

**R**EGIONAL **R**ESOURCE **C**ENTER

**Quick Start:  
Special Education**

# QUICK START: SPECIAL EDUCATION

## REFERRAL, EVALUATION, ELIGIBILITY

### REGIONAL RESOURCE CENTER

#### Educator's Toolbox

## Quick Start: SPECIAL EDUCATION

### Topics covered in this handout:

1. Referral
2. Evaluation
3. Eligibility Determination
4. Definition of Student with Disability
5. Definition of Specially Designed Instruction

### Topic: Referral

#### Referral for Special Education Evaluation (34 CFR 300.300-301)

##### Federal Special Education Regulations (34 CFR Part 300)

- All referrals must go to the evaluation team for appropriate action
- Evaluation Team can
  - Accept referral and conduct evaluations
  - Decide additional data is needed before conducting evaluation
    - Seek additional data
    - Refer to RTI/MTSS

### Topic: Evaluation

#### Evaluation Procedures (34 CFR 300.301-300.305)

The procedures a school district must follow to comply with an initial evaluation include:

1. Within 10 school days of the receipt of a referral for special education services, a team of qualified professionals (including the IEP team members) and other qualified professionals, referred to as the **Evaluation Team** meet to determine if a special education evaluation is needed.
2. All referrals for special education services MUST be forwarded to the Evaluation Team for appropriate action.
3. School districts are not permitted to require action (including RTI and other interventions) as a prerequisite to forwarding a referral or request for special education services or evaluation.
4. The initial evaluation must begin within 10 school days of receipt of parent consent to evaluate. (LEAs should establish criteria that determines what constitutes the *start* of an evaluation process)
5. The evaluation team must document efforts to obtain parent consent if the parent fails to provide consent within 5 school days.
6. The evaluation Team must meet to determine next steps if the parent fails to provide consent to evaluate after 15 school days.
7. The evaluation process, including a determination of eligibility, must be completed within 60 calendar days of receipt of parent consent.
8. Within 15 school days of a determination of eligibility for special education, an IEP must be developed and services made available for the eligible child.

# QUICK START: SPECIAL EDUCATION

## REFERRAL, EVALUATION, ELIGIBILITY

### **Exceptions to 60 days evaluation timeline (34 CFