

DID YOU KNOW?

Did You Know?

A child may be eligible to receive individualized instruction and related services (such as speech and occupational therapy) if he or she has a qualifying disability that **adversely affects educational performance**.

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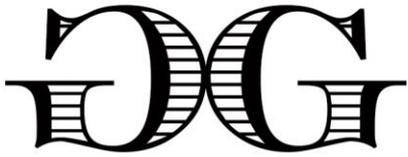
A child may qualify for special education services, starting at age 3, if he or she has any of the following:

- Autism
- Deaf-blindness
- Developmental delay (only applicable to age 9)
- Emotional Disability
- Hearing impairment
- Intellectual disability
- Multiple disabilities
- Orthopedic impairment
- Other health impairment (including ADD/ADHD)
- Specific learning disability (including dyslexia)
- Speech or language impairment
- Traumatic brain injury
- Visual impairment

The services for which a school is responsible to provide, once a child qualifies under minimum state requirements under one of these 13 categories, is the same whether the child is 3 years old or 10 years old. A student is entitled to a 'free and appropriate public education' (FAPE) from the ages of 3 to 21. There is a requirement for the student to be reevaluated, at least, every 3 years to ensure that they still meet the minimum standards for qualification.

Did You Know?

Due to a climate of "zero tolerance" in school conduct, children with disabilities (and their parents) are often the subject of inappropriate disciplinary sanctions (such as suspension, expulsion, and criminal prosecution under juvenile or truancy laws). Special education eligibility can protect a student from being unfairly punished for "disability-related" behaviors



THE GALLINI GROUP
SPECIAL EDUCATION LAWYERS

ACHIEVING LASTING SOLUTIONS IN EDUCATION

Did You Know?

A child may be eligible for individualized instruction and related services even if he or she has passing grades. A child may qualify for an individualized education program (IEP) if the disability adversely affects his or her “educational performance.” Educational performance is more than grades, and also includes social, health, emotional, communicative, physical and vocational needs. Even “gifted” children may qualify for special education services.

There is a common misconception that a child receiving services during ‘early intervention’ (birth to 3 years old) will or should automatically receive school-based services starting at age 3. A child must meet minimum qualification standards established by their state department of education to be eligible for services upon reaching 3 years old or beyond. If the child is receiving early intervention services (birth to 3 years old) then the EI provider is mandated to schedule a meeting with your local school district, at least, 6 months prior to your child turning 3 years old. The purpose of the meeting is to make the introduction to the school system and for the school system to get written consent from you so they can begin the evaluation process for qualification for 3 year old IEP (special education) services (which can include occupational therapy, speech/language therapy, ABA therapy, etc.).

Did You Know?

A school’s responsibility to provide a qualifying child a “free and appropriate public education” (FAPE) starts on the first day of the child’s third (3rd) birthday. Special Education is a year round process and school personnel work throughout the summer months and during scheduled breaks, if required, to assess, test, evaluate and service children in need of specialized instruction and related services. The law provides for a seamless (uninterrupted) transition of services from early intervention (birth to age three) to a formal IEP (ages 3 to 21). For children with disabilities (or suspected of having a disability), a public school must start the evaluation process 6 months prior to the child’s 3rd birthday to ensure this seamless transition. The school system must then comply with strict timelines once a parent provides written consent. As part of being a good advocate, parents should keep a calendar handy in order to track the various time constraints that exist to protect the child and the parent’s right to full and meaningful participation.

Did You Know?

All children with disabilities have the right to equal access to an education. Even if your child does not qualify for an IEP, he or she is likely eligible for a 504 plan. To qualify for a 504 plan, your child must have a physical or mental impairment that substantially limits a major life activity. Major life activities are things like speaking, breathing, learning, reading, concentrating, thinking, communicating, functions of the brain, neurological, and bowel/bladder. A 504 plan is intended to level the playing field and provides for accommodations that may compensate for some of the effects of your child’s disability. A 504 plan may, for example, provide for a note-taker or allow your child extended time on tests.

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Did You Know?

Due to a climate of "zero tolerance" in schools, children with disabilities (and their parents) are often the subject of inappropriate disciplinary sanctions (such as in-school suspension, out-of-school suspension, expulsion, and criminal prosecution under juvenile or truancy laws). Special education eligibility and/or 504 eligibility can protect your child from being unfairly punished for "disability-related" behaviors.

Did You Know?

Parents also have rights under the special education laws. Perhaps the most important is the right to **full parental participation**, as equal members of their child's "team" in the design of their child's individualized education program (IEP). The fact that parents are outnumbered by school employees doesn't dilute their input or voice. A child's IEP team makes decisions based on "consensus" and not majority vote. If a parent disagrees with any portion of a proposed plan or service then they should notate that disagreement on the signature page of the IEP (anywhere there is a blank space to write). The notation should be very specific in explaining the nature of the disagreement. Parents should not rely upon the school's notations or version of what was discussed.

SPECIAL NOTE**All school produced documentation/notices pertaining to your child should be treated with respect and care. You are your child's key advocate, so maintaining a copy of all documentation and communications is very critical to long-term success. There is nothing wrong with adding additional explanations on school documentation in order to clarify your position, thoughts and intent. If you see blank space on a paper, use it! It is also perfectly acceptable to record your IEP meetings as a means of full participation in the IEP process.**

Did You Know?

Every IEP meeting for a child must have at least three (3) particular school employees in attendance for the entire duration of the meeting: a general education teacher, a special education teacher and a "Local Education Agent" or LEA. That doesn't always mean that three actual school employees will be at the meeting, since the law allows an individual to assume multiple roles (for example special education teacher and LEA). A general education teacher is required due their specific knowledge and expertise of the general education curriculum (regardless of the severity of your child's needs). The special education regulations demand that we educate our children with general education students to the maximum extent appropriate. A general education teacher will provide input into this area, including how the curriculum can be modified for a qualified child. A special education teacher must also be in attendance for the entire duration of the meeting in order to provide specific knowledge and expertise of how to teach and present modified and/or deconstructed

curriculum and material. The last required professional is a LEA. This professional must be aware of all the resources and services available in the school district and within the community, and possess the power to monetarily commit the resources of the school district on the child's behalf. If a parent is planning to make a request for testing or a program/placement that will cost money then it is good practice to write a positive and professional letter or email to the Special Education Director of the school to inform them in advance so that a proper LEA is in attendance.

Did You Know?

An IEP meeting must be scheduled at a time and location that is also convenient to the parents. A school cannot hold an IEP meeting without the parents unless the parents grant permission for the school to meet without them, or if the school has made, at least, two (2) documented reasonable attempts to “convince” a parent to attend. A work conflict, illness, or other family commitment would not be considered a “refusal” to attend. There is a growing issue where schools are inflexible in their scheduling and incorrectly interpreting a scheduling conflict as an “attempt”. A parent must be vigilant in documenting, in writing, that they want to attend and participate and are merely requesting that the District schedule the meeting at a date and time that works for the family. Do not allow the school to convene an IEP meeting without your input and participation. There is always a way to provide input and participate. An IEP meeting may be conducted by telephone or video conferencing if the parties agree. You must remember that written documentation is critical and some schools will make a concerted effort to only communicate via telephone. If you happen to live in one of these school districts then please take a few minutes and draft a follow-up email after you speak to the school employee so you can create a paper trail of your meeting. You must draft the email to the school professional you were speaking to and simply restate what your telephone conversation was about. This is unfortunate but too many schools make calls because there is deniability in a phone call and no “record”. In a due process situation, the school employees tend to “forget” or testify in a way that is not favorable to the parent or child.

Did You Know?

For children with qualified disabilities, transportation to and from school is a right. The District must provide this transportation free of charge to the family if the IEP team determines that the child requires this related service in order to benefit from special education. If bus transportation is not available, or if circumstances are such that bus transportation isn't appropriate or feasible, then the District must reimburse the parents for transporting the child to and from school.

Did You Know?

A child with behavioral issues inside the school setting requires that the District conduct a “functional behavior assessment” (FBA) to assist in identifying the causes of the behaviors and in designing a “behavior intervention plan” (BIP) for the child. The resulting BIP is to be used by all school staff in implementing positive behavioral approaches as opposed to traditional disciplinary policies. If these positive behavioral approaches are not working, or new behaviors manifest, then the District is required to adjust, modify and change the BIP accordingly and as appropriate.

For a student with behavioral issues, a school district can suspend (out-of-school) a child for a total of ten (10) days for an entire school year without the removals affecting the child's

“placement” or program. This number is for the entire school year and can be all at once or sporadic (a day here, two there and so forth until it has reached a total of 10).

Many schools utilize in-school suspension or isolation in lieu of out-of-school suspensions as a means of circumventing special education rules. A parent must request any and all documentation pertaining to in-school suspensions or other types of removals of their child from the classroom, and typical school districts do poorly in keeping parents informed about these types of removals. These removals from the classroom do not count towards the ten (10) days unless the parents can show that the in-school suspensions or removals form a pattern for like behaviors related to the child’s disability. If a pattern of classroom removal does form, the District would then be obligated to modify the child’s BIP to address the reasons behind the removals. Children who are not in class are not learning. Alternative schools and in-school suspension programs are not designed to provide specialized instruction.

If a child is suspended for a total of ten (10) days then the District must conduct a “manifestation determination” hearing. The purpose of this hearing is to fully review the child’s education record, evaluations, assessments, medical/psychological data (if consented to or provided by parents), and the particular incidents at issue in order to determine (1) whether the incidents were a manifestation of the child’s disability; and (2) whether the behaviors resulted from the District’s failure to follow the child’s IEP (which includes the behavior plan). If either or both of these questions are answered “yes” then the child cannot be expelled and the IEP team must alter the BIP and/or IEP in order to address the behaviors.

Did You Know?

If a family disagrees with the school district about their child’s eligibility for an IEP or implementation of special education services and retain the help of a lawyer, they may be entitled to reimbursement or payment of all or part of their attorney fees.

Did You Know?

The Gallini Group will answer any and all of your questions pertaining to special education and/or 504 issues. We are proud to offer “Ask a Special Ed Attorney” as a free service to families across the country. You may also access “Ask a Special Ed Attorney” directly on the Gallini Group website (www.thegallingroup.com) or through our Facebook page. There you will also find a growing collection of resources and templates to utilize in the advocacy process for your child.

The **Gallini Group** is the only law firm in Alabama dedicated entirely to the field of special education law, representing children with disabilities and learning difficulties whose families disagree with their public school districts. Our attorneys have a thorough and complete understanding of the federal and state laws and regulations governing the educational rights of children with special needs in Alabama, Texas, Georgia, and Tennessee. They have extensive experience working with families and practicing special education law and have unique insight into how individual school districts operate, who the key decision-makers are, and what factors play the biggest role in decisions related to specialized services. Many of the attorneys that practice with The Gallini Group have children with qualifying disabilities or need for accommodations so we have a unique and parent-driven perspective in resolving the issues because we are IEP team members too and understand the delicate need to work

proactively with the District in order to preserve a good and positive working relationship with your school district.

The Gallini Group has expanded into Texas, Georgia and Tennessee with the goal of opening offices in all 50 states within the next 5 years.

The Gallini Group

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