



*The Protection and Advocacy System for South Carolina*

3710 LANDMARK DRIVE, SUITE 208, COLUMBIA, SC 29204  
803-782-0639; FAX 803-790-1946  
IN STATE TOLL FREE: 1-866-275-7273 (VOICE) AND 1-866-232-4525 (TTY)  
E-mail: [info@pandasc.org](mailto:info@pandasc.org)  
Website: [www.pandasc.org](http://www.pandasc.org)

## **P&A FACT SHEET**

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### **SPECIAL EDUCATION EVALUATIONS**

Children between ages three and twenty-one who have disabilities have a right to a free appropriate public education under both the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act of 1973.

#### **STEP ONE: CHILD FIND**

Each local school district has the duty to identify, locate, and evaluate all students with disabilities living in the district, including homeless children and wards of the state, who need special education or related services under IDEA, or who need accommodations under Section 504. This requirement is called "child find."

#### **STEP TWO: HOW TO START AN EVALUATION**

Either a parent or the school district may request an individualized evaluation of a child. A parent can write to the special education director. A sample letter requesting an evaluation is attached. If a district denies the evaluation request, it must provide the parent with a legal notice called "Prior Written Notice" explaining why the district does not believe an evaluation is necessary. Parents can then exercise various legal rights to dispute that decision. (See later section called "When You Disagree.")

A school district must obtain informed consent from a student's parent before starting an evaluation about special education. Once the parent consents, the school district has 60 days to complete a full and individualized evaluation.

The district must use a variety of assessments and strategies to gather information. Evaluation materials should be in the language and form most likely to measure what the child knows. The evaluation should measure what the child can do academically, developmentally, and functionally. These evaluations should not be racially or culturally discriminatory. If it is suspected that your child has a learning disability (the student does not achieve as expected according to his/her age and ability), the evaluation may include a period of checking whether the child responds to certain classroom interventions.

### **STEP THREE: EXPLANATION OF RESULTS**

The school district staff must give you a copy of the evaluation report and explain the evaluation results to you. The district has a responsibility to you as a parent to make sure that your child receives an appropriate evaluation. The district also has a responsibility to help you understand the evaluation, the special education process, the Individualized Education Program (IEP) process, and all of your due process (legal) rights. This includes the district providing an interpreter for meetings, phone calls, and correspondence with you if you have limited English ability or you use Sign Language.

### **STEP FOUR: DECISION OF ELIGIBILITY FOR SERVICES**

Based on the evaluation results, the parent and school staff members will meet to discuss whether the child is eligible for special education services under IDEA. If the evaluation shows the child not need special education services, the evaluation may still show that the student needs accommodations (changes) in the regular classroom to provide equal access to school and related activities. Under Section 504, a student's accommodations may include seating in a particular section of the classroom, special communications about the student's assignments, behavior intervention plans, assistive technology, or other changes.

If a student is eligible for special education, a written IEP will be developed within 30 days after the evaluation. Parents and the school staff are equal members of an IEP team; you should be invited to all IEP meetings.

If a student is eligible for a 504 plan, that plan must be developed in a reasonable time, although there is no specific time limit. Both IDEA and 504 require that the student's plan be developed by individuals knowledgeable about the student. Unlike IDEA, Section 504 does not specifically require that the team include parents. However, districts should develop the 504 plan with input from parents. In practice, most school districts use similar procedures for both IEPs and 504 plans. This means written 504 plans are normally prepared during meetings with both school staff and parents. Schools do this because the US Department of Education regulations say that if districts use IDEA procedures for 504 plans, they will be complying with the Section 504 law.

### **INDEPENDENT EDUCATIONAL EVALUATION (IEE) FOR SPECIAL EDUCATION**

If you do not agree with the evaluation results done by the district, you have the right to request an Independent Educational Evaluation (IEE) at public expense. This means that the district must pay for an outside evaluator to test your child. The parent has the right to choose the evaluator. If the district does not wish to pay for such an evaluation, they must request a due process hearing and prove their evaluation was sufficient. The district has to provide the parent with information about the district's criteria for an IEE and where the parent can obtain an IEE. As a practical matter, before an IEE is done, the school and the parent should discuss the parent's choice of IEE evaluator. That way there will not be a dispute after the evaluation about the evaluator's qualifications or charges.

There is no right to an IEE under Section 504, but a complaint or due process hearing can be used if the basic evaluation was inadequate.

## **REEVALUATIONS**

Students in special education should be reevaluated at least every three years. If there is no question that the student will continue to qualify for special education, a reevaluation need not be performed unless requested by the parent. A parent can request a reevaluation at any time there is good reason to believe it is necessary, such as a change in behavior, performance, or medical status. A reevaluation is not done more than once a year unless the parent and the school district agree it is needed. The IEP team determines what methods will be used so enough information is available to properly decide on the student's IEP.

Unless a student is graduating or aging out of school, a school must reevaluate a student before deciding that the student is no longer eligible for special education or a 504 plan.

Section 504 does not set specific times for reevaluations, but districts must have a policy about reevaluations. Many districts use special education procedures because the US Department of Education regulations say using IDEA procedures is one way to comply with Section 504.

## **WHEN YOU DISAGREE**

Either the parent or the district has a right to request an impartial due process hearing if there is disagreement about the identification, evaluation, or educational placement of the student for special education or Section 504.

For special education issues a parent may request mediation. This involves using a neutral person to guide a meeting between the school district and the parent. A parent may also file a complaint with the SC Department of Education about special education issues. For more information about dispute resolution and filing complaints with the SC Department of Education see <https://ed.sc.gov/districts-schools/special-education-services/parent-resources/dispute-resolution-information/>.

For issues involving Section 504, a complaint may be filed with the US Department of Education. See website: <http://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>  
Note: Students receiving special education under IDEA also have rights under Section 504.

## **Sources for the information in this Fact Sheet:**

Individuals with Disabilities Education Improvement Act of 2004 (IDEA): 20 USC §1412(a) §1414 and §1415(3)(B); US Department of Education Regulations: 34 CFR 104.35-36 and 34 CFR 300.301-305, 502, and 503 (a); South Carolina Regulation R 43-243 IV and V (3) and (4)

This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, contact P&A for updates.

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# REQUESTING AN EVALUATION

## SAMPLE LETTER

[Date]

Ms. Jane Doe [**Call district office for director's name**]  
Director, Special Education [**Call district office for director's title**]  
Name of School District  
Address of District Office

Re: [**Student's name**]

Dear Ms. Doe:

I am writing this letter to request that a full and individual initial evaluation be conducted for my child, [**student's name**], to determine if [**he/she**] is a child with a disability under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973.

**[You should then describe your child's school situation or why you believe an evaluation is needed. You could state that he/she is failing classes or the teachers say he/she has behavior problems. You can also describe any disability you are aware of and include copies of medical records about that disability.]**

I request that the evaluation be conducted as soon as possible. I understand that South Carolina follows federal regulations requiring that initial evaluations be conducted within 60 days of a parent's consent. Please provide me with proper information and a consent form.

You may contact me at [**give your phone number(s) and times you can be reached; try to give a daytime number**].

Sincerely,

[**Your signature**]  
[**Your printed or typed name**]  
[**Your address**]

Enclosure(s): [**List any medical records or other papers you are sending with the letter; you should NOT send original records**]

Copy to: [**Name and address of principal of school where your child attends**]

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[You may want to send your letter "CERTIFIED MAIL, RETURN RECEIPT REQUESTED." This will give you proof that it has been received. If you personally deliver it, ask the school staff to make a copy. Then ask the staff to write "RECEIVED" on the copy and sign and date it for you to keep.]