suspensions or other discipline in school. These protections apply to students who have Individualized Education Programs (IEPs) and, under certain circumstances, to students whom the school has reason to suspect may have a disability. Students with 504 Plans also get certain protections, which will be discussed more fully below.

Given the number of students in foster care who have IEPs and qualify for 504 Plans, it's imperative that agency staff understand the laws that protect students with disabilities from lengthy suspensions, especially since ***students with IEPs are more likely to be suspended from school than general education students***. Some youth get suspended multiple times per year, or even multiple times per month, and often for behavioral infractions they did commit and which the school can prove. Agency staff and parents can wear themselves out reacting to and trying to fight every suspension.

Defending students against unjust suspensions is critically important; so is being familiar with the wide universe of behavioral interventions that exist for students with disabilities and understanding how to access those services, while ensuring that schools do not suspend students for behavior that is caused by their disability and largely outside of their control.

The following section lays out the laws that protect students with disabilities and offers a number of strategies for agency staff as you work to support these students.

MANIFESTATION DETERMINATION REVIEWS

In most circumstances, the IDEA prohibits schools from suspending a student for behavior that is closely related to their disability. This right is enforced through a meeting called a [Manifestation Determination Review](#), or MDR. The purpose of the MDR is to decide if the behavior that led to the suspension was caused by the student's disability. If it was, the student cannot be suspended, and the school must return them to their regular program immediately.

At the MDR meeting, the team will answer two questions:

1. Was the student's behavior directly related to or caused by their disability?
2. Did it happen because the school was not following the student's IEP?

If the answer to either of these questions is yes, then the student must be returned to their classroom immediately, because the behavior was a "manifestation" of the student's disability.

As a general rule, students with disabilities get an MDR if they are facing a suspension of more than 10 school days. (Up until that point, they are disciplined in the same manner as students without disabilities).

Specifically, the school or Committee on Special Education (CSE) must hold an MDR before removing a student with an IEP or 504 Plan from class or school when:

- The student is being suspended for 11 or more school days in a row
- The student attends a NYC DOE school, has been removed from class or suspended from school three or more times during the school year, and the removals add up to a total of 11 or more school days in a 40 school-day period
- Within one school year, the student has been removed from class or suspended from school two or more times; the removals add up to a total of 11 or more school days; and there is a pattern to these suspensions or removals, based on similarity of the behavior, the length of each suspension or removal, and the proximity of the suspensions or removals to one another

Once a school holds an MDR for a student, another MDR must take place for any **subsequent suspensions** that school year, assuming they fall within the 40-day period or constitute a pattern.

Consider a situation where a student gets a principal's suspension on January 2 for 3 days, a principal's suspension on January 30 for 5 days, and a principal's suspension for up to 5 days on February 5. The school or CSE is required to hold an MDR before the third suspension because the student could be removed for more than 11 school days in a 40 school-day period. In New York City, MDRs take place at the student's school if they attend a DOE school and at the CSE if they attend a charter or state-approved nonpublic school. Outside of the city, MDRs usually are held at the CSE office that oversees a student's special education case.

TIP: Work with your foster parents, parents and case planners to keep track of every time a student is removed from class or suspended from school.

Write down:

- Any date the student is suspended or removed from class for any length of time
- The length of each suspension or classroom removal (in days or number of class periods)
- The behavior or incident that led to the suspension or classroom removal.

If a student has an IEP and is facing a superintendent's suspension that could result in a suspension of more than 10 days, the suspension Hearing Office will automatically schedule an MDR, which should be included in the suspension notice. However, schools may not always schedule an MDR following multiple principal's suspensions or teacher removals, especially if they are not properly recording the suspensions or removals in the DOE's computer systems. As long as you keep diligent records of any suspensions and removals, however, you can request MDRs of the school or CSE whenever they are needed. This may be especially important for students who attend charter schools, where the CSE and not the school conducts the MDR.

THE MDR TEAM MUST INCLUDE:

- A district representative who is familiar with the student and can interpret information about their behavior (usually the school psychologist or social worker)
- Other relevant members of the student's IEP team
- The parent (*The parent may bring an advocate or attorney with them to the MDR, as well as anyone who has special knowledge or expertise about their child.*)

At the MDR, the team must review and consider all relevant information in the student's file, including their IEP, FBA, BIP, evaluations, teacher observations, and any information that the parent or agency provides.

If the student sees a medical or mental health provider outside of school who can explain the youth's disability and how their actions were related to that disability, consider asking that person to come to the MDR, participate by phone, or write a letter explaining the connection between the student's behavior and their disability.

If the team decides that the behavior was a manifestation of the student's disability, the student has the right to return to class immediately.

If the team decides that the behavior was not a manifestation, then the youth's suspension will continue according to the principal's (for a principal's suspension) or the Hearing Officer's (for a superintendent's suspension) decision.

Parents who disagree with the outcome of an MDR may request an expedited due process hearing to appeal the decision.

For more information about how to request a due process hearing, refer to [Section 2G of the special education manual](#).

HOW TO PREPARE FOR AN MDR

STEP 1: GATHER AND REVIEW THE RELEVANT DOCUMENTS

Before the MDR, get copies of the student's relevant education records, as well as reports from outside providers, such as psychological, psychiatric, or developmental evaluations.

If the agency does regular mental health evaluations, these may be helpful when preparing an argument for the MDR. *Just make sure to get consent from the parent (or appropriate agency employee, if the parents' rights are terminated or their whereabouts are unknown) before releasing HIPAA-protected documents to the school.* Consider redacting reports if they contain information about the Family Court case that is not relevant to the school issues.

Useful documents may include:

- The student's most recent IEP or 504 Plan
- The student's most recent psycho-educational evaluations, or any other evaluations that relate to the behavior being discussed at the MDR
- Information about the incident that led to the suspension or removal, such as the suspension notice, occurrence report, witness statements, or video of the incident
- Documents that show the student's behavior in school, such as progress reports, classroom observations, prior suspension records, anecdotes, referrals for counseling, FBAs, and BIPs
- Any documents showing that the school was not following the IEP or BIP
- MDR worksheets from previous meetings. The school must fill out an MDR worksheet for every MDR. For more information about MDR worksheets, see "[During the MDR Meeting](#)" on pages 23-24
- Reports and letters from clinical providers outside of school, such as therapists, counselors, and doctors

As you read through the paperwork, look for examples of how the youth's disability or diagnosis impacts their behavior, as well as evidence of behavioral challenges similar to the behavior at issue during the suspension or classroom removal. For example, if the student was suspended for fighting, look to see if the documents describe incidents of fighting, or for statements that the student struggles with verbal or physical aggression towards others.

STEP 2: PREPARE NOTES OF WHAT YOU WANT TO SAY AT THE MEETING

You may know the student better than anyone at the youth's school who participates in the meeting, and what you say can convince the team that the behavior was a manifestation of the student's disability.

If you believe that the behavior was caused by or related to the student's disability, you can prepare by highlighting information in the student's records, including:

- How the youth behaves
- What can trigger problem behavior
- What the student needs to prevent and manage challenging behaviors
- How the behavior keeps the student from learning, and
- How the behavior is related to their disability.

This information can come from any part of the student's IEP, evaluations, FBA, BIP, teacher reports, suspension notices, witness statements, or other documents. Look for information about the student's behavior and disability from other sources as well, including the case planning team, clinical staff, the youth's therapist, doctor, or family members, and resources like the DSM-V.

The classification on a student's IEP does not determine what disability-related behaviors the student has. A student with a speech and language impairment could also be diagnosed with ADHD or a mood disorder that substantially impacts the student's behavior, or the student can manifest communication challenges through behavior without any further diagnoses.

The MDR team must consider and discuss ALL of the student's behaviors and how they relate to any disability the student may experience, not just the classification of disability listed on their IEP.

If you think the incident happened because the school was not following the student's IEP, you can prepare by:

- Reading the IEP and BIP (if the student has one) and highlighting any services or accommodations the school may not have been providing at the time of the incident.
- Asking the student what accommodations and services they get in school and how often.

If you aren't sure if the student was getting their services, prepare some questions for the MDR team. For example, if the student has a 1:1 paraprofessional on their IEP, ask where the para was during the incident. You may learn that they were out sick that day and the school didn't provide a replacement, that they were out of the room helping another student, or that a paraprofessional was never assigned to the student in the first place. Any of that information would be relevant to the MDR decision and could lead to a determination that the behavior was a manifestation of the student's disability.

STEP 3: INVITE A TEAM TO SUPPORT THE STUDENT.

An MDR is an important part of the special education process, and ***the student's special education decision-maker must be invited to participate.*** In most cases, that will be the **student's birth parent**, unless their rights have been terminated or surrendered, or the foster parent has been assigned as a surrogate parent for the student.

The outcome of the meeting may involve requesting new evaluations, in which case the school will need to seek consent from the parent. It's always more efficient if that can happen in the moment at the meeting. The parent also may have insights into what triggers the youth's behavior, or ideas about incentives that could be motivating to the student, that could inform an updated FBA or BIP.

In most cases, you will want to involve the foster parent in the meeting, even if they are not making special education decisions for the student. They can speak to the youth's behavior at home and how that impacts their behavior in school; they will also need to be involved if part of a behavior plan or contract includes regular communication or enforcing consequences of school-based behavior at home.

You can ask the school to reschedule the meeting if absolutely necessary, just keep in mind that you have a limited window to do so, and a postponement could also delay a student's return to class. *As with other important meetings, the parent has the right to an interpreter if their preferred language is not English, so be sure to request an interpreter prior to the meeting.*

If the student is seeing a therapist, psychiatrist, or other medical or mental health clinician outside of school, consider asking them to participate in the meeting in person or by phone. Think about what they can share about the student's medical or mental health needs, how any diagnoses may impact their behavior, cognition, and decision-making, and whether those symptoms are substantially related to the behavior that led to the suspension. Make sure to tell the provider about the incident that led to the suspension or removal, share documents, such as the suspension notice or witness statements with them, and talk to them about whether they believe the incident was related to the student's disability.

If the clinician cannot participate directly in the MDR meeting, ask them to write a letter of support.

Again, keep in mind that you will need to get consent to release any HIPAA-protected information to the school.

The letter should:

- Explain how the clinician knows the student, and for how long;
- Describe what type of services they provide to the youth outside of school;
- List the documents they have reviewed before writing the letter, if any;
- Describe the student's symptoms and how they manifest in the student's behavior, including any similar incidents that the clinician may be familiar with; and
- State that they believe the behavior at issue here was a manifestation of the student's disability, and explain why.

The school can also invite additional people to the MDR, such as teachers, a guidance counselor, the student's paraprofessional, and any staff who were there when the incident took place. If there are particular **staff members** you'd like the school to invite, ask the school to include them.

DURING THE MDR

For students in New York City, the DOE will use this [MDR worksheet](#) to guide the meeting. **We recommend bringing a copy of the worksheet with you to every MDR so you can follow along during the meeting.**

The section below explains each section of the worksheet in the order it will be completed during the MDR. The MDR determination must be made at the MDR meeting; if the school provides an entirely completed MDR worksheet before the meeting begins, the parent can challenge the result at an expedited due process hearing.

DISABILITY AND BEHAVIORAL HISTORY

At the MDR, the team must consider information about the student's disability and behavioral history. According to state regulations, the team must review "all relevant information in the student's file," including the student's IEP or 504 Plan, evaluations, teacher observations and progress reports, their FBA and BIP (if they have one), and any "relevant information provided by the parent." For more information about the types of documents the MDR team may consider, see [Step 1 in Section 1E: How to Prepare for an MDR](#).

After reviewing the documents, the MDR team must describe the student's disability and how it affects their behavior. Every student with an IEP has a classification of disability on the first page. In New York, students can only have one classification, even though they may have more than one diagnosed disability. Furthermore, behavior may be associated with a student's classification that is not obvious at first blush.

For example, a student with a "Learning Disability" classification may become frustrated when they struggle to read or write, leading to acting out or aggressive behavior, especially if the student is confronted about their challenges.

The team must look beyond the disability classification on the IEP and think about whether the behavior the youth was disciplined for is related to any of their disability challenges and how their disability manifests in that individual youth. Make sure the school lists all the student's specific behaviors when completing the worksheet.

INFORMATION ABOUT THE INCIDENT

The team will then describe the incident that led to the suspension or classroom removal and the events that led up to the incident. If there was a suspension hearing before the MDR, the school must rely on the Hearing Officer's findings from the hearing. The suspension hearing office should share these findings with the team prior to the MDR.

RELATIONSHIP BETWEEN DISABILITY AND INCIDENT

During this part of the meeting, the MDR team will describe the connection between the behavior that led to the incident and the "disability-related behaviors" listed in the previous section of the MDR.

This is where the connection between the student's past behaviors and the recent incident takes place. The team will ask how the behavior that led to the incident is similar or related to the behaviors identified earlier in the meeting.

One thing to watch out for is the school or CSE arguing that the behavior is not a manifestation because the student knows right from wrong or the behavior was "intentional." Neither of those things matters for purposes of the MDR.

A student can understand that they are doing something wrong but, in the moment, be unable to control their behavior because of their disability.

The school must look at the student's disability-related behaviors and whether there is a connection between those behaviors and the incident that led to the suspension or classroom removal. *The student's "culpability" is not relevant to that question.*

MAKING A DETERMINATION

At the MDR, the team must discuss and answer two final questions:

QUESTION 1:

Was the behavior that resulted in a suspension or classroom removal caused by or substantially related to the student's disability?

QUESTION 2:

Was the conduct in question a direct result of the DOE's failure to follow any part of the student's IEP or BIP?

If the MDR team decides the answer to Question 1 or Question 2 is "YES", the behavior is a "manifestation" of the student's disability.

Question 1 asks the team to decide whether there is a connection between the student's behavior and their disability.

Question 2 asks the team to decide whether the school actually followed everything on the student's IEP or BIP. If the school was not following the IEP or BIP, the team must decide whether the behavior took place because of that failure. *For example, if the student has not been receiving mandated counseling for several weeks, and their behavior has become increasingly erratic or aggressive during that time, leading up to an outburst that caused the suspension, then the MDR team should find that the behavior was a manifestation of the student's disability, because it was caused by the school's failure to implement the student's IEP.*

REMEMBER: The team must consider information about the student even if it does not seem to be related to their special education classification.

A student does not need to be classified with an Emotional Disability in order for their behavior to be a manifestation of their disability. The MDR team can find behavior to be a manifestation no matter what classification the student has.

Most importantly, the school needs to look at how the behavior that led to the suspension or removal was impacted by the student's disability.

AFTER THE MDR

At the end of the MDR, ask for a copy of the completed worksheet. If the school won't give you a copy before you leave the meeting, take a picture of each page with your phone and ask the school to fax or email you a copy once the MDR worksheet is finalized. When you get it, compare the worksheet to the photos to make sure they are the same.

IF THE MDR TEAM DECIDES THAT THE STUDENT'S BEHAVIOR WAS A MANIFESTATION OF THEIR DISABILITY, the suspension cannot continue; the student has the right to return to class immediately.¹ The school must conduct a **Functional Behavioral Assessment (FBA)** to identify what might be causing the behaviors and create a **Behavior Intervention Plan (BIP)** to support the student. *If the student already had a BIP and the school wasn't following it or it wasn't working, the school must implement the BIP or update it to better address the student's current behavioral needs.*

¹ Unless the student has been placed in an IAES, as discussed on [page 26](#).

An FBA must include a description of the problem behavior(s), the factors that contribute to the behavior(s), and thoughts as to why the behavior(s) occur. A student's FBA must be based on multiple sources, including direct observation of the student, information from teachers and related service providers, interviews with the student and parent, and a review of the student's behavioral history and file.

A BIP is a plan based on the results of the FBA and, at a minimum, includes a description of the problem behavior, thoughts as to why the behavior occurs, and intervention strategies, like positive behavioral supports and services, to address the behavior.

FBAs and BIPs are tools that can help students with disabilities who have behavioral challenges. Schools or CSEs must consider an FBA or BIP whenever a student's behavior consistently gets in the way of their learning or that of others, not just when there is a positive MDR. For more information on FBAs and BIPs, refer to [Section 2F of the special education manual](#).

IF THE MDR TEAM DECIDES THAT THE STUDENT'S BEHAVIOR WAS NOT A MANIFESTATION OF THEIR DISABILITY, the student's suspension or classroom removal will continue until the end of the suspension or removal period. *For suspensions longer than 10 days, the school district must provide the student with special education services sufficient for the student to make progress toward their IEP goals, which the DOE calls a "Suspension Plan."*

The Suspension Plan lists the special education services the student will get while they are suspended. A Suspension Plan is like a mini IEP.

The suspension site will hold the meeting to develop the Suspension Plan, usually on the 11th day of the student's suspension. Parents must be invited to attend this meeting, have the right to an interpreter if they need one, and can participate in person or by phone. *The suspension notice should include the date, time and location of the Suspension Plan meeting.*

SUSPENSION PLAN SPECIAL EDUCATION SERVICES

Many students with disabilities facing longer-term suspensions will get counseling on their Suspension Plan.

The Suspension Plan should include:

- ☑ All related services that are mandated on their IEP, like speech or OT
- ☑ They may need SETSS or other remedial instruction on a temporary basis, as they will not be placed in special education classes at the suspension site.
- ☑ Any testing or classroom accommodations on the student's IEP or 504 Plan.
- ☑ If the student has a medical condition that requires nursing services or other accommodations, make sure those go into the Suspension Plan as well.
- ☑ Students with disabilities can also receive transportation through a Suspension Plan.

Even if the student's behavior was not a manifestation of their disability, the parent can still request an FBA and BIP to better support the student's behavior going forward.

If the student may need a different school or classroom setting, the MDR meeting can be a good place to request re-evaluations and provide parental consent to the school or CSE, although the parent can of course request new evaluations at any time.

APPEALING THE MDR DECISION

If the parent does not agree with the outcome of the MDR, they can request an expedited due process hearing. The hearing request, which must be submitted in writing to the Impartial Hearing Office, should list any ways the school or CSE failed to follow the proper MDR procedures and the reason the MDR decision is wrong. Once the parent submits a hearing request, the school district must hold a resolution meeting within 7 days. If the parties can't settle the case at the resolution meeting, the hearing must take place within 20 school days of the date the hearing request was filed, and the impartial hearing officer must issue a decision no later than 10 school days after the hearing.

If you are thinking about appealing an MDR decision, feel free to reach out to Project Achieve for help. For more information on the Impartial Hearings process, [see Section 2G](#).

INTERIM ALTERNATIVE EDUCATIONAL SETTINGS (IAES)

There is an exception to the usual MDR rules for situations involving serious violence, weapons, or drugs. Under sections [201.8\(d\)](#) and [201.9\(c\)\(3\)](#) of the NY state special education regulations, a superintendent or impartial hearing officer can place a student with a disability in an Interim Alternative Education Setting, or IAES, for up to 45 days if the hearing officer finds that the student has inflicted serious bodily injury on another person, brought a weapon to school, or knowingly possessed or sold drugs at school or a school event. They can do this even if the MDR team decides that the behavior is a manifestation of the student's disability. In our experience, these cases are very rare; when we do see them, they usually involve situations where a student brought a gun to school or assaulted or threatened someone with a knife.

If a student you are working with is facing placement in an IAES, we recommend reaching out to the student's attorney or Project Achieve right away for assistance.

EXPEDITED EVALUATIONS

If a student does not have an IEP but may need special education services, they are entitled to expedited evaluations if they are referred for special education during a principal's or superintendent's suspension.

The school or CSE must complete expedited evaluations within 15 school days from parental consent and must hold the IEP meeting no later than 5 school days after the evaluations are completed. *As always, requests for evaluations should be made in writing, dated, and signed by the parent or special education decision-maker.*

For more information about special education referrals, [see Section 2B](#).

If a student you're working with does not have an IEP but you think they may have a disability, and they are being suspended or removed from class, ask for expedited evaluations in writing at the school or during the superintendent's suspension hearing. Once the evaluations are done, the school district will hold an IEP meeting to decide if the student has a disability and is eligible for special education services (or a 504 Plan).

OTHER PROTECTIONS FOR STUDENTS WITH DISABILITIES

In limited circumstances, school districts must hold MDRs for students who do not have an IEP or 504 Plan. This happens when the school should have known that the student has special education needs. In these cases, we say that the student is “presumed to have a disability for discipline purposes” and the school or CSE is “deemed to know” of the student’s disability.

A school or CSE is deemed to know of a student’s disability if any of the following took place before the student’s suspension or removal:

1. The parent requested an evaluation or expressed concerns in writing that their child needs special education services
2. The school district referred the student for evaluations;
3. The student’s teacher or other school personnel expressed specific concerns about the student’s pattern of behavior
4. The student’s behavior in school demonstrated the need for special education services (only applies in New York City)

A student is not presumed to have a disability for discipline purposes if their parent refused to consent to special education evaluations, declined special education services, or withdrew their consent to an evaluation or services. *However, if the parent changes their mind and wants to pursue special education, the student is still entitled to expedited evaluations, even if the school or CSE is not “deemed to know” of the disability.*

If you believe the district should presume the student has a disability for discipline purposes, ask the school (or CSE, if the student attends a charter school) to hold an MDR.

If the student is facing a superintendent’s suspension, you should also notify the Hearing Officer at the hearing. Make sure to explain why the school or CSE should be “deemed to know.”

Provide a copy of the written request for evaluations or proof of any concerns expressed, as well as when, how, and to whom any requests were submitted. If you are trying to show that the student’s behavior demonstrated the need for special education services, you can provide copies of incident reports, disciplinary records, or other school-related documents from before the suspension or classroom removal.

If the school or CSE is deemed to know of the student’s disability, it must hold an MDR, just like it would for a student with an IEP or 504 Plan.

At the MDR meeting, the school should consider all available documents that show concerns about the student’s suspected disability and behavior, including classroom observations, anecdotes, disciplinary records from previous incidents, and any private evaluations or reports from outside providers. The student is also entitled to expedited evaluations.

The school or CSE cannot wait until the evaluations are completed before holding the MDR; they must conduct the meeting as soon as the student is facing a suspension of more than 10 days (or more than 10 cumulative days, as discussed in [Section 1E](#)).

F. DISCIPLINE FOR STUDENTS IN CHARTER SCHOOLS

Advocating for students who attend charter schools can be challenging in any context, especially when students are facing suspensions or classroom removals. While charter schools must follow basic principles of due process laid out in court cases like *Goss v. Lopez*, there is disagreement in the field about whether they must follow NYS Education Law [§ 3214](#).

Students who attend charter schools are entitled to notice of the suspension and the opportunity to be heard. They are definitely entitled to a hearing if they are facing a suspension of 10 days or more. Because students have the option to enroll in their local district school, charter schools sometimes expel students for behavior that would never result in an expulsion if the student attended a non-charter school.

Charter schools and networks create their own discipline policies, or student Codes of Conduct. Rather than operating under Chancellor's Regulation A-443 or the DOE's Discipline Code, charter schools in New York City follow their own policies and procedures when disciplining students.

Charter schools are required to provide alternative instruction to students during a suspension. They are also required to follow federal and state special education laws. This means that students with disabilities at charter schools facing suspensions are entitled to MDRs, FBAs and BIPs, and expedited evaluations, just like students who attend other public schools. The CSE holds the MDR for students with IEPs at charter schools, while the charter school should conduct the MDR if the student has a 504 Plan. The charter school is supposed to notify the CSE about scheduling the MDR. *However, if you are concerned that won't happen, reach out to the CSE where the charter school is located to ask for the MDR yourself.*

ALTERNATIVE INSTRUCTION

Like district public schools, charter schools must provide students with continued academic instruction – not just homework packets – while they are serving a suspension or awaiting a suspension hearing.

Typically, this consists of 2 hours of instruction per day after school or at an alternate site. Since COVID, we have seen many charter schools provide remote instruction during a suspension. This must include some live, teacher-led instruction and doesn't just mean the student can access their homework through Google classroom. Alternative instruction must be substantially equivalent to the instruction the student was getting in school before the suspension.

Students must be able to earn academic credit and take exams while suspended.

The charter school must tell the parent when, where, and how the student will get alternative instruction either before or immediately following the start of the suspension.

Students should receive instruction for the full length of their suspension. They should not be marked absent if they are attending alternative instruction.

SHORT-TERM SUSPENSIONS (LESS THAN 10 DAYS)

Charter schools can only remove a student from school by suspending the student for behavior that violates the school's discipline policy.

The school must follow the procedures stated in its policy or charter when suspending a student. *Charter schools cannot place students on a shortened schedule or require the parent or another adult to sit with the student in order for the student to attend school.*

Charter schools should provide parents with a copy of their discipline policy or Code of Conduct at the beginning of the school year. Some policies are also available online. If you can't find the charter school's discipline policy, ask for a copy from the school. You'll want to consult the policy whenever a student is facing a suspension or experiencing

removals from the classroom.

Make sure the charter school is following the process outlined in its own policies, and that a suspension or removal is allowed by the policy for whatever infraction the school is saying the student committed.

Charter schools must give notice of a suspension to the parent, even if the school is suspending the student for only one day.

The notice must:

- ☑ Describe the behavior the student is being suspended for, including the charge and basis for the accusation
- ☑ Explain how the student will get alternative instruction during the suspension, and
- ☑ Contain any other information the charter school's discipline policy requires

Be sure to get a copy of the suspension notice and any other documents related to the suspension for your records. Sometime these notices will reveal all kinds of legal violations, including a lack of alternative instruction, the failure to schedule an MDR, or suspensions for behavior that does not warrant a suspension, even under the charter school's own discipline policy.

LONG-TERM SUSPENSIONS (10 DAYS OR MORE)

Students facing a suspension of 10 days or more are entitled to written notice of the suspension and a suspension hearing. Since an expulsion is a permanent suspension, we believe the more formal procedures required for suspensions of 10 days or more are required for expulsions, too.

At the hearing:

- The school has the burden of proving the charges
- The hearing officer should be impartial and base their decision on the evidence presented
- Students cannot be forced to testify
- Parents have the right to call witnesses, submit evidence, and be represented by counsel
- The proceedings must be recorded, in case the parent wants to appeal the decision

If you need more time to prepare for the hearing, are seeking representation or advice, or need to reschedule, you can ask the school to adjourn the hearing to a reasonable date. *We recommend reaching out to the student's attorney, Project Achieve, or another advocacy organization whenever a charter school student is facing a long-term suspension or expulsion.* If the school won't reschedule, ask the hearing officer, on the record, for an adjournment at the start of the hearing, and explain why you need more time. If you request an adjournment and the student is in an alternative educational setting, they likely will remain in that setting until the hearing takes place and the hearing officer rules on the suspension.

A charter school hearing process may be very different from the public school hearing process discussed in [Section 1C: Superintendent's Suspension Hearings](#). The person(s) in charge of conducting the hearing, sometimes called the "hearing officer," must decide if the student has done what the school is charging them with and, if so, what the appropriate consequence should be.

Check the school's discipline policy to find out who should be conducting the suspension hearing, whether it's the principal, student support team, or the Board of Trustees. The person(s) conducting the hearing can accept the school's recommendation for a long-term suspension or expulsion, reject the recommendation and allow the student to return to school immediately, or decide that a shorter suspension or a less severe consequence is appropriate.

As soon as you receive notice of the proposed suspension or expulsion, ask the charter school for the *documents* and the *list of witnesses* that the school will present at the hearing, as well as any other evidence that the school has related to the incident that led to the suspension. These documents should include any statements the student, their classmates, or their teachers wrote about the incident.

Be sure to get this information before the hearing. If the school does not give you this evidence in a reasonable amount of time before the hearing, you can ask to adjourn to give you time to prepare.

At the hearing, you can object to any information the school did not give you in advance.

The hearing officer(s) may issue a decision at the hearing or send the parent a letter with the decision following the hearing. If the hearing officer(s) does not decide at the hearing, ask when you can expect to get the decision.

Any punishment the student receives from the charter school must be appropriate; in other words, the punishment should fit the crime. Students should not receive a harsh punishment like a long suspension or expulsion for a minor violation of the charter school's discipline code.

APPEALING A CHARTER SCHOOL'S SUSPENSION DECISION

Once you receive the charter school's decision to suspend or expel the student, the parent has the right to file an appeal. New York state courts have found that parents whose children attend charter schools must follow the steps listed below to appeal a suspension or expulsion decision, which is the same process to file a formal complaint with the charter's Board of Trustees.

Some charter schools might have discipline codes that list a different appeals process; however, a court has said that parents must follow the process below regardless of what the charter school's discipline code says.

THE APPEAL SHOULD BE SUBMITTED AS SOON AS POSSIBLE AND WITHIN THE SCHOOL'S REQUIRED TIMELINE.

STEP 1: WRITE A LETTER TO THE CHARTER SCHOOL'S BOARD OF TRUSTEES.

You can ask the school for the name and contact information for the Chairperson of the Board of Trustees. In your letter, explain:

1. The problem you are having with the charter school (for example, the suspension or expulsion decision)
2. Why you disagree with the school's decision, and
3. The specific request that you are making to the Board, whether it's to remove the suspension from the student's record, impose a shorter suspension, or reinstate the student in school.

STEP 2: WRITE A LETTER TO THE CHARTER SCHOOL'S AUTHORIZER.

If the Board of Trustees does not respond to your complaint or if it agrees with the charter school's decision, then you can submit a letter of complaint to **the charter school's authorizer**, which is the entity that approved the school's charter.

Charter schools are authorized by one of three entities—the NYC DOE, the State University of New York Board of Trustees (SUNY), or the New York State Education Department (NYSED) Board of Regents.

You can find out which authorizer is responsible for the charter school by asking the school or accessing the [NYSED Charter School Directory](#). Contact information for the three authorizers is below.

NYC DOE: www.schools.nyc.gov/school-life/school-environment/get-help-at-your-charter-school/file-a-formal-complaint-at-your-charter-school/charter-school-authorizers

SUNY Charter Schools Institute: www.newyorkcharters.org/contact

NYSED Charter School Office: www.p12.nysed.gov/psc/complaintprocess/complaint.html

STEP 3: WRITE A LETTER TO THE STATE EDUCATION DEPARTMENT.

If the school's authorizer is the DOE or SUNY, and it also agrees with the school's decision, you can make an appeal to the New York State Education Department's Charter School Office at charterschools@nysed.gov.

DISCIPLINE FOR STUDENTS IN PUBLIC SCHOOLS OUTSIDE OF NYC

All school districts in New York State must follow the due process requirements laid out in *Goss v. Lopez*, as well as [State Education Law § 3214](#) and federal and state special education law. They do not follow the detailed procedures in NYC Chancellor's Regulation A-443 or the guidelines in the NYC Discipline Code.

Each school district has its own Discipline Code or Code of Student Conduct. Many discipline codes are available online, but if they aren't, ask the parent or foster parent if they have a copy or get one from the school.

Generally, you should approach a suspension at a public school outside of New York City in a similar manner as you would a suspension at a DOE school. The rules in § 3214 around teacher's removals, principal's suspensions, and superintendent's suspensions apply across the state.

Students are always entitled to alternative instruction, which usually takes the form of two hours of home instruction per day. Students are also entitled to a conference upon request after a teacher's removal and prior to or following a principal's suspension.

School districts must prove the charges against a student at a formal hearing before they can issue a suspension of longer than 5 days. *Make sure to get a copy of the notice and review the district's discipline code before a suspension conference or hearing.* Ask the school for copies of any evidence they will be using before the hearing, and talk to the student to get their side of the story.

The main difference with superintendent's hearings outside the city is that students may face harsher penalties under other Discipline Codes and may have access to fewer positive interventions or restorative practices. The hearings themselves may be more or less formal in other districts. Because the compulsory school age is 16 outside of NYC instead of 17, students can be expelled at a younger age. Some other districts do not provide alternative instruction to students who are no longer compulsory school age while they are serving a suspension.

For students with IEPs, the regulations around MDRs, FBAs and BIPs, and expedited evaluations are the same across NY state and operate similarly in most school districts. In our experience, many school districts are willing to negotiate with you when a suspension involves a student with an IEP, a student who previously had an IEP but has been declassified, or a student presumed to be a student with a disability for discipline purposes.

If you have questions about suspensions in districts outside of New York City, reach out to the student's attorney or contact Project Achieve. While they may have limited or no experience with that particular school district, they will try to point you in the right direction.

SECTION 2: SPECIAL EDUCATION ADVOCACY

INTRODUCTION

Students in foster care are disproportionately represented in special education settings. In New York City, roughly half of students in foster care qualify for special education services. Many of the students who struggle the most in school have significant special education needs. As a result, Coaches and Specialists will likely find themselves spending a great deal of time working with schools, students, and students’ families to address youth’s special education needs, and strong advocacy skills in this area are crucial. It’s especially important for staff to understand special education laws and policies; the programs and supports available to students; how to access those supports for the youth on your caseload; and how to help students and parents exercise their due process rights when youth are not getting the supports they need.



A. LEGAL FRAMEWORK

A federal law called the Individuals with Disabilities Education Act, or IDEA, governs special education services across the country. Under IDEA, students with “qualifying disabilities” from age 3-21 are entitled to a free appropriate public education in the least restrictive environment. New York State’s implementing laws and regulations, called the [Part 200s](#), further clarify students’ rights and school districts’ legal obligations. The Part 200s apply to all school districts, charter schools, and state-approved nonpublic schools across the state, and can be a powerful tool to help you advocate effectively for youth with disabilities.

[The New York City DOE’s Special Education Standard Operating Procedures Manual \(SOPM\)](#) gives additional guidance to DOE staff and includes detailed information about what steps the DOE must follow when it conducts evaluations, holds Individualized Education Program (IEP) meetings, and arranges school placements and services for students. The DOE also has a [Guide to Special Education Procedures for Students Attending Charter Schools](#). Throughout this manual, we have included references to the Part 200s, the DOE SOPM, and the charter school guide where agency staff may find it helpful to get background information or identify the legal or procedural justification for a particular request.

FREE APPROPRIATE PUBLIC EDUCATION

Special education is not a place, but an array of supports and services that school districts must offer to students with disabilities. The IDEA guarantees eligible students a Free Appropriate Public Education, or FAPE. These services must be free, provided at no cost to the parent, and supervised by the public-school system. Education can include special instruction as well as related services like speech therapy, counseling, or transportation.

While people typically agree about what free, public, and education mean, disagreements can arise when determining what is “appropriate” for a particular student. The law says that a student’s education program must be specially designed to meet that child’s unique needs, so they can make appropriate progress in light of their circumstances and achieve challenging objectives. What progress is appropriate for one student may not be appropriate for another student.

For example, for most students with special education needs, we expect them to perform at or near grade level if they are getting the right services. For students with significant cognitive delays, however, they may not be able to complete grade level work, especially as they get older. However, all students should gain new adaptive and academic skills each year so they can become more independent. If a student is not making progress, or their progress seems too slow given their capabilities, then that student is not receiving a FAPE, and they likely will need a change in program or services.

LEAST RESTRICTIVE ENVIRONMENT

Students with disabilities must be educated in the Least Restrictive Environment, or LRE. This means that, to the greatest extent possible, a child with a disability should learn alongside children that do not have disabilities. Students with special education needs are entitled to extra academic and behavioral supports so they can progress appropriately in the least restrictive setting. The goal is inclusion; students should only be removed from the general education environment when their disability is such that they cannot progress, even with the help of aides and services, in a general education setting.

The LRE requirement does not mean that the school district can never recommend a child for a small class or a specialized school setting. Some students cannot receive a FAPE in a mainstream classroom and require a specialized class in order to learn. Other students need a specialized school where all staff are trained to work with students with disabilities. Many can return to a less restrictive setting after receiving intensive support in a specialized program for a period of time. [Section 2E](#) of this manual describes the full range of programs available to students.

SECTION 504

Section 504 of the Rehabilitation Act is a federal civil rights law that prohibits any organization that gets federal funding from discriminating against people with disabilities. It also requires organizations to provide reasonable accommodations to people with disabilities. Section 504 applies to all public and charter schools, as well as any private schools that get federal funding, either directly or indirectly. Section 504 may apply to day care centers, summer camps, after school programs, and other community-based organizations that serve youth in care.

Students can get accommodations in school through a Section 504 Plan. It's important for Coaches, Specialists and Tutors to know about Section 504 because it can be a way for students with disabilities who don't qualify for special education to get needed accommodations. In addition, some parents who are reluctant to consent to special education services for their child may feel comfortable pursuing supports under 504. Section 504 also applies to parents and foster parents with disabilities, who may need accommodations to participate in school meetings and events or otherwise access their child's school building.

ELIGIBILITY

Section 504 protects students with a "physical or mental impairment" that substantially limits one or more "major life activities." Lots of things can be considered a major life activity, such as seeing, hearing, eating, sleeping, walking, standing, caring for oneself, communicating, performing manual tasks, breathing, thinking, concentrating or learning. Major life activities can also be bodily functions, such as functions of the immune, digestive, or respiratory systems.

Whether the disability "substantially limits" a major life activity depends a lot on what a doctor says about the student's condition. If a student's doctor is completing a form, writing a report, or participating in a 504 meeting to request accommodations for a student, make sure they are clear on how the student's disability impacts their ability to function in school. Some common qualifying disabilities under Section 504 are medical conditions like asthma, diabetes, severe allergies, or mobility issues; mental health diagnoses like depression or anxiety; and learning disabilities like dyslexia or ADHD.

ACCOMMODATIONS

The accommodations or services a student can get will depend on the nature of their diagnosis and disability. These might include getting medication or having one's blood sugar checked during the day; being allowed snacks or scheduled breaks; having extra time on tests, to complete assignments, or to travel between classes; the use of an elevator pass; and participating in gym on a modified basis, or getting adaptive physical education. Students with emotional or behavioral needs might get a modified classroom schedule, behavior intervention plan, or access to a guidance counselor or social worker as needed. Students with learning disabilities often qualify for testing accommodations, and students with various types of disabilities might require assistive technology or a health paraprofessional.

To request 504 accommodations for students in NYC public schools, parents and health care providers need to complete certain forms, depending on the disability and the accommodations being requested. The forms are available on the [DOE website](#). Many of the forms include boxes for the parent, health care provider, or evaluator to complete. It's important to be as detailed as possible when filling out the forms. If there is not enough room in the space provided, feel free to attach additional pages to the request, as well as relevant evaluations or medical reports.

The DOE's 504 forms require the signature of a parent or guardian. The child's school may also request additional information from the child's health care provider, which means that the parent will need to sign a HIPAA release. As long as the student's parent maintains their rights, you will need to work closely with the parent to get their consent and involve them in the 504 process. If the parents' rights have been terminated or surrendered, the agency foster care program or medical Director can request the services and consent to the release of medical information. This differs from the special education process, where the agency can never sign consents, because 504 is considered a medical issue. Students age 18 and over can consent to the release of their own medical records and request their own 504 Plans.

Submit the completed forms and any supporting documents to the school's Section 504 Coordinator. If you can't determine who the 504 Coordinator is, give them to the principal. Request everything in writing and keep copies for yourself. Make sure to get confirmation from the school when they receive the paperwork, such as a fax confirmation sheet, return receipt from your email, or a date-stamped "received" copy if you drop off the papers in person, and follow up with the school in two weeks to ensure they are processing your request.

THE 504 MEETING

Within 30 school days of receiving a request for 504 services, the school must hold a 504 meeting to determine the student's eligibility under 504 and any recommended accommodations. Parents should get notice of this meeting at least 5 days before it takes place. The 504 team must include at least one person familiar with the student, one person who can interpret the evaluations or medical records, and one person familiar with the services available at the school. At least two DOE staff must participate in the meeting, so one person may fill multiple roles. For complicated cases, the Borough/Citywide Health Director for the student's school may need to attend.

With the parent's permission, you can invite additional people to the meeting, such as the student's therapist, psychiatrist, medical provider or evaluator, to explain their recommendations and why the student needs certain accommodations. Team members may participate in person or by phone. The team may review the student's tests, observations, work samples, report cards, and medical records, and participants may bring any information they believe best describes the child's abilities and needs. For students under 18, parents must be invited to the 504 meeting, but they are not required to attend, and schools can proceed in their absence. Given the sensitive nature of the information discussed, however, we would recommend that parents participate whenever possible, at least by phone if they are unable to attend in person.

DUE PROCESS RIGHTS

If the student is approved for 504 services, the parent, youth or agency will receive a Notice of Eligibility, a copy of the student's 504 Plan, and an Annual Notice of Reauthorization, which explains how to get the student's 504 plan renewed for the next school year. If you don't agree with the plan, or if the student is found ineligible for 504, the parent/guardian or youth has 10 days to appeal that decision.

You can appeal by writing a letter to the Health Director that covers the student's school. The Health Director is required to issue a written decision within 15 days. Names and contact information for the Health Directors are available [here](#).

If parents disagree with the Health Director's decision, they have 10 school days to file for an impartial due process hearing. For more information on requesting an impartial hearing, see [Section 2G](#) of this manual. Students, parents, or agencies can also file a complaint with the U.S. Department of Education's [Office for Civil Rights \(OCR\)](#).

NON-DOE SCHOOLS

For students who attend charter schools or go to school outside of New York City, speak to the school or consult the district's website for information on how to request a 504 Plan.

Typically, the parent will need to send a letter to the school or district Committee on Special Education (CSE) that:

- Identifies the student's disability
- Explains the specific accommodations the student needs
- Describes what can happen if the accommodations are not provided
- Includes supporting documentation from the student's doctor or health care provider.

You can submit this letter on behalf of the parent, but you will need their consent to release any medical documentation, and the parent likely will need to sign a HIPAA release so that the medical provider can speak to or share records with the student's school. Depending on the school district, there may be additional forms for the parent to sign. Each district will have its own internal appeals process, but parents in NY state always have the right to request an impartial hearing to challenge a decision under 504, and anyone can file an OCR complaint on behalf of a student, regardless of where the student attends school, as long as the school gets some federal funding.

B. REFERRING STUDENTS FOR SPECIAL EDUCATION SERVICES

Youth in foster care are both over- and under-represented in special education programs. For example, youth may be referred for evaluations due to behavioral challenges that are a response to the trauma they have experienced, and which often improve over time with appropriate mental health supports outside of school. Students may also be behind academically because of limited school attendance prior to entering foster care or frequent school moves, rather than because of a learning disability. On the other hand, some youth with disabilities are never identified as needing special education services, perhaps because they change schools frequently or there are difficulties securing needed consents, or they don't receive appropriate evaluations and therefore are misclassified and recommended for programs that don't meet their needs.

You should refer students for special education evaluations only when their academic performance or behavior indicates that they may have a disability that is impacting their progress in school. Some signs that a student may need special education services include academic difficulties, long-standing behavioral difficulties, school avoidance, or a diagnosed medical or psychiatric condition.

Academically, look for failing or barely passing grades, despite receiving intervention services or tutoring; low scores on standardized tests; results on reading, writing or math assessments that are well below the expected range or remain stagnant; or repeatedly being identified as promotion in doubt. Behaviorally, you may see a history of classroom removals or in-school disciplinary actions that persist over time, frequent calls home to the parent or foster parent, poor reports concerning a student's behavior for several report cards in a row, or multiple suspensions.

Clinical or medical staff at your agency may also recommend that a student be referred for special education services, based on what they find in assessments or observe during appointments with the student. Sometimes, a young person may tell you that they are struggling and need extra help.

Before evaluating a student for special education services, schools must try to address the problem with appropriate interventions. Students whose promotion is in doubt are entitled to academic intervention services (AIS) in the areas where they are struggling. AIS can take many forms, like before-or after-school tutoring, small group instruction in the classroom or through a pull-out, at-risk counseling, at-risk speech, a behavior contract, or other time-limited supports. Students may receive AIS during the school day, before school, or after school. Every school should have a Pupil Personnel or other team to identify which students need extra help, to develop interventions, and to monitor student progress.

You may also hear schools refer to Response to Intervention services (RTI) or Multi-Tiered System of Supports (MTSS), which are forms of AIS. RTI and MTSS are instructional approaches to identify and support students with learning and behavioral needs that begin with universal screening. Students who are struggling get additional small-group, individualized intervention based on their needs, with regular assessments to measure their progress. If the student continues to struggle despite receiving these interventions, or if it becomes apparent that the student will need support for a long period of time, then the school must refer the student for special education evaluations. If the parent believes a child needs special education supports, however, the parent does not need to wait for pre-referral interventions. They have the right to refer their child for an evaluation immediately.

How you proceed will depend on the situation and the needs of the particular student. If the student is just a little behind, or if they have done alright in school until recently, it may make sense to wait and see how the student does with the intervention services. If, however, the student is significantly behind, or if there are existing medical or psychological evaluations that indicate the student will likely need special education supports, then you will probably want to proceed with the special education process. In the meantime, the student should receive AIS and any other recommended services.

HOW TO REFER A STUDENT FOR SPECIAL EDUCATION

Only the parent or a school district designee – usually the principal or the CSE Chairperson – can refer a student for special education evaluations. Other school personnel, a doctor, a judge, or foster care agency staff can request that a student be referred for special education evaluations, but they cannot refer a student directly. Youth age 18 or older can also request that they be referred for evaluations. You can write the referral letter, but it's best for the parent to sign the letter whenever possible, to ensure that the school or CSE accepts the referral. For students in foster care, "parent" means the birth or adoptive parent, as long as they retain their rights. If the parents' rights have been terminated or surrendered, if the parents are deceased, or if their identity is unknown, the foster parent can refer the youth for special education evaluations. More information about parental involvement is included in [Section 2B](#).

STEP 1: WRITE A LETTER REFERRING THE STUDENT FOR SPECIAL EDUCATION EVALUATIONS.

The letter should describe the reason for the referral, including any test results or reports that support the need for special education services, and any intervention services that have been attempted so far. However, if the parent signs the letter, a simple statement that they would like their child to be evaluated for special education services is sufficient. You definitely want to include the student's name, DOB, and student ID number, if you have it; the parent's name and contact information, and the best way to reach them; and your contact information and role. [Template letters are available here](#).

STEP 2: IDENTIFY WHERE THE REFERRAL LETTER SHOULD GO.

If the student attends a DOE school, the referral letter goes to the School Based Support Team (SBST). You can address the letter to the School Psychologist, IEP Coordinator, Assistant Principal for Special Education, or whoever is in charge of special education referrals at the school. If you can't reach anyone to determine the appropriate person, just send the letter to the school principal.

If the student attends a charter, private, or parochial school, send the letter to the CSE that serves the school district where the school is located, and send a copy to the school. Address the letter to the CSE Chairperson. To determine the correct CSE, go to the DOE's website, schools.nyc.gov, and select "[Find a School](#)". Click on it and enter the school's address into the box labeled "School Name or Address." The schools that pop up nearby will indicate the correct school district. Then, go to the [NYC DOE Committees on Special Education page](#) for a [list of CSE locations by school district](#).

If the student is placed in a residential treatment program or is not attending school and has been discharged for a significant length of time, send the letter to the CSE that serves the district where the youth is living, where they most recently resided, or where they will reside upon discharge from the facility. You can identify that CSE by entering the appropriate address into the Find a School feature as described above.

If the student is enrolled in a school district outside New York City, the letter should go to the CSE for the school district where they attend school, or to the CSE where they live, if they are not enrolled in school.

STEP 3: SEND THE LETTER TO THE SCHOOL OR CSE.

However you send the letter, make sure to get proof of receipt. If you mail the letter, send it certified, return receipt requested; if you fax it, save the confirmation sheet; if you email it, ask for a read receipt; and if you bring the letter in person to the school or CSE, make sure to get a date-stamped copy to prove when they received it.

STEP 4: FOLLOW UP.

Call the school or CSE a few days after you send the letter to make sure they received your letter and processed it. In New York City, the DOE must upload the letter into its computer system, called SESIS. According to page 19 of the SOPM, the DOE has 15 business days from the date of the referral to reach out to the parent to schedule the social history meeting. Stay in touch with the parent to make sure they know someone will be calling them and that they understand the purpose of the appointment.

CONSENT

Federal and state law give parents a crucial role to play in the special education process. Once a referral is made, the school district must get informed consent from the parent before evaluating the student. Informed consent means that the district fully explains the special education process to the parent, including their rights under the IDEA, in the parent's preferred language. Consent must be voluntary and in writing, and parents can withdraw their consent to evaluations at any time. After the school district gets written consent from the parent, the evaluation process begins. The parent will need to provide consent again, after the IEP meeting, for the student to receive special education services.

Once the student begins receiving services, the parent can still withdraw their consent to special education and remove their child from special education programming. They would do this in writing by signing a "Notice of Termination" form that states they no longer want their child to receive any special education services. At that point, the student would stop getting all related services, accommodations, and legal protections in disciplinary proceedings, as well as any special education instruction. If the parent disagrees with the services the district is providing to their child, but still feels the student needs services, the parent should pursue a new IEP meeting, mediation, or an impartial hearing, rather than withdrawing consent altogether. Detailed information on these due process rights and procedures is covered in [Section 2G of the manual](#).

SPECIAL EDUCATION DECISION-MAKING FOR STUDENTS IN FOSTER CARE

For youth in care, it sometimes can be challenging to determine who the "parent" is when it comes to special education. It can also be difficult to secure services for students when their parents' involvement is inconsistent, when they have no contact with the agency or youth, or when their whereabouts are unknown. In some circumstances, the law allows others to serve as the special education decision-maker for a student in foster care, when their parents no longer maintain their rights or are otherwise unable to participate in the special education process.

[Section 200.1\(ii\)](#) of the state special education regulations defines parent as:

- A birth or adoptive parent
- A legal guardian
- A person in parental relationship to the youth (such as a relative the youth lives with)
- Someone designated by the parent to make educational decisions for the student or
- A surrogate parent.

The birth or adoptive parent is presumed to be the parent; that is the default situation in the special education context. However, another person can assume the role of special education "parent" for the student if the birth or adoptive parents no longer maintain their rights to make educational decisions for their child. If the birth parents' rights have been terminated or surrendered, the parents are deceased, or their identity is unknown, the youth's foster parent can serve as the parent for special education purposes. A foster parent also can serve as a student's surrogate parent, or the parent might designate the foster parent as the education decision-maker for the student.

The law is very clear that agency staff can never consent to special education evaluations or services for a student in care, even if the student is freed for adoption. The exact language from the regulations is, "a public agency that provides education or care for the student, or a private agency that contracts with a public agency for such purposes, shall not act as the parent." If the young person does not have a parent, foster parent, or legal guardian to serve as their special education parent, then the school district or Family Court judge must assign someone to serve as a surrogate parent for them. Refer to [this chart](#) for more information about who can make special education decisions for students in foster care.

TIPS FOR ENGAGING PARENTS IN EDUCATION DECISION-MAKING

If you are working with a student who needs special education evaluations or services, but the parent is reluctant to consent to services, or you are simply having a hard time reaching them to follow through on each part of the process, there are a number of steps you can take. [The Reasonable Efforts Checklist](#) tool includes lots of tips for involving a parent in education decision-making for their child. The following suggestions may also help you navigate difficult conversations with parents about special education and the special education process.

- If the parent is reluctant to consent to evaluations, ask them why. Make sure you understand the parents' concerns and explore how the agency can address them.
- Make sure the parent understands the information they've received about their child's education, the evaluation process, and possible services. Explain anything that the parent is confused about and emphasize the parent's rights in the process.
- Be mindful that parents may have different ideas about special education based on their own culture and experiences, including possibly their own experience with special education.
- Talk openly with the parent about any misconceptions they may have about special education or any perceived stigma against special education. You may want to share examples of students who did better in school with help from special education services; discuss learning or behavioral challenges as differences, not as disability or inability; or ask the parent about their goals for their child and share how extra services can help the child achieve those goals.
- Ask the parent if they want to discuss their child's academic progress or any reservations about special education with others, such as the school, their child's pediatrician, their attorney or social worker, the child's attorney or social worker, an education advocate, etc.
- Explain to the parent that special education is not forever. Many students make progress and no longer need services. Parents can also withdraw their consent to special education evaluations or services if they choose to do so.
- Let the parent know you are there to support them, attend meetings with them, and help voice their concerns.
- If the parent is concerned about their child attending a special school:
 - Review the special education continuum with the parent. Explain that most students with IEPs get services in general education or inclusion settings.
 - If the youth may need a specialized setting, ask the school to explore less restrictive options first.
 - Emphasize that the child's program will be reviewed every year and can be changed based on their needs and growth.
- If the parent doesn't agree with or trust DOE evaluations, offer to arrange for evaluations at the agency or through an independent provider.
- If the parent wants to wait and see how their child does:
 - Emphasize the importance of intervening early for children who are behind.
 - Stress that they can consent to just evaluations at first, to see how their child is doing; their consent will be required again before services can begin.
 - Suggest that you would like to advocate for at-risk services in the meantime.
 - Set a deadline for following up and pursuing special education evaluations if the child has not made sufficient progress.

For more suggestions for involving parents in educational planning for their children, refer to the Toolkit, [Empowering Parents So Children Succeed](#), especially the reproducible resources included in the Appendix.

DESIGNATIONS

For parents who struggle to keep appointments consistently but are otherwise in agreement with special education, they may want to consider designating someone else to make education decisions for their child on their behalf.

Parents can use this [form](#), or they can write a letter that includes the required information from [Title 15-A of the General Obligations Law](#). The form is good for up to 1 year if it is notarized, and up to 30 days if it's not. Parents who use the designation retain the right to participate in meetings and get information about their child if they wish, while knowing that the process can go forward even if they can't participate, because someone else can sign consents for them.

Designations are also helpful in situations where the parent lives out of the country, out of state or even just far from the child's school, is incarcerated, is participating in a substance abuse or other program, or otherwise cannot attend education meetings or appointments but wants their child to receive services.

SURROGATE PARENTS

A surrogate parent acts in place of the child's parents when they are not available to participate in the special education process. A surrogate parent has the same rights as a parent with respect to special education evaluations, placement and services.

School districts must appoint a surrogate parent whenever a student has no parent to make special education decisions for them, or when the student's birth or adoptive parents cannot be found after the district makes reasonable efforts to locate them. A student in care will also need a surrogate parent if their parents' rights have been terminated, surrendered, or limited and the youth has no foster parent to act as their parent. Finally, school districts also must appoint surrogate parents for unaccompanied homeless youth.

A surrogate parent should not be assigned to a student just because the parent misses a meeting or their phone is turned off for a week. Surrogate parents are only appropriate where the parents' whereabouts are truly unknown

Some examples might be:

- Where you do not have a current address for the parent, they do not visit the agency, and you have no way to reach them via phone or email;
- The parent is living in a different state or country, but besides knowing the particular state or country, you have no further information and no way to contact them;
- The parent has been arrested and incarcerated under a different name, and you can't locate them in any of the state, local, or federal correctional systems.

If the parents retain their rights but you can't find them, the student will need a surrogate parent. This is true whether you are requesting evaluations for the student or the young person already has an IEP and needs a "parent" to represent their interests at their next IEP meeting. As soon as you know a student may need a surrogate parent, write a letter to their school or CSE documenting the request. The school district will need to do their own outreach to the parent, including sending notices to their last known address and attempting to reach them by phone, before they can assign a surrogate parent to the student. You can help the school district by giving them the parent's last known address, email and phone numbers in your letter, including phone numbers for relatives who may have contact with the parent. This outreach is an important part of the process – sometimes a parent who will not get back to the agency will respond to outreach attempts from their child's school.

Typically, if a student's birth or adoptive parents cannot be located, their foster parent will serve as their surrogate parent. The school district can assign the foster parent as the surrogate parent in a meeting with the school or CSE social worker, psychologist, or an administrator. If the youth's foster home placement is unstable and they've been moving frequently between placements, you may want to consider exploring alternative surrogate parents, such as a relative, mentor, community member, CASA, or former foster parent with whom the youth has a close relationship.

The young person may have good ideas for who can serve as their surrogate parent. If they live in a group home or other congregate setting, and their parents no longer maintain their rights or can't be located, the student will definitely need a surrogate parent.

School districts are required to keep a list of people who are available to serve as surrogate parents for students who need them. These people are familiar with the special education process and are expected to speak to the student, review their school records, consult with their teachers or other school staff, and visit any proposed school programs. In most circumstances, however, a stranger surrogate should be a last resort.

A family friend, relative or other trusted adult who is willing to serve as surrogate parent for the student can do so, as long as they are fingerprinted and added to the school district's list. An employee of the school district, ACS, or the youth's foster care agency may not serve as a surrogate parent for the youth.

A school district cannot assign a surrogate parent to a student when the birth parent's whereabouts are known but they are exercising their right not to consent to special education evaluations or services for their child. In exceptional circumstances, the Family Court may limit a parent's right to make education decisions and appoint another person, often the foster parent, as a surrogate parent for the child.

A court order should be a tool of last resort and only pursued when non-special education services cannot address the child's needs. An order may be needed when a parent is unreasonably (as determined by the Court) withholding consent or unwilling to participate in the special education process, or when they are unable to participate due to incapacitation or some other reason.

HOW TO REQUEST A SURROGATE PARENT FOR A STUDENT IN CARE

STEP 1: NOTIFY THE SCHOOL DISTRICT THAT THE STUDENT NEEDS A SURROGATE PARENT

Write a letter to the school or CSE stating that the student needs a surrogate parent and explain why. Include supporting documents, such as redacted court orders, when available. If the birth or adoptive parents' whereabouts are unknown, describe the agency's attempts to contact the parent(s) and provide the parents' last known address, phone numbers, or other contact information. *This letter can be combined with a request for evaluations or an IEP meeting.*

STEP 2: WORK WITH THE SCHOOL DISTRICT TO REACH OUT TO THE PARENT(S)

If the youth is freed and does not have a foster parent who can make special education decisions, proceed to Step 3. If the parents still hold their rights, the school district must make "reasonable efforts" to contact them. The school district must do appropriate outreach, including sending notices to the parents' last known address, attempting to contact the parent by phone, or reaching out to other contacts the district may have in ATS or the student's file.

STEP 3: ENSURE THAT THE SCHOOL DISTRICT ASSIGNS A SURROGATE PARENT FOR THE STUDENT

Once the school district determines that a student needs a surrogate parent, Section 200.5(n)(3) of the state regulations requires them to assign one to the student within 10 business days. School district staff should reach out to the foster care agency or current caregiver(s) to find out if there is someone in the child's life that could serve as the surrogate parent, such as the foster parent, a relative, family friend, or mentor, if no one was suggested in the request letter.

If no potential surrogate is identified, the school or CSE must choose an appropriate person from the surrogate parent list maintained by the district. The school district must ensure that the surrogate parent has no personal or professional conflict with the child and has the skills needed to represent the child.

The school or CSE social worker, psychologist or administrator will meet with the individual to assign them as the student's surrogate parent. In New York City, the DOE will provide the person with a copy of the Surrogate Parent Agreement, which indicates that they will serve as the youth's surrogate parent for at least one IEP cycle.

STEP 4: HELP THE SURROGATE PARENT MAKE SPECIAL EDUCATION DECISIONS FOR THE STUDENT

Whoever the surrogate parent is, agency Coaches and Specialists should work with them to ensure that they have all the relevant information they need to make good decisions for the student. Surrogate parents are required to act in a student's best interests and should take the youth's goals and wishes into account when making decisions. Agency staff should continue to participate in any school conferences or meetings for the student and continue to advocate on the youth's behalf. If things change and someone comes into the young person's life who meets the definition of "parent" under the law – for example, the birth parent reappears and begins planning for their child, or a youth who has been freed moves from a residential facility into a pre-adoptive foster home – then the surrogate parent's services will no longer be needed.

For detailed information about the surrogate parent assignment process in NYC, refer to the [DOE's Guidelines and Procedures for the Assignment of Surrogate Parents](#).

C. EVALUATIONS

After a school district receives consent to evaluate a student, they have 60 calendar days, under Section 200.4(b) (1) of the state regulations, to complete the evaluations. If the youth is found eligible for services, the school district must arrange for placement and services within 60 school days of the parent's consent for evaluations.

School districts are required to identify and evaluate students in all areas of suspected disability under a legal requirement called child find. An initial set of evaluations must include at least a social history, a psycho-educational evaluation, and one classroom observation, and should include other evaluations as needed. Initial evaluations also must include a recent physical, usually done by the child's pediatrician and provided by the parent or agency. Although the DOE has an obligation to refer and evaluate students, it is always a good idea to request a specific evaluation yourself if you feel that a student may need a particular service. For more information about the different types of evaluations for students with disabilities, refer to this [tool](#) on special education evaluations.

THE SOCIAL HISTORY

At the initial social history meeting, the school social worker or psychologist will explain the special education process to the parent, review their due process rights, and ask for the parent's consent to evaluate the student for special education services. *The parent's written consent is required before the process can continue.*

Once the school or CSE gets consent, they will complete the social history by asking a series of questions about the youth's development and medical history, the family's background and composition, the student's educational history, and any concerns the parent has.

The social history is an opportunity for the parent to learn about the special education services that may be available for their child, and for the school district to get information that can help them make appropriate referrals for any additional evaluations the student may need. After the initial social history, the district should conduct a social history update whenever a student is referred for new evaluations, including triennial evaluations.

Because the social history includes information about a youth's early developmental history and family background, as well as information about their current educational performance and functioning in the home, the evaluation will be most comprehensive if multiple people contribute information. While the birth parent can offer information about the young person's developmental history, the foster parent can speak to the youth's current performance.

If the student has not been in their current foster home for very long, an agency staff person, such as the case planner, Coach, or socio-therapist, may be well-positioned to contribute relevant information to the report. The school social worker or psychologist can speak to collateral sources by phone, or in separate meetings; everyone does not need to be in the same room at the same time for their contributions to be included in the social history report.

Sometimes the social history meeting becomes a barrier to a student's receipt of special education evaluations because their parent is struggling to attend the meeting, even when they want their child to get evaluated.

Despite what a school might tell you, there is no legal requirement that a social history take place in person. Parents participate in social history meetings by phone all the time. While an in-person meeting is preferable, especially when seeking informed consent from the parent for the first time it is not required. Schools can conduct the social history over the phone, by Facetime, or video-conference, and fax or email the consent form to the parent for them to sign and send back.

If the parent cannot receive the consent themselves, the school can share the consent form with the agency, who can print it out for the parent and have them sign it at a home or agency visit, and then send it back to the school so the evaluation can proceed.

While foster care agencies should not be informing parents of their due process rights for the school district or asking parents to sign consents before they have been fully informed, agency staff are often well-positioned to help facilitate the process. Agency staff can escort parents to social history meetings, ask the school to schedule the meeting immediately after a regular appointment the parent has, so they can meet the parent and travel with them to the school, or provide car service, if needed. In some cases, where the school is near the foster care agency, we have seen school staff attend family visits and seek consent from parents at the agency. In cases where there is a protective order prohibiting the parent from going to the school, the meeting can take place at the school district office or another DOE location instead.

THE PSYCHO-EDUCATIONAL EVALUATION

Many school districts, including the DOE, combine psychological and academic testing into a psycho-educational evaluation. The cognitive portion of the testing measures the student's intelligence, or IQ, including their ability to reason, use language, process information, and store information in memory. Results can be used to estimate a student's potential to learn and to identify areas of weakness, such as attention, oral and visual perception, or language. Common assessments are the Wechsler Intelligence Scale for Children (WISC-V) and the Stanford-Binet.

Psychological testing sometimes includes measures of social-emotional functioning, such as the Thematic Apperception Test (TAT) or Sentence Completion Test, and may include behavior scales, such as the Conners CBRS or the Behavior Assessment System for Children (BASC). The Conners is often used to assess students for ADHD, while the BASC can identify a range of internalizing and externalizing behaviors and adaptive skills, at home and in school. *School districts may also screen students for autism using measures like the Gilliam Autism Rating Scale (GARS) or Childhood Autism Rating Scale (CARS), but the DOE rarely conducts the gold standard of autism assessments, the Autism Diagnostic Observation Schedule, or ADOS.*

In a psycho-educational evaluation, the academic achievement testing measures the student's current academic levels in areas such as reading, writing, math and listening comprehension. Common tests include the Wechsler Individual Achievement Test (WIAT-4) and Woodcock Johnson Tests of Achievement (WJ-IV). Students receive standard scores on the tests, which determine where they fall in comparison to other students, and can be used to calculate a grade or age equivalency.

When a school district conducts psychological and academic testing, it compares the results to identify discrepancies between a student's cognitive scores and their academic levels, which may indicate a disability. *For example, a student with average cognitive potential but below average academic scores may have a learning disability, or some other disability that is impeding their ability to learn. Similarly, large differences between index scores on cognitive measures, or scatter within specific subtests, can also indicate a learning disability.*

Students with learning disabilities, students whose native language is not English, and students with limited exposure to school often have lower IQ scores, and results should be interpreted carefully. Depression or anxiety can also decrease a student's scores, especially on measures where there is a time limit. If the student becomes emotionally dysregulated during testing, they aren't paying attention, or they aren't trying their hardest, these factors can also result in lower scores, meaning the test isn't a true measure of the student's ability. Cognitive testing administered immediately before or during an acute psychiatric hospitalization, or right after a traumatic experience, is often unreliable and should be viewed with extreme caution.

When there are concerns that a student may have an intellectual disability, it's especially important that the school, CSE, or other evaluator complete adaptive testing, in addition to psycho-educational testing, for the student. A student cannot be diagnosed or classified with an intellectual disability unless they have significant delays in their cognitive and adaptive abilities. In other words, the student must score in the extremely low range on IQ testing (usually below a 70), and in the extremely low range on adaptive scales, which look at a person's social, communication, self-care, community, and daily living skills.

Common adaptive tests are the Vineland and the ABAS-3. Adaptive scales should be completed by the student's caregiver, teacher, or another adult that knows the student well. Since foster parents and teachers are not always the most reliable reporters, especially if they have not known the youth for long, it's really important that both forms are completed so that the IEP team can come to an accurate classification for the student.

It is not uncommon for youth in care to be inappropriately placed in special education programs for lower-functioning students, because of artificially low scores on a psycho-educational evaluation, due to behavioral challenges or other environmental factors. At the same time, we see students struggling in local schools who need a specialized setting because of an intellectual disability but are misclassified because they never got the comprehensive, appropriate assessment they needed. If you're concerned a student is not in the right setting, ask for updated evaluations and make sure the psychologist completes the full battery of testing, along with adaptive measures, if there is a chance the student may have an intellectual disability.

FUNCTIONAL BEHAVIORAL ASSESSMENTS (FBAS)

State regulations also require school districts to conduct a Functional Behavioral Assessment (FBA) for children whose behavior makes it harder for them or their classmates to learn, as part of an initial assessment or whenever their behavior makes it necessary. An FBA describes the factors that affect a student's behavior in the classroom and helps the school create a Behavior Intervention Plan (BIP), to prevent and address behavioral issues. For more information on FBAs and BIPs, refer to [Section F](#) of the manual.

RE-EVALUATIONS

Every student with an IEP must be re-evaluated every three years, unless their parent agrees in writing that testing is not necessary. This is called a triennial evaluation. It is almost always a bad idea to skip the triennial. Students can change a lot in three years, and evaluations offer an objective look at how the student is doing. Parents should be advised against waiving testing unless they truly believe that additional evaluations are unnecessary.

If you think a student needs new evaluations, however, you don't need to wait three years to get them; a parent or school district can refer a student for new evaluations at any time. The district must do the evaluations, upon request, unless the student has already been evaluated within the last year.

New evaluations should be requested whenever the student is not making adequate progress, when the current program is not sufficiently supportive, or when the student has progressed to the point where a less restrictive program may be needed. Re-evaluations should include, at a minimum, a psycho-educational evaluation and a social history update, but if you believe the student needs updated speech, OT, or other evaluations, request those as well.

Just as with an initial request for evaluations, it's best if the parent sign the request, because that makes it a "referral" for re-evaluations and the school district will have to accept the referral.

As with all special education advocacy, agency staff should include parents in the process whenever possible and empower them to participate in meetings and advocate for their child.

If you are having trouble reaching the parent, you can request that the student be referred for a re-evaluation, and the school or CSE will review the request and determine if it is appropriate to re-open the case. *Because the parent has already consented to special education evaluations for the student, their consent is not required for re-evaluations; however, the school or CSE must seek their consent before proceeding with the evaluations, and cannot proceed if the parent refuses.*

They can proceed if the parent does not respond. Page 91 of the [DOE's SOPM](#) lays out the procedures for reaching out to parents when seeking consent for a re-evaluation and states, "If outreach to obtain consent was conducted and documented and the parent failed to respond, the IEP team may proceed with assessments without parental consent." Remember, if the parents' whereabouts are unknown, you should also ask that a surrogate parent be appointed for the student.

As with initial evaluations, the school or CSE has 60 calendar days to complete re-evaluations under the state regulations. The school district has 60 school days from the date the student's case was referred for re-evaluation (not from the date of consent) to complete the evaluations, hold the IEP meeting, and arrange for placement and services. While schools and CSEs are not required to complete re-evaluations more quickly, in urgent situations they can and do, so don't be afraid to advocate with the school or CSE to move the process along as quickly as possible. Sometimes, if the agency can supply the IEP team with an appropriately redacted psychological evaluation or other reports, that can help to speed up the process.

PRIVATE V. INDEPENDENT EVALUATIONS

School district evaluations typically do not assess a student's mental health needs or diagnose a child with a specific condition, such as ADHD or dyslexia. An outside evaluation is usually necessary for a specific diagnosis, and may be paid for through a student's Medicaid. Some clinics or hospitals also offer evaluations on a sliding scale fee, based on family income.

Agency psychiatric and psychological evaluations may be helpful in establishing eligibility for special education services, and are often required if the youth's treating psychiatrist or therapist is recommending a day treatment program or other therapeutic school environment for the student. If the youth needs specialized testing to assess them for a specific learning disability, such as a neuropsychological evaluation, you may need to refer them to a hospital or learning disabilities clinic, or request an Independent Education Evaluation (IEE) from the school district. Schools are required to consider any private or independent evaluations disclosed to them, although they don't necessarily have to agree with the recommendations and may conduct their own testing. Sometimes, the DOE will accept a private evaluation instead of doing their own assessment.

Independent evaluations differ from private, or outside, evaluations because they are paid for by the school district, and the school has a right to the results. Private evaluations are arranged for and paid by the parent, the student's insurance, or some other means. As such, they do not have to be shared with the DOE, which is helpful if you don't agree with the results.

A parent can request an IEE at district expense if they disagree with the district's evaluations or feel they are not sufficiently comprehensive.

The district then has two choices:

1. It can disagree with the parent and file an impartial hearing against them to prove that its own evaluations are appropriate; or
2. It can pay for the independent evaluation. In NYC, the DOE will issue a voucher called an assessment authorization form, which allows the parent to find a private, licensed provider at a DOE-approved rate.

If the school or CSE fails to respond to a request for an IEE within a reasonable period of time, contact the Supervising Psychologist or Administrator for Special Education at the Superintendent's Office for the student's school district, or the CSE Chairperson for students in charter or nonpublic schools.

If you can't reach them, email specialeducation@schools.nyc.gov. Feel free to reach out to Project Achieve for help and copy us on your email.

D. THE IEP MEETING

Once a student's evaluations are completed, the school or CSE will hold a meeting to decide if the student is eligible for special education services and, if they are eligible, to develop an Individualized Education Program (IEP) for them. In New York State, there are 13 possible classifications of disability, listed below. In order for a student to qualify for special education services, the student's disability must "adversely affect" their school performance. A classification is not the same thing as a medical diagnosis. In some states, a student can have multiple classifications, but in New York, only one can be assigned as the primary classification on the IEP. Regardless of the classification, the services the student receives should be individually tailored to meet their needs and not based on youth's classification.

The 13 classifications of disability are:

- Deaf-Blindness
- Hearing Impairment
- Deafness
- Visual Impairment, including Blindness
- Autism
- Intellectual Disability
- Orthopedic Impairment
- Speech or Language Impairment
- Emotional Disability
- Learning Disability
- Traumatic Brain Injury
- Multiple Disabilities
- Other Health Impairment

Definitions for each of the classifications are listed in Section 200.1(zz) of the [NYS regulations](#).

A student's IEP is an important legal document that outlines the student's educational needs and the special education services they are entitled to receive. Once a student is found eligible for special education services, the IEP team will update the student's IEP every year at a meeting called an annual review.

Under the law, an IEP must include:

- The student's present levels of educational and social/emotional performance;
- Measurable annual goals;
- Recommended classroom programs and related services;
- Participation in testing, testing accommodations, and classroom modifications;
- Promotional criteria; and
- For students 15 and older, transition services to prepare the student for life after high school.

MEETING PARTICIPANTS

Parents are legally mandated members of the IEP team. They must have the opportunity to participate equally in the decision-making with other team members. Other required team members include:

The student's special education teacher or provider. If the student receives SETSS, this should be their SETSS teacher; if they are in ICT classes, the special education teacher from their class must participate; and if they are in self-contained classes, their special education teacher must participate. *If the student has multiple special education teachers (i.e., they have one ICT teacher for math/science and a different ICT teacher for ELA and history), only one teacher must attend the meeting, but the student's other teachers should provide written reports on how the student is doing.*

If the student only gets related services (such as occupational and physical therapy), then one of those providers must attend instead. Again, while both providers are not required to attend the meeting, they should provide written reports before the meeting if they cannot participate in person. If this is the student's first IEP meeting, someone who could provide special education services to the student must participate. At the school level, this is usually the IEP teacher or the school SETSS provider.

A general education teacher, if the student is, or may be, participating in a general education class for all or part of the day. If the student is in a general education or ICT setting for part of the day, then at least one of their general education teachers who can speak to the student's academic performance in a general education class should participate. *This should not be their gym teacher or a lunch monitor.*

The student, when appropriate. When transition services are being discussed, the school or CSE must invite youth age 14 and older to participate in the IEP meeting. Younger students may also participate in at least part of their IEP meeting, when appropriate. *For more information on transition services, see [Section 2E](#) of the manual.*

The school psychologist, or a DOE staff member who can explain the results of any new evaluations. They must participate in all initial IEP meetings and meetings following re-evaluations and triennials. The school psychologist also must participate if the team is recommending a more restrictive setting.

A district representative who is qualified to supervise special education and is familiar with the educational resources available in the district. Another team member who meets these qualifications (such as the school psychologist, social worker, or an IEP teacher) could fill this and another role on the team. *The district representative usually facilitates the meeting.*

An interpreter, if the parent needs one.

Additional team members may include:

- The student's related service providers, including school counselors;
- A school physician, *parent must request their attendance in writing at least 3 days before meeting;*
- The school social worker;
- Anyone with "special expertise or knowledge of the student," such as the case planner, Education Specialist, or Coach; the youth's tutor; a therapist or other mental health provider; an outside evaluator who has assessed the student; an advocate; a representative from an outside agency, like ACCES-VR, OPWDD, or a supportive housing program; or the foster parent (*assuming they are not the student's education decision-maker, in which case, they are a required team member*).

The school district may ask the parent to go forward with the IEP meeting without a required team member as long as the parent gets notice before the meeting, you receive a written report from the team member who is not present, and the parent gives permission to go ahead with the meeting. The parent has the right to reschedule for a time when everyone can participate. Whether or not you reschedule can depend on a lot of factors, including how important that team member is to the ultimate decision, how urgently you want to go ahead with the meeting, and any challenges you may experience ensuring the parent's participation if you do not go forward with the meeting.

It's incredibly important for the parent, foster parent, and agency staff to participate in the student's IEP meeting. During this meeting, the team will review important information about the student's educational needs, progress, and mandated services.

IEP meetings offer a wonderful opportunity, when everyone is gathered in the same room, to ask questions about how the student is doing and what services the school is providing. IEP meetings can be empowering for parents and provide a forum for them to be involved in their child's education. If there are concerns about a student's performance, the parent can request additional assessments, in writing, at the meeting, or the team can set strict timelines for monitoring the student's progress.

When agency staff do not attend these meetings and do not ensure that parents attend, schools often conduct pro forma meetings that consist of short phone calls with foster parents, who may not understand that they are participating in an IEP meeting at all. Coaches and Specialists must gather copies of IEPs for all students on their caseload anyway; one tip is to note the dates when annual reviews are due, so they can reach out to schools proactively and get adequate notice of meetings.

Agencies often ask if schools can conduct IEP meetings if a parent is not present. Schools are required to conduct outreach to parents, including at least two attempts to reach the parent by phone and in writing (usually by US mail or email and a letter back-packed home). If the parent does not respond to outreach, the school can hold the meeting without the parent and is obligated to make a recommendation they believe is appropriate.

Education Specialists and Coaches can help facilitate contact between the parent and the school by making sure the school has the correct phone number, email address, and mailing address on file for the parent; by inviting the parent to the meeting and sharing copies of meeting notices with the parent; and by offering to escort parents to meetings or provide transportation when necessary. Parents can participate in IEP meetings by phone if they have competing work or other commitments (such as a drug treatment or employment programs), or if traveling to the school is difficult.

You should also feel comfortable asking the school to reschedule the meeting so that the parent, student, or important agency staff can participate. The law is clear that school districts need to prioritize parent involvement in meetings over other considerations, like strict compliance with deadlines. If postponing the meeting for a week means that the school will be a few days out of compliance with the IEP, that's okay; it's more important that the parent can be there and has the support they need to fully participate in the process.

Because foster care agencies can access school information and education records without the parent's consent, case planners, Specialists, and anyone else with access to the student's case plan does not need consent from the parent to participate in an IEP meeting. Agencies may need consent to release medical information or other relevant documents to the school.

While foster parents should be encouraged to attend IEP meetings whenever possible, since they have important information to contribute, if the birth parent maintains their rights and objects to the foster parent's presence, then the foster parent cannot attend.

The same goes for other outside providers who may have important information to contribute to the meeting, such as therapists or a tutor; the parent would need to give permission (verbal consent is fine) before they can participate.

PREPARING FOR AN IEP MEETING

The following suggestions can help you prepare to advocate effectively for students at their IEP meeting. Education Specialists, Coaches, and other agency staff may also want to consult this [checklist](#) before meetings and bring it with them to students' IEP meetings.

READ THE STUDENT'S REPORTS AND EVALUATIONS.

According to [page 43 of the SOPM](#), parents are entitled to a copy of any new evaluations or teacher/provider reports seven days before the IEP meeting. While the reports are often not ready a full week in advance, you should be able to get them at least a couple of days before the meeting. Agency staff should request copies and review them with the parent, and student, if appropriate. If you cannot get evaluations before the meeting and the parent agrees, ask the school to reschedule. If you are sharing any agency evaluations with the school, review those with the parent and provide those in advance, too.

Things to note include:

- The nature of the student's disability and how it affects them in school.
- Whether the evaluations accurately portray the student.
- The student's specific performance levels in reading, writing, and math, their communication, motor, and developmental skills, and any behavioral or social-emotional challenges
- The student's strengths, weaknesses, and interests. What accommodations or techniques does the teacher use? Do they seem to be working?
- Any specific recommendations from the student's teachers, evaluators, or other service providers. DOE evaluations often do not include specific recommendations, but outside evaluations usually do, and teacher or provider reports may as well.

For students who already receive special education services, try to determine how much progress, if any, they have made since the last IEP meeting or the last evaluation. Compare test results, scores on teacher assessments, and reported functioning levels in reading and math. Have they met the goals in the previous year's IEP? If you cannot see documented progress, the student may need a different setting or additional services. If the student's evaluations are more than 3 years old or will be soon, you will also want to request new evaluations.

For parents who do not speak or read English, it is particularly important to review the results of the evaluations with them before the meeting, as the DOE will not provide them with translated copies of the evaluations ahead of time, and it may be difficult for them to follow along with the school psychologist's oral translation of the reports during the meeting.

KNOW THE CONTINUUM OF SPECIAL EDUCATION SERVICES.

Special education services exist on a continuum from the least restrictive to the most restrictive environment. Students can receive services in their neighborhood school, specialized programs, or specialized public or private school settings. Students can receive a combination of classroom programs and related services. Before the meeting, consider if the youth's current classroom setting is appropriate. Do their needs vary depending on the class or subject? Some students need smaller settings for academic subjects, but can do well in a general education setting for electives. Other students might just need additional support in one subject, like math. Does the student need a more specialized setting overall, or have they made sufficient progress that they can transition into a less restrictive setting? For more information on the full continuum of services, refer to [Section 2E](#) of this manual.

PREPARE YOURSELF, THE PARENT AND THE STUDENT TO BE ACTIVE MEMBERS OF THE TEAM.

Talk to the student and parent before the meeting about what program, services and accommodations the student needs to be successful. *Ask the student what their teachers do in class to help them learn. What do they think helps them the most? What doesn't work, and what skills do they want to work on in the coming year?* If the youth is 14 or over, be sure to prepare them to discuss their career and post-secondary goals, including any activities they may want to try related to job skills, college or career exploration, or independent living, like financial literacy or travel training.

You may also want to talk to the school to get a sense of their position and to let them know what you and the family are considering. You, the parent and the student should be equal participants with other team members. Neither you nor the parent should be asked to attend only a portion of the meeting or agree to an already completed IEP. Make sure to take notes about who attended the meeting, what they said, and what the agreed upon recommendations were.

If the parent will need an interpreter, request one from the school before the meeting. You should not be asked to interpret for the parent; the district is obligated to provide interpretation services. They are also required to provide a translated copy of the IEP to the parent upon request.² This can take a month or more, so be sure to follow up with the school until the parent receives it.

COME WITH RECEIPTS.

If you and the family are looking to make changes to a student's IEP, make sure to come to the meeting with facts to back up your request. For example, if you are advocating for a change in classroom setting, you typically will need current evaluations that demonstrate why the change is needed, especially if you are looking for a more restrictive setting.

² According to page 44 of the [SOPM](#), the DOE must provide the parent with a translated copy of their child's IEP upon request. They have 30 days from the date of the request or the date the IEP is finalized, whichever is later.

If you are seeking a day treatment or nonpublic school for a student with significant psychiatric or social-emotional needs, you will need a current psychiatric evaluation (within six months) that recommends a therapeutic setting, or at the very least, an older evaluation with a recent letter from the treating psychiatrist updating the student's status and recommending the change in program. If you are seeking a nonpublic school for other reasons, such as a learning or developmental disability, you will need comprehensive psycho-educational evaluations at the very least. A neuropsychological evaluation or a recommendation letter from the student's treating clinician or agency psychological can be very helpful.

If you are seeking additional services for a student, such as more OT or individual speech therapy instead of group, make sure your request is supported by the related service provider's report. If you are advocating to add SETSS to the student's IEP, be prepared to show that the student is not making the academic progress they need to, based on Regents or standardized test scores, teacher's reports or assessments, or grades on their report card (that are not because of poor attendance or the refusal to do work). Similarly, if you and the family are advocating for a less restrictive setting, you should be able to show that the student can be successful with less supports, based on their grades, test scores, or improved behavior, and not just by arguing it.

INVITE OTHERS TO BE PART OF THE IEP TEAM.

With the parent's permission, invite outside service providers, such as tutors, therapists, respite workers, or anyone else with relevant information to participate in the meeting, either in person or by phone. The IEP team must consider all the information they receive, including the results of private evaluations or reports, as discussed above.

If the student's program recommendation changes, the team must discuss placement options and note any preferences the parent or team has concerning possible school placements. For older students, the team also must discuss the student's diploma path and transition plan for when the student leaves school, including services the school will provide to help the student meet their transition goals. This is an opportunity to invite or bring information from the agency's Employment or College Specialist to the meeting, as well as providers from other agencies who are helping with transition planning for the student.

AFTER THE IEP MEETING

When the IEP meeting is over, make sure all the participants sign the attendance sheet. Signing the attendance sheet does not mean that you agree with the IEP or with everything that was said during the meeting; it simply means that you were present. Get a copy of the attendance sheet for your records. Take a picture with your phone if you have to.

You also want to make sure to get a copy of the draft IEP. In New York City, IEPs are created using a computer system called SESIS. A student's IEP typically is not finalized until after the meeting, once school staff enter information discussed at the meeting into the electronic document. Parents are entitled to a draft of the recommended programs and services page at the end of the meeting. Bring a print-out of [page 44](#) of the DOE's [SOPM](#) with you to meetings, which explicitly states this right. This page also includes the parent's right to request a copy of the IEP translated into their preferred language.

Since you likely won't get a full copy that day, follow up to make sure you and the parent get a copy of the finalized IEP. Schools typically mail it to the parent (or give it to the student to give to their foster parent).

You can ask the District Representative, who usually leads the meeting, to email or fax the IEP to you and/or the parent, mail it to the parent, or you can share a copy with the parent if their mail is unreliable. Follow up with the school or CSE after one week, and then every week thereafter, if you don't get it. If this is the student's first IEP, the parent will also need to get and sign a consent for initial provision of services.

Sometimes schools will give this form to the parent at the meeting; in other cases, they will send it to the parent in the mail, along with a Prior Written Notice and the finalized IEP.

When you receive the finalized IEP, review it to make sure all the information is accurate and reflects what was said during the meeting. Sometimes staff make mistakes, which can be fixed easily enough, and sometimes they purposefully change the recommendation after a meeting, which will require more intensive advocacy on your part to resolve.

Every year at the IEP meeting, the student's special education program and placement recommendation should be reviewed. Most students with IEPs will remain in their current school and receive any recommended services or accommodations there. Parents and students should observe a proposed classroom before accepting a change in program. Once the parent agrees to a program change, always follow up to make sure the student is placed in the correct classroom and receiving all their mandated services. Ask to speak to any new teachers or related service providers, such as counselors or paraprofessionals, to introduce yourself, get their contact information, and help ensure a smooth transition for the youth.

An IEP is a legal document, and students are entitled to receive all the related services on their IEP. If the DOE cannot provide all the speech therapy, occupational therapy, physical therapy or counseling services recommended for a student in New York City, the school or CSE needs to give the parent a Related Services Authorization, or RSA. An RSA is a voucher that allows the student to get services outside of school at DOE expense. A similar voucher, called a P-4 letter, allows students to get services out of school if the DOE cannot provide a student with their mandated Special Education Teacher Support Services (SETSS).

Along with their RSA or P-4 letter, parents should get a giant packet with names and contact information for therapists and teachers who are certified to provide related services or SETSS to students at the DOE rate. Despite the long list, providers fill up quickly, and it can be difficult to find someone, especially during the middle of the school year. Reach out to as many of the providers on the list as possible via email to get their availability and help facilitate an initial meeting with the student or parent. Some providers will go to the student's home, others will meet in a community location like a public library or the foster care agency, and others will ask the student to come to their office

or clinic for services. The DOE will reimburse the parent for any travel expenses; a form is included in the packet. If you need help getting an RSA or P-4 letter and the school or CSE is not being responsive, email relatedservices@schools.nyc.gov.

Sometimes, students will be recommended for specialized programs in a different community school, such as programs for children with Intellectual Disabilities or Autism Spectrum Disorder (ASD), or they will be recommended for a specialized school, called a District 75 school. In that case, the parent should receive a placement offer, called a School Location Letter, in the mail. There is a separate process, which will be described in greater detail below, for students recommended for a nonpublic school.

Parents always have the right to visit the proposed placement and should do so before accepting it. Whenever possible, someone from the agency should visit the school with the family. This [tool](#) has a list of questions to consider when visiting a potential special education placement. While all the questions may not be relevant for your youth, it can help you and the family make a comprehensive assessment of whether the school is the right fit for the student. If it's not the right fit, it will also help you explain to the DOE why it's not right, and what the student needs instead.

If the student was recommended for a District 75 program and does not receive a School Location Letter, contact the District 75 Placement Officer for the borough where the student lives or attends school. If they were recommended for an ASD or ACES program and did not receive a school placement, contact the person from the DOE's Specialized Programs Office who oversees the relevant program. If the student is awaiting a bilingual special education class or a bilingual alternate placement paraprofessional, email BSEprograms@schools.nyc.gov. You can find contact information for all these offices in the special education section of this [tool](#) on Education Escalations in NYC.

A parent may accept or reject the proposed placement. If they want to reject the placement and explore other schools, contact the person who issued the School Location Letter to see what other school options are available. There may be another school that is a better fit for the student.

If there are no other schools available, or if the program itself is inappropriate for the student, you will need to consider other options, including requesting or providing the DOE with additional evaluations, requesting a new IEP meeting, pursuing mediation, or requesting an impartial due process hearing. More information on parents' due process rights is included in [Section 2G](#) of this manual.

If the parent accepts the placement, they should receive an Authorization to Attend (A-1) letter in the mail or from the student's current school. The parent or foster parent should bring this letter to the new school when they enroll the student, along with an in-care letter from the agency, immunizations, and a copy of the student's current IEP.

If the student receives special education transportation, the new school should provide the parent or foster parent with information about the student's bus route. If you are having trouble getting busing information from the school, you can reach out to the appropriate [Transportation Liaison](#).

TIMELINES FOR SPECIAL EDUCATION PLACEMENTS

If a student is receiving special education services for the first time, the school district must arrange for placement and services within 60 school days from the parent's consent to evaluations. If the student already had an IEP, the school district has 60 school days from the referral for re-evaluations to complete testing, hold the IEP meeting, and provide the student with their new placement and services.

If a student in NYC is recommended for a self-contained class (i.e., a 12:1, 12:1+1, 8:1+1, or 6:1+1 setting), and the DOE does not offer the student placement within the appropriate time frame, the student is entitled to a P-1 letter, also called a Nickerson letter. A P-1 letter allows the parent to place their child in a state-approved nonpublic school at public expense, if they can find an appropriate school that accepts the student. For more information on state-approved nonpublic schools, refer to [Section 2E of this manual](#).

If the student is recommended for an Integrated Co-Teaching (ICT) class and does not receive placement within the appropriate timeframe, the relief depends on where the student is moving from. If they are moving from a more restrictive setting, like a 12:1:1 class, then they can remain in that setting until an ICT class becomes available. If the student is moving from a general education setting, they are entitled to two periods of SETSS per day until an ICT becomes available, or a P-4 letter if the school cannot provide the required SETSS.

DEFERRED PLACEMENT

The DOE may ask to postpone, or defer, the placement until a later date. This usually occurs when the IEP meeting takes place in late spring, and the deferral is until September. Although it often makes sense for a student to stay in their current school or class until the end of the school year, you may want to ask to see the proposed placement right away, as it can be very difficult to visit a proposed fall placement in August, and the DOE may not send out School Location Letter until then. If the parent consents to defer placement over the summer, the DOE must offer the student a school placement by August 15th. If they do not, the student is entitled to a P-1 letter.

If the student's IEP recommends a 12-month program, the DOE must offer a school placement before the start of the school year, which begins on July 1st for a 12-month program, with sufficient time for the parent to visit and for transportation to be set up, typically by mid-June.

DECLASSIFICATION

Some students get special education services for as long as they are in school, while others only need the support for a short period of time. There are two ways a student can stop receiving special education services: an IEP team can decide that they are no longer eligible for services, or the student's parent can withdraw their consent to special education services.

Declassification happens when an IEP team decides that a student no longer needs special education services. Before declassifying a student, the school or CSE must conduct new evaluations and hold an IEP meeting with the full team, including the parent. If the team decides that the student no longer needs special education services, it must provide any services needed to help the youth transition back into a general education setting. These services can include support for the student's teachers, instructional modifications, or related services like speech or counseling, and can last for up to one year.

A student who is declassified can still get testing accommodations if they are included on the declassification IEP notice. A student who was declassified in grades 8-12 is also eligible for the safety net, as long as their last IEP specifies safety-net eligibility. The safety net allows students to get lower scores on their Regents exams and graduate with a Local Diploma. There is no harm in making a student eligible for the safety net upon declassification – if the student earns scores of 65 or above on their Regents exams, they will graduate with a Regents Diploma, notwithstanding their safety net eligibility. In most situations, Specialists and Coaches should advocate for safety-net eligibility for students declassified in 8th grade or high school, just in case. It's also recommended to request continued testing accommodations, if there is any chance that the student may need them. For more information on the safety net and high school graduation pathways in New York State generally, refer to the High School Planning and Graduation tools on the [Fair Futures website](#).

Even if the student no longer needs special education services, they may still qualify for accommodations under a 504 Plan. For more information on Section 504, refer to [Section 2A of this manual](#).

E. THE CONTINUUM OF SPECIAL EDUCATION SERVICES

All school districts should offer a continuum of special education programs that serve students with a variety of cognitive and social-emotional abilities, skills, and needs. This ranges from services and instructional supports designed to help a student remain in general education classes (least restrictive) to self-contained settings (more restrictive) and specialized schools. The list below is based on the programs available to students in New York City. School districts outside of the City should offer a similar range of options, although programs may have different names or require students to be placed in a neighboring school district. Keep in mind that the school district may offer a combination of services or programs listed below. Any recommended programs or services will be listed on the student's IEP.

SPECIAL EDUCATION SUPPORTS AND SERVICES

Students in any classroom setting or combination of classroom settings can receive the following special education supports and services:

ASSISTIVE TECHNOLOGY (AT)

Assistive Technology (AT) is equipment, devices, and services that help students with disabilities participate in school and access the curriculum. AT can also include training for parents, school personnel, and students on how to use a device. Some common examples of AT are laptops and iPads with specialized software, adaptive keyboards, technology for students who are blind or have low vision, or Alternative Augmentative Communication (AAC) devices for students who have trouble communicating using speech.

If you are working with a student with a learning disability, communication delay, or physical disability who you think might benefit from AT, you can request an assistive technology evaluation. For more information, see Advocates for Children's [Guide to Assistive Technology](#).

RELATED SERVICES

These include speech and language therapy, occupational therapy (OT), physical therapy (PT), counseling, hearing and vision services, orientation and mobility services, school health services, and transportation. Students can receive related services individually or in a group. Schools can provide related services using a push-in model (where the student gets the service in the classroom), a pull-out model (where the student works with the therapist or teacher outside of the classroom), or a combination of both. The method of delivery should be based on the student's needs and will be specified on their IEP.

SUPPLEMENTARY AIDS AND SERVICES

These include Special Education Teacher Support Services (SETSS), formerly known as resource room, consultant teacher services, and one-to-one paraprofessionals. SETSS is specially designed instruction provided by a special education teacher so that students with disabilities can access the general education curriculum. As with related services, the special education teacher may push into the classroom to work with students or provide SETSS in a separate location using a pull-out model. Schools may provide SETSS directly to the student or indirectly, where the special education teacher works with the general education teacher to adapt instruction and the learning environment to meet a child's needs.

Students can receive SETSS for as few as 3 hours per week (about 4 periods) to as much as half of their program (about 15 periods per week), individually or in a group of up to 8 students, for support in ELA, math, or other subjects. Although schools sometimes push back on this, students can get SETSS in combination with other programs, such as Integrated Co-Teaching or self-contained classes. Individual or small-group SETSS (no more than 3 or 4 students) can be especially helpful to students who are in special education programs for part of the day and have intensive remediation needs. You can also advocate for students to receive SETSS after school through a P-4 letter.

IEP teams assign paraprofessionals to meet student's individual management needs. Students can receive a para to help manage their behavior, for health concerns (for example, if the student has a medical condition like a seizure disorder, or a physical disability that limits the student's adaptive skills), or for interpretation services, if the student requires a bilingual special education class but none is available in their native language. These one-to-one paraprofessionals are different from paraprofessionals that are assigned to an entire classroom. As with other services, school districts can recommend a para for part of the day, or use "group" paras that are shared between 2-4 students, depending on the students' individualized needs.

TESTING ACCOMMODATIONS

There are many possible accommodations for students with disabilities, but some common ones include extra time, questions and directions read aloud, testing in a separate location, scheduled breaks, or the use of a calculator or assistive technology when testing. Depending on the student's IEP, they can receive testing accommodations just on state exams, on state and classroom tests, on all tests over 30 minutes, or on all state exams, classroom tests and quizzes. More information on testing accommodations, including a complete list of accommodations for different student characteristics, is available on the state [Education Department's website](#).

TRANSITION SERVICES

Transition services are designed to help students prepare for life after high school. In New York state, students with special education needs must have transition services on their IEP by the time they turn 15. Transition services should be based on what the youth wants to do after high school and describe what the school will do to help youth reach their goals.

Transition services can include:

- Internships
- Volunteer opportunities
- Tutoring
- Afterschool activities
- Exploring different types of housing
- College advising and help applying for financial aid
- Help applying to vocational programs for after high school
- Help getting a driver's license or state ID
- Learning to use money, financial literacy and budgeting
- Travel training

Once a student with an IEP turns 12, the school district must conduct a Level 1 Vocational Assessment, which includes interviews with the student, parent and teacher to ascertain the youth's skills and interests. The assessment should then inform the transition plan. You can request a Level 2 Vocational Assessment for a more detailed evaluation of the youth's skills.

For more information about transition services, refer to this [Guide to Transition Services and College Planning: Helping Students with Disabilities Move from School to Adulthood](#).

MODIFIED PROMOTION CRITERIA AND ALTERNATE ASSESSMENT

If a student has modified promotion criteria on their IEP, it means that the school will hold them to a lower standard when deciding whether the student should be promoted to the next grade. Students may be held to a percentage of grade level standards, such as 75% of ELA standards for their grade, or they may be expected to meet the annual goals on their IEP. There are no modified promotion criteria for high school; instead, students must pass the required classes and earn a certain number of credits each year to move from grade to grade. For students with low promotion standards in elementary and middle school, the transition to high school can be especially challenging.

Students who are alternately assessed based on their IEP are exempt from the promotional criteria entirely. These students are assessed using functional measures, rather than state exams. The DOE frequently uses a test called the SANDI to measure progress in alternately assessed students. If a student is alternately assessed, they cannot graduate with a Regents or Local diploma. Instead, they will leave school with something called a Skills and Achievement Commencement Credential, or SACC. Alternate assessment status is only appropriate for students with a severe cognitive disability and significant deficits in communication and adaptive skills, who require a highly specialized education program with assistive technology, personal care or health services, or behavioral interventions. Academic or cognitive delays on their own are not sufficient for a student to qualify for alternate assessment. This distinction is really important for agency staff and families to understand, particularly once a student enters high school, because students who are alternately assessed will not have the opportunity to access Regents-level courses or ultimately earn a high school diploma. Before a school recommends a student for alternate assessment, make sure it is truly appropriate for the student.

SPECIAL EDUCATION PROGRAMS

GENERAL EDUCATION WITH SUPPLEMENTARY AIDS AND SERVICES

It's important for parents and students to understand that general education classes are part of the special education continuum. Many students with IEPs spend most or all of their school day in general education classes with additional support, such as related services, SETSS, or an individual or shared paraprofessional.

INTEGRATED CO-TEACHING (ICT)

An ICT class is a general education class co-taught by a full-time general education and a full-time special education teacher. Students with disabilities (up to 40% of the class) receive specially designed instruction alongside general education peers. Both teachers should work together throughout the day to adapt the instruction and classroom materials so the entire class can access the general education curriculum.

An ICT can be a good fit for many students with disabilities who attend a neighborhood or community school and need additional support in the classroom. Students can receive ICT services on a full or part-time basis, depending on the content area and their particular needs. These aren't necessarily small classes

– at the high school level, they can have up to 30 or 35 students – but an ICT does offer more teacher support than a general education-only setting, and in some schools, ICT classes can be as small as 18-20 students.

SPECIAL CLASS IN A COMMUNITY SCHOOL (“SELF-CONTAINED”)

These are smaller, separate classes just for students with IEPs in a school that also serves general education students. Students in this type of class should be “functionally” grouped by age and ability, and may have a mix of classifications. Students in special classes receive instruction from a special education teacher and can be recommended for a special class full-time or just for certain subjects, depending on the content area and their particular needs. The DOE offers special classes with these student-to-teacher ratios in its District 1-32 schools:

12:1 (elementary and middle school only) and 15:1 (high school only) — for students with academic and/or behavior management needs that cannot be met in a general education or ICT setting

12:1:1 — for students with academic and/or behavioral management needs who require extra adult support and specialized instruction.

Many District 1-32 schools do not offer self-contained classes for all grades, and some do not offer these classes at all. Some special classes are “bridge” classes and serve students in several grades at once, i.e., grades K-2 or grades 3 and 4. According to state regulations, schools are allowed to have up to three grades together in one class, as long as the students are grouped according to their academic, social, emotional and physical needs.

Some DOE high schools do not offer 15:1 classes or if they do, they may only have them for ELA and math, or for 9th and 10th grade subjects. The idea is that students will be able to transition into ICT classes once they move into the upper grades. Some students, however, will continue to need more support. If you are working with a student who needs a smaller class and one is not available in their current school, we can sometimes advocate with the DOE to get them to open up self-contained classes in the student’s school, or advocate for a transfer to a school with the appropriate setting. The student may also qualify for a P-1, or Nickerson letter. For more information, refer to [Section 2E](#) of this manual or reach out to Project Achieve and discuss the student’s options.

NOTE: WHEN YOU SEE A RATIO, SUCH AS 12:1+1

The **first number** means that there are up to 12 students in the classroom;

The **second number** means there is one teacher in the classroom;

The **third number** means there is at least one paraprofessional in the classroom, not including a paraprofessional who is assigned to a particular student.

A student’s IEP should note both the class ratio and whether the class is in a neighborhood (District 1-32 in NYC), charter, or specialized (District 75 in NYC) school.

SPECIALIZED PROGRAMS IN DISTRICT 1-32 SCHOOLS

The NYC DOE offers several specialized programs in neighborhood, or District 1-32 schools. These programs are not available in every school, but should be available in every school district, or nearly every district. They include:

ASD NEST. The ASD Nest program offers smaller, ICT classes in District 1-32 schools for students with Autism Spectrum Disorder (ASD) whose academic skills are at or above grade level. Staff receive specialized training related to ASD, and students have access to additional emotional and social supports. Students in ASD Nest cannot have significant behavioral challenges and must be able to function in a general education setting with the appropriate supports. Because of the program’s specialized nature, students who struggled socially in an ICT or self-contained settings in their previous school may do very well in ASD Nest.

ASD HORIZON. ASD Horizon offers special classes (8:1+1) in District 1-32 schools for students with ASD and mild to moderate behavioral challenges whose academic skills are at or near grade level. As with ASD Nest, school staff receive specialized training related to ASD, and students have access to additional emotional and social supports.

To apply to ASD Nest or Horizon, go to [this webpage](#) and click on the link for the ASD Program application. The application is the same for both programs and consists of a 3-page form. The student must have current evaluations on file with the DOE that include some type of autism assessment. Once ASD program staff review the application, if the student appears to meet criteria, they will do a classroom observation to determine if the student is eligible for the Nest or Horizon program. They may also decide that the student needs updated testing. For more information, review the specialized programs webpage above or email ASDPrograms@schools.nyc.gov.

ACADEMIC, CAREER, & ESSENTIAL SKILLS (ACES) PROGRAM. The ACES program offers special classes in D1-32 schools for students with an Intellectual Disability or Multiple Disabilities who are alternately assessed. ACES classrooms teach academic, vocational, and independent living skills and are designed for students with mild to moderate intellectual disabilities and delays in their adaptive skills, who may also have mild to moderate behavioral challenges. Similar to ASD Nest and Horizon, ACES programs do not exist in every school or every district, but they are available across the City. To apply, visit [this webpage](#) and scroll down for the link to the ACES program application. Submit the completed application directly to the ACES team at ACESprograms@schools.nyc.gov.

BARRIER FREE: A school building that is accessible to students who have limited mobility, serious health issues, or use a wheelchair or other mobility device. Most public schools in NYC are not fully accessible, and some buildings are not even partially accessible to people with disabilities. For more information on school enrollment for students who need a barrier free school in New York City, visit www.schools.nyc.gov/enrollment/enrollment-help/meeting-student-needs/students-with-accessibility-needs.

BILINGUAL SPECIAL EDUCATION: Bilingual special education programs are for English Language Learners (ELLs) who require bilingual instruction because of their language needs and an ICT or special class because of their special education needs. If a student is recommended for bilingual special education services, a language other than English will be indicated on the recommended programs page of their IEP. Because bilingual special education classes are not available in most schools, students may need to transfer schools to access the program.

The reality is that there are a limited number of bilingual special education classes in New York City, especially at the high school level. There are more bilingual special education programs for grades K-8, especially for students who need bilingual Spanish classes, but these tend to be concentrated in certain neighborhoods. If the student speaks a language other than Spanish, and for all students recommended for a bilingual special education program in the higher grades, they will likely be placed in an English-only special education class and receive a bilingual alternate placement paraprofessional who will translate for the student. For help accessing a bilingual special education class or getting an alternate placement para, email BSEprograms@schools.nyc.gov.

In recent years, the DOE has piloted two new specialized programs for students with IEPs. Both have separate application processes and are only available in a limited number of schools, serving students in reduced-size ICT settings:

I READ PROGRAM: The I Read program is for students with disabilities in grades K-2 who are struggling to develop early literacy skills.

PATH PROGRAM: The Path Program serves children with average cognitive skills who have significant emotional or behavioral needs.

For more information, visit the [DOE's website](#) or contact Project Achieve if you are working with at student who may be eligible.

SPECIAL CLASS IN A SPECIALIZED SCHOOL (DISTRICT 75)

District 75 is a separate, city-wide school district within New York City for students with intensive special education needs who require lots of support. District 75 schools provide educational, vocational, and behavioral supports in self-contained classes or inclusion programs to students in PreK through 12th grade with significant cognitive delays, emotional needs, sensory impairments, multiple disabilities, and autism spectrum disorder. Some District 75 programs are located in buildings with general education schools; others are in schools serving only District 75 students. District 75 also provides hospital instruction (see below) and operates a handful of day treatment programs in mental health agencies. For more information on day treatment programs, refer to [Section 2F](#) of this manual.

District 75 and other specialized schools offer classes with the following student-to-teacher ratios:

- **12:1+1** – for students whose academic or behavior management needs require additional adult support and specialized instruction. Typically, standard assessment 12:1+1 classes are for students with an Emotional Disability (ED) classification or who otherwise have significant behavioral challenges, while alternate assessment 12:1 + 1 classes are for students with mild to moderate ID/DD.
- **8:1+1** – for students who require constant, intensive supervision, and a significant degree of individualized attention, intervention, and behavior management. These classes can also include students on standard or alternate assessment, and typically are for students with ASD, very significant behavioral challenges, or significant cognitive and behavioral delays.
- **6:1+1** – Alternate assessment classes for students with very significant academic, social-emotional, and management needs. Students often have severe language delays and aggressive or self-harming behaviors. These programs provide intensive support and continual adult supervision, including specialized behavior management intervention, and are typically for students on the autism spectrum. The DOE also operates a specialized program in some District 75 schools, called AIMS, for students with with ASD with a 6:2+1 ratio, staffed by a special education teacher, a speech therapist, and a paraprofessional. For more information, visit the "[Specialized Programs](#)" page on the [DOE's website](#) and click on "[AIMS Program](#)."
- **12:1+4** – Alternate assessment classes for students with severe and multiple disabilities. Students typically have limited functioning in all areas. These classes have a habilitation and treatment focus, including training in activities of daily living and communication skills, and a limited focus on academics.

Outside of New York City and the Big 5 school districts, students who need specialized schools are referred to Boards of Cooperative Educational Services (BOCES) programs. BOCES was created so that smaller school districts with similar needs can share instruction to create specialized programs. BOCES programs typically serve students with significant special education needs who cannot be served in district schools. They also offer adult education and career and technical education programs to high school students with and without special education needs.

DISTRICT 75 INCLUSIVE SERVICES (DISTRICT 75 INCLUSION)

District 75 inclusion programs integrate students with disabilities into general education classes at District 1-32 schools. Students get SETSS, related services, and paraprofessional support from District 75 providers while learning in general education classes alongside general education students. Students are registered with District 75 but spend most of the day mainstreamed in the general education setting. Students may share a para with up to 3 other students or have their own, and receive SETSS for 5-15 periods per week, plus related services, depending on their needs.

District 75 inclusion programs are often quite supportive, because the special education teacher works with a small caseload of students and has the time to modify the student's coursework and assignments significantly based on the student's abilities. The teacher can also push into the classroom and provide indirect services to the general education teacher. District 75 inclusion is good for students with ASD or ED who have strong academic skills or who no longer need District 75 special classes, and for students with ID with strong social skills. Students typically transition into District 75 inclusion after they have been in a special class and are ready for a less restrictive setting, but wouldn't be sufficiently supported in an ICT. The program also works well for students who have been in a 12:1+1 District 1-32 class and are transitioning to high school. These students may not have the skills to be independent in 15:1 and general education classes, but moving to a District 75 special class would be too restrictive. District 75 inclusion allows students to be in a neighborhood school and still receive substantial supports.

For more information, talk to the student's counselor or IEP team at their current District 75 school. If you are working with a student who is currently in a District 1-32 school but you think they would benefit from District 75 inclusion, contact Project Achieve and we can discuss the student's options and put you in touch with the District 75 inclusion program.

PLACEMENTS OUTSIDE OF A PUBLIC SCHOOL

STATE-APPROVED NON-PUBLIC DAY SCHOOLS (NPS)

These are private special education schools that are publicly funded and approved by NY State to provide special education services to students whose educational needs cannot be met in a public school program. Many nonpublic schools specialize in serving a particular population of students, such as students with ASD, students with behavioral challenges, or students with learning disabilities.

A list of state-approved non-public schools is available on the [New York State Education Department \(NYSED\) website](#).

The IEP team must consider all options available in NYCDOE schools before recommending an approved non-public school.

There are three ways the DOE can fund private school tuition when it has not provided an appropriate public school placement for a student with a disability:

1. A nonpublic school recommendation on the student's IEP. The IEP team may decide that the student's needs cannot be met in a public school setting and recommend a state-approved nonpublic day (or residential) program. In New York City, the IEP team will first defer the student's case to the Central Based Support Team (CBST). The CBST is a DOE office that helps place students in nonpublic schools. When the IEP team sends a student's case to the CBST, the CBST will assign the student a case manager, who will apply to different nonpublic schools for the student (outside New York City, the CSE takes on this role). If you or the parent does not hear from the CBST within a couple of weeks, you should reach out to them directly. A list of CBST case managers is available in the third tab of [this document](#).

The CBST case manager can tell you which schools they have applied to. Schools are supposed to review the student's paperwork and call the parent to set up an intake if they think their school would be a good fit for the student. However, many students look different on paper than they do in person, so it's often helpful to contact schools directly to advocate for an intake interview for your student. If the CBST has incorrect contact information for the student's parent or foster parent, schools won't be able to contact them for an interview, which is another reason it's a good idea for you to reach out to schools yourself. Agency staff can also apply directly to schools on the state-approved list, which often speeds up the process. Call or email the admissions team at the school to find out what paperwork they need for an intake packet. The first tab of [this resource](#) contains a list of nonpublic schools and admissions contacts. At a minimum, the school will need the student's current IEP and evaluations.

Multiple schools may contact the family to arrange for an intake, and more than one school might accept the student for admission. It's always a good idea to visit at least two schools if you can before making a decision. As with public schools, all non-public schools are not created equal, and some have a stronger track record of serving students with disabilities than others. You, the student and parent can use [this tool](#) when visiting schools to help you determine which is the best fit for the student.

After the school visit, the school will decide whether they will accept the student, and the student should decide whether they wish to attend that school. Notify the CBST case manager right away when you know which school the student will be attending. Schools will also let the CBST case manager know if they have accepted a student, so it's important to communicate regularly with the CBST case manager in case they place the student in a school that the student or parent doesn't want. The CBST will then ask the student's old school or CSE to schedule a securement meeting for the student. At that point, the IEP team will modify the student's IEP, if necessary, to match the specifications for the particular school, and they will arrange special education busing for the student. Many nonpublic schools are located in Westchester county or Long Island, and even if the school is within the City, it's likely the student will need busing to attend. Talk with the student and make sure they are okay taking the school bus, if necessary, as you consider school options.

Once a student is recommended for a nonpublic school, the school district typically keeps recommending that program unless the family expresses a wish to change schools or move to a less restrictive setting. If the student is going to change schools, the CSE will need to hold a new IEP meeting to send their case back to the CBST for a new school search. This can be a lengthy process, so be patient. As always, agency staff can help speed up the process by sharing evaluations with the CSE, with the appropriate permissions, and by reaching out to schools directly if you are considering other nonpublic schools.

2. A P-1 or Nickerson letter. Students in New York City are entitled to a P-1, or Nickerson letter, when their IEP recommends a special class and the DOE has failed to offer a placement within the mandatory timelines. A P-1 letter requires the DOE to fund the student's placement at a state-approved nonpublic school for one year, if you can find an appropriate school that accepts the student. Due to the limited number of schools on the list and the limited seats at each school, especially during the middle of the school year, a P-1 letter does not guarantee a nonpublic school placement for the student. The DOE is still required to look for an appropriate special class placement for the student even after it issues a P-1 letter. If the P-1 letter has an expiration date, you can continue to use the letter after it has "expired," until the DOE makes a placement offer. The DOE should automatically issue P-1 letters but if they don't, contact the school (for students waiting for a special class in a District 1-32 school) or District 75 (for students waiting for a District 75 placement), or email specialeducation@schools.nyc.gov.

3. Payment through an impartial hearing order. If you can prove that the DOE failed to provide a student with a FAPE, the parent may win funding for tuition at a nonpublic school by filing a request for an impartial due process hearing. You will also need to prove that the school the family chose for the student is appropriate to address the student's special education needs. For more information on impartial hearings, see [Section 2G](#) of **this manual**.

There are a number of private special education schools in and around the City that are not state-approved and that sometimes accept students without getting money up front, if they know the student's family is seeking tuition payment through a hearing. The only way to get funding for one of these schools is through a hearing. Contact Project Achieve if you are interested in learning more about these school options.

RESIDENTIAL PLACEMENTS

Residential programs, also called Residential Treatment Centers (RTCs) are for students whose educational needs are so intensive, they require comprehensive services on a 24-hour basis. Youth attend school and participate in a structured living environment on campus. For most students, their IEP team can recommend a New York state-approved residential program; however, youth in foster care cannot be placed in a residential program through their school or CSE – they must be placed by ACS. Many of the state-approved residential schools also contract with ACS, but not all of them do. If the student's special education needs are such that they cannot be placed in any of the programs that normally contract with ACS, you may be able to work with ACS to see if they can arrange a one-time contract to place the student at one of the other state-approved residential programs. This problem is most common for students in care on the autism spectrum.

Students can also be placed in Residential Treatment Facilities, or RTFs, which are funded by the state Office of Mental Health (OMH). RTCs and RTFs are similar, but RTFs have psychiatric services available on a 24-hour basis, while psychiatrists at RTCs may only be on campus a couple of days per week. There is a separate application process for RTFs, which requires current psychiatric, psycho-social, and psychological evaluations. Students must have a significant mental health diagnosis, an inability to live safely in the community, despite receiving mental health interventions, and an IQ above 70 to be eligible for an RTF.

HOME INSTRUCTION

Home instruction is education services from a special education teacher for students with a medical or psychiatric condition that makes it impossible for them to attend school. School districts will send a teacher into the home to see the student (an adult must be present); students in grades K-5 get 5 hours of instruction per week, and students in grades 6-12 get 10 hours of instruction per week. Typically, districts provide home instruction on a temporary basis until the student can return to school, but sometimes students will receive home instruction while awaiting a specialized or nonpublic school placement. Home instruction differs from home schooling, which is when a parent chooses to teach their child at home, rather than sending their child to school.

A school or CSE can recommend home instruction for a student with a severe medical condition, but this should be rare; students should be enrolled in school whenever physically possible, with accommodations for a shortened day if necessary. Students do not need an IEP to get temporary home instruction; any student may request home instruction while they are recovering from an accident, surgery or illness. A pregnant student on bed rest may qualify for home instruction, or a teen parent who must stay at home because of their child's medical condition.

To apply for home instruction, students must submit paperwork completed by their doctor or psychiatrist that explains why home instruction is necessary. Information and forms are included in [Chancellor's Regulation A-170](#) and on the [DOE website](#). It can take several weeks before the DOE approves home instruction and assigns a teacher to the student, so work with the youth's school to get homework packets in the meantime, so the student doesn't fall too far behind. More information on the DOE's home instruction office is at www.homeinstructionschools.com.

HOSPITAL INSTRUCTION

The DOE is required to provide educational instruction to all school-age public and private school students who are hospitalized in New York City for medical or psychiatric reasons. Students receive instruction from District 75 teachers, who should work closely with the student's home school to individualize their instruction.

F. SUPPORTS FOR STUDENTS WITH BEHAVIORAL, EMOTIONAL, AND MENTAL HEALTH NEEDS

FBAS AND BIPS

When students with disabilities have inappropriate behaviors that interfere with their learning or the learning of others, or their behavior gets them suspended or removed from class, schools must provide students with behavioral supports so that they can remain in the classroom and continue learning. Appropriate supports are informed by an evaluation of the student's behavior, called a Functional Behavior Assessment, or FBA.

An FBA is a process for gathering and reporting information to figure out what causes a student's challenging behavior. An FBA should include a written report of direct student observations in different settings throughout the school day, across multiple days; interviews with parents, teachers, related service providers, and the student; and a review of other relevant information, such as the student's evaluations, academic record, and discipline record.

The people who know a student's behavior best should participate in the FBA, including parents, foster parents, the student, teachers, and the student's guidance counselor. Agency staff, such as the youth's sociotherapist, Coach, or Education Specialist, or an outside mental health provider, also have valuable information to contribute to an FBA.

Once the person completing the FBA finishes gathering the information, the FBA must:

- Identify and define the behavioral challenges that need to be addressed, including the location(s), time(s), frequency, and severity of the behavior;
- Identify possible factors that cause the behavior, including internal factors, such as learning problems or hyperactivity, and external factors, such as the time of day, type of activity, or factors related to the student's home or family situation;
- Collect and review information to determine what can lead to and trigger a student's challenging behavior and the conditions that promote positive behavior. For example, an FBA may show that misbehavior occurs at certain times of day, around certain people, or in connection with particular events, instruction or activities; and
- Make an educated guess from the information collected about why the behavior happens and any triggers for the behavior.

Once the FBA is completed, the student's IEP team must meet and use the FBA to create a Behavior Intervention Plan (BIP) to prevent and address the target behaviors and promote positive behavior.

The BIP should include:

- Baseline information about how often the behavior occurs and the behavior's severity;
- Specific steps the school will take to prevent the behavior from occurring, such as changes to class activities or schedules, to avoid triggering the behavior;
- Strategies the school will use to support the student and build the skills the student needs to manage their behavior;
- Precise details about how school staff will respond to triggers for the behavior and the behavior if it occurs, including de-escalating or reducing the severity of the behavior
- Any consequences they will impose for the behavior, including rewards for alternative positive behaviors
- A schedule to measure the BIP's effectiveness at reducing the target behavior, report back to the student's parent on the student's progress under the BIP, and modify the BIP if the student is not making progress.

PARAPROFESSIONALS

Schools can recommend a paraprofessional, or 1:1 aide, for a student whose behavior is interfering with their learning or the learning of others. According to [page 63 of the SOPM](#), schools must implement an FBA and BIP for a student before the IEP team can recommend a behavior support para, also known as a crisis management para. Schools and CSEs should only recommend a behavior support para if the student presents with serious behavior problems that cannot be addressed through a BIP implemented with fidelity. Schools must train the para in general behavior management techniques, as well as how to monitor and implement the student's specific BIP.

There is a section on the IEP called "Supports for School Personnel" where IEP teams can specify the type of training the para (or other school staff) will receive.

Remember the IDEA's requirement that school districts educate students in the least restrictive environment. If a student has strong academic skills but behavioral challenges that impact their school progress or performance, they may need a 1:1 para so they can remain in a general education or ICT setting. Students should only be placed in a 12:1+1 or other special class if their needs truly cannot be met in a less restrictive setting with the appropriate supports. If a school or CSE tries to recommend a special class or District 75 setting for a student with behavioral challenges without attempting a BIP and providing them with a 1:1 para first, you should push back and question if this is truly appropriate. For guidance from the NYS Education Department on when it is appropriate to recommend a 1:1 para for a student, see www.p12.nysed.gov/specialed/publications/1-1aide-jan2012.html.

AT-RISK, MANDATED, AND SOCIAL WORK COUNSELING

Students who are at-risk for not meeting grade-level standards can receive student support services, like counseling or attendance improvement services, if they are needed to improve the student's academic performance. Students who qualify typically get at-risk counseling for a limited period of time, usually anywhere from 6 to 12 weeks.

If you are working with a student who is struggling emotionally or behaviorally in school but does not have an IEP, or whose IEP does not include counseling, you may want to ask for at-risk counseling. At-risk counseling can be particularly helpful for a student who is going through a difficult transition or just experienced a traumatic event. It is available to general and special education students.

Many special education students have counseling mandated as a related service on their IEP. IEP teams should recommend counseling if the student's social-emotional or behavioral needs are impacting their classroom performance and counseling will help them achieve their IEP goals.

Students can receive counseling from a guidance counselor, social worker, or school psychologist. If there are clinical reasons why a student needs counseling from a licensed social worker or psychologist – for example, the student needs a more therapeutic approach to their counseling, and the school social worker or psychologist has training in a relevant area like Cognitive Behavioral Therapy – then the student's IEP can specify social work or psychological counseling.

As with other related services, schools can provide counseling to students in a group or individually, using a push-in or pull-out model, depending on the student's needs. You may want to advocate for a combination of push-in and pull-out services, so that the student can work on generalizing social skills in the classroom and also have time alone with the counselor to discuss more personal matters. If a student needs pull-out services, schools should schedule them during non-academic times to the greatest extent possible.

SCHOOL-BASED MENTAL HEALTH CLINICS

All public schools in New York City receive some support to assist students with mental health needs. Some schools have access to mental health consultants, who may provide staff training and referrals to students; other schools can access services from outside providers in crisis situations; and still other schools have mental health clinics or providers on site who can provide regular counseling, training, and crisis support directly to students and families. Many DOE Community Schools partner with a non-profit organization that offers counseling services to students. If there is an Article 31 Mental Health Clinic or Article 28 Health Clinic that also provides mental health services at the youth's school, the student can access medication management, individual and family therapy, and a full array of mental health services in the school building.

For more information about a school's mental health services, speak to the Parent Coordinator, School Social Worker, or the student's School Counselor. You can find a full list of mental health programs provided to schools across the city at <https://www.schools.nyc.gov/school-life/health-and-wellness/mental-health>.

NOTE: Some school-based mental health programs will not see students if they have mandated counseling on their IEP. If you encounter this barrier while seeking school-based mental health services for a student on your caseload, contact Project Achieve for assistance.

DOE DE-ESCALATION POLICY AND SAFETY PLANS

For students in New York City, [Chancellor's Regulation A-411](#) lays out the procedures DOE schools must follow to de-escalate students experiencing behavioral crises, including when they may contact 911. The regulation requires every school to have a Crisis Intervention Team that completes an annual Crisis De-escalation Plan. The Plan must include strategies for de-escalating student behavioral crises; safe locations in the building for students experiencing a behavioral crisis; the names of any school staff trained in de-escalation techniques; school and community-based resources; and how de-escalation and response protocols will be communicated to school staff members.

When a student engages in behavior that "poses a substantial risk of serious injury to the student or others," schools must determine the appropriate way to manage the behavior and consider whether school staff can safely de-escalate the situation. Staff must follow the strategies in the school's Plan; if the classroom teacher or responding staff member cannot de-escalate the situation on their own, they should get help immediately from a school or community resource identified in the Plan. Schools must attempt to contact the student's parent and allow the parent to speak with the student, assuming it's safe to do so. A parent can be anyone in a parental relationship to the student, and may include their birth parent, foster parent, or agency personnel, so it's important to communicate to the school who is most likely to be able to help the student calm down.

Where a student's behavior poses an imminent risk and cannot be safely addressed by school staff or other support services, the school must call 911. Whenever a school calls 911, they must attempt to reach the parent immediately and allow the parent to come to the school or talk to the student by phone, if feasible, before sending a student to the hospital. If the parent asks EMS not to bring their child to the hospital, the on-scene 911 responders will get relevant information and determine whether they can honor the parent's request. If the school is unable to reach the student's parent, the on-scene 911 responders will decide whether the student requires emergency medical treatment; if they bring the student to the hospital, a school staff member must go with the student.

The regulation is very clear that schools can't use 911 as a form of discipline or as an alternative to appropriate de-escalation strategies and techniques. Following any behavioral crisis, the school should meet with the parent, and the student when appropriate, to discuss appropriate behavioral supports and interventions for the student.

DAY TREATMENT PROGRAMS

Day treatment programs are designed to meet the educational and social-emotional needs of students with significant psychiatric and mental health concerns. Students receive academic instruction along with medication management and comprehensive mental health services as part of a day treatment program. Day treatment programs can be short or long-term. Many, but not all, require an IEP. More information on the different types of day treatment programs is listed below.

SHORT-TERM PROGRAMS

Intensive Day Treatments (IDTs) and Partial Hospital Programs (PHPs) offer targeted mental health supports to students for a limited period of time, usually about 45 days, to avoid a psychiatric hospitalization or as a step-down from a hospitalization. The Queens, Brooklyn, and Bronx campuses of the NYC Children's Centers, a state-funded OMH program,² offer Intensive Day Treatment Services to students from age 9-17. The exact age varies, depending on the location and the current student population, so you will need to contact the program directly for more information. The PHP at Bellevue Hospital serves students ages 5-18 from all five boroughs, and the program at Elmhurst Hospital serves students ages 9-16 who live in Queens.

No IEP is required to attend an IDT or PHP. Instead, contact the program directly for admissions information. Most programs require a current psychiatric, psychological, psycho-social, and medical as part of the application process. If the program feels the student would be a good fit, they will call them for an intake appointment. You will need the parent's consent to release the documents to the program, and their informed, written consent will be required in order for the student to attend. If the parents no longer retain their rights, the agency can sign off on HIPAA releases or medical consents for the student.

LONG-TERM DAY TREATMENT PROGRAMS

If you are working with a student who will likely need a day treatment program for a longer period of time, there are options within District 75, District 79, and nonpublic schools. By and large these programs operate on a 12-month schedule, and most students who are successful will stay for a year or two before transitioning into a less restrictive program. Because students do not cycle in and out every 45 days, many of these programs have waitlists, so in most cases, you will want to cast a wide net when applying, rather than limiting yourself to one program.

In New York City, there are a number of agency-based day treatment programs that partner with District 75 schools. Employees of the mental health agency provide clinical services to the students, and District 75 teachers, paras, and related service staff provide the educational services. An Assistant Principal from District 75 typically oversees the site, along with personnel from the mental health agency. There are District 75 day treatment programs at the NYC Children's Center locations in the Bronx, Brooklyn and Queens; at Astor Services for Children and Families in the Bronx; at Staten Island Mental Health and South Beach Psychiatric on Staten Island; and at The Lifeline Center for Child Development in Queens.

In order for a student to enroll in a District 75 day treatment program, their IEP must recommend a District 75 day treatment. Each program has its own application process, and you can apply directly by submitting the application materials – usually the student's current psychiatric, psychological, psycho-social, and IEP – to the program (except for Lifeline; they only accept applications from the student's school). Nearly all day treatment programs have a strict IQ cut-off of 70, or very close to that. After reviewing the paperwork, the program will contact you or the family to schedule an intake if they feel they can meet the student's needs. Once the student is accepted into the program, the IEP team can reconvene and amend the student's IEP to recommend a District 75 day treatment, along with any other modifications that may be needed to the IEP.

² The NYC Children's Centers are state-run mental health facilities that provide in- and out-patient mental health services to children and adolescents and are completely unrelated to the ACS Children's Center.

There are a handful of state-approved nonpublic schools that are also day treatment programs, meaning that they have a psychiatrist on site and can offer students and families a full range of mental health services, including medication management, parent training, and group, individual, and family therapy. The League Treatment Center in Brooklyn and Clear View Treatment Center in Westchester county are two such schools that serve students in New York City. Before the student can attend, the school or CSE will need to defer the student's case to the CBST for a nonpublic school program. Both League and Clear View will accept applications directly from agency staff while you are working on getting the student's IEP changed, so you may want to apply to one of these programs, along with a District 75 day treatment, before the IEP meeting to maximize the student's options. Unlike the District 75 day treatments, nonpublic schools offer a full array of educational services, and some students stay until they graduate, especially students who enter when they are in high school.

New York City's alternative school district, District 79, has one day treatment program located at Mt.Sinai/St. Luke's hospital in West Harlem, called Comprehensive Adolescent Rehabilitation and Education Service, or CARES. Students who attend CARES can earn a Regents or Local Diploma or High School Equivalency and receive a full range of integrated mental health and substance abuse services. Students do not need an IEP to attend CARES, although many students who go do have one. Instead, they will need to submit a completed application, their current transcript, and a copy of their IEP, if applicable, directly to the program. The student will then need to complete an intake and evaluation before they can be accepted. CARES gives the TABE to students as part of the intake process; they are looking for students with at least 5th grade levels in reading and math, so agencies should be aware of this requirement before referring students. There is often a waiting list at CARES, and the application is pretty lengthy, but for students who get in, it's an excellent program.

NPS DAY PROGRAMS

Some NPS day programs, such as Andrus, Summit, and Martin de Porres, are similar to day treatment programs and serve a similar population of students, but don't offer medication management or the full complement of clinical services. While not day treatment programs per se, these schools typically have more supports for students and are more therapeutic than a District 75 setting. There are also day treatment programs and partial hospitalization programs outside of NYC (i.e., in Nassau, Suffolk, and Westchester counties). In our experience, most of these programs will not accept applications from outside providers and require the student's district CSE refer the student to the program. Refer to the [second tab of this tool](#) for a detailed list of day treatment, partial hospital, and NPS day programs in and around NYC.

HOME INSTRUCTION

For students with severe anxiety disorder or other psychiatric needs that are preventing them from attending school, home instruction can offer temporary educational services while the student's mental health providers work to stabilize the youth's mental health. Students can earn academic credit and take Regents and other state exams while on home instruction. Because of the limited hours provided, however, students will not earn the full complement of credits each semester. For more information on how to apply for home instruction, refer to [Section 2E](#) of this manual.

G. DISPUTE RESOLUTION

ESCALATION PATHWAYS

Monitoring special education services for students with IEPs can be a full-time job. It's not uncommon for schools to be late holding IEP meetings, fail to evaluate students, or fail to provide students with all their mandated services. Even if a student is getting all the services required by their IEP, the recommended program may no longer be appropriate to meet their needs, or they may require additional supports.

Whenever you have concerns about a student's special education program or services, it's best to start by reaching out to the school for clarification and support. Talk with the student's teachers, related service providers, the school psychologist, or the principal. It can be frustrating to raise these concerns with the school if you feel they aren't helping, but it's important to first try and work things out with them. Keep notes on all your conversations and who you talk to.

If the school is not being responsive or their responses don't address your concerns, you can reach out to the Family Support Coordinator within the Superintendent's office that oversees the school. Their name and contact information is listed under the "District Contacts" tab on the school's page on the DOE's website. Family Support Coordinators can help connect you to appropriate staff within the school or Superintendent's Office. You can also email the DOE's central special education team at SpecialEducation@schools.nyc.gov. For a more detailed list of suggested special education contacts, consult [this tool](#), or you can reach out to Project Achieve for help figuring out next steps.

DUE PROCESS RIGHTS

Under law, parents have certain rights during the special education process and means to pursue a solution if they feel their rights, or the rights of their child, have been violated. Below are some of the rights parents have, including the right to request mediation or an impartial hearing. If you are working with a student and you think they need to engage in due process, reach out to Project Achieve for help. We can help you evaluate next steps and, depending on the situation, may be able to represent the student and their parent at mediation or an impartial hearing.

RIGHT TO PARTICIPATE IN IEP MEETINGS

Unless a court has ordered otherwise, parents have the right to participate in IEP meetings and be involved in special education decision-making for their child. They have the right to notice five school days in advance of IEP meetings, and if they cannot attend, they have the right to reschedule meetings. On the other hand, if the school or CSE cannot reach the parent after making outreach attempts, the IEP team may go forward without the parent. Make sure parents understand the importance of attending these meetings and offer any support they may need to participate meaningfully in the process.

RIGHT TO TRANSLATION AND INTERPRETATION SERVICES

Under the IDEA, parents whose native language is not English have the right to an interpreter at all special-education related meetings. For students in NYC, the DOE is also required to translate IEP documents upon request. Parents can ask for a translated copy of the IEP at the meeting, or at any point after the meeting.

RIGHT TO REQUEST NEW EVALUATIONS, INCLUDING INDEPENDENT EVALUATIONS

Parents have the right to refer their child for new evaluations at any point if they think their child may need a different special education program, a less restrictive setting, or more intensive supports. The district must conduct the requested evaluations unless the student has already been evaluated within the last year. Parents also have the right to request independent educational evaluations at school district expense if they disagree with the district's evaluations.

RIGHT TO WRITTEN NOTICE

The school district must send a parent "prior written notice" before any proposed changes to a student's IEP, classification, evaluation or placement. The district also must respond in writing if it disagrees with a parent's request for an evaluation.

RIGHT TO THE PROCEDURAL SAFEGUARDS NOTICE

The school district must give parents a copy of the "Procedural Safeguards," a notice that describes their legal rights in the special education process, when a student is first referred for special education; when someone requests an evaluation for a student; when the parent requests an impartial hearing; every year at the annual IEP meeting; and upon request. Procedural safeguards include the parent's right to contest the school or CSE's recommendation for their child.

PENDENCY

If a parent requests mediation or an impartial hearing, the student has the right to stay in their current placement and receive the same services under a rule called "pendency," unless the school district and the parent agree to a different placement, until the mediation or hearing is resolved. Pendency is sometimes called "stay put" and is part of the IDEA.

MEDIATION

Mediation is a meeting between the parent, a school district representative, and an outside mediator where the parties try to resolve their disagreements. In special education matters, the mediator is not a judge or an employee of the school district, but a neutral person who has been trained to help people come to an agreement about their dispute. Statements made by either side in mediation are confidential and cannot be used later at an impartial hearing. If both sides reach an agreement at mediation, both sides must honor the agreement.

To request mediation, the parent, surrogate parent, or foster parent (if the child is freed) must write a letter to the mediation center in the borough where the student attends school, or where their CSE is located, if they attend school outside the City. Give copies of the letter to the school principal or the CSE. You can find more information and a list of mediation centers [here](#).

There is no requirement to participate in mediation. It is a completely voluntary process, and both sides must agree to mediation in order for it to go forward. In our experience, mediation can be a quick and effective way to resolve many disputes, since the mediation session must be scheduled within 30 days. Most mediation requests are successfully resolved, and the process can be especially effective when you are seeking services in the student's current school, at a different public school, or in a state-approved nonpublic school. There are some types of cases, however, they cannot be resolved through mediation. If you are working with a student whose parent is interested in mediation, feel free to reach out to Project Achieve for assistance with this process.

IMPARTIAL HEARINGS

Parents have the right to request an Impartial Hearing whenever they believe the school district has violated their child's special education rights or they disagree with the school or CSE about their child's special education placement, services, evaluations, classification, or eligibility for special education. In New York State, a parent must request a hearing within two years of the time they "knew or should have known" about the problem under the statute of limitations. If the problem occurred more than two years ago, but the parent was never informed of their rights — for example, the school district never gave them a copy of the Procedural Safeguards notice, or the school insisted that they had resolved the problem — the parent may be able to argue that the statute of limitations shouldn't apply.

An Impartial Hearing is an administrative proceeding held before an Impartial Hearing Officer, who acts as a judge on the case. The hearing officer is an independent decision-maker who is not a DOE employee. They have the authority to decide what solution is appropriate after hearing testimony and receiving evidence from the parent and the school district. When in person, the hearing takes place around a table in a conference room and is recorded. Because a hearing is a formal process, parents may bring an advocate or attorney to represent them, although many parents in New York City successfully complete hearings on their own.

The timeline for Impartial Hearings varies from case to case. After the parent files a hearing request, there is a mandatory resolution period that usually lasts 30 days. Once the resolution period ends, the first hearing date is supposed to be scheduled within 14 days; however, there is a shortage of hearing officers in New York city and it can take several months to schedule a hearing. Once scheduled, the hearing may take only a few hours to complete, or it may require multiple hearing dates. The law requires the hearing officer to issue a decision within 45 days of the first hearing date, but this also can be extended. It often takes six months or more from the date of a hearing request to receive a decision, depending on postponements and the number of issues in the case. On the other hand, some cases settle within a month or two, with no need to proceed to a hearing at all.

A hearing officer's decision is final and must be followed by the parent and the school district, unless either side appeals to the State Review Officer (SRO). For more information on appeals, visit www.sro.nysed.gov.

REQUESTING AN IMPARTIAL HEARING

To request an impartial hearing in NYC, the parent, surrogate parent, or foster parent (if the child is freed) must submit a letter to the impartial hearing office. They can also use the form on the DOE website. A similar form is available in six different languages on the State Education Department's website at www.nysed.gov/special-education/due-process-hearing.

The hearing request should include at least the following information:

- The student's name, date of birth, and student ID number (OSIS);
- The parent's name;
- The student's home address, and the parent's address if they live apart from the student;
- The name and address of the student's school, if any;
- The school district where the student attends school;
- The reasons for the hearing requesting (what did the school district do wrong?); and
- The result you would like from the hearing. Be as specific as possible.

Hearing requests should go to the student's school district. In New York City, email the Impartial Hearing Office at IHOQuest@schools.nyc.gov. You will also need to send a copy to the New York State Education Department at speced@nysed.gov.

As always, keep copies of all the paperwork, including proof of receipt. If you don't hear anything, it is a good idea to call the hearing office at 718-935-3280 after a week to make sure your hearing request was received.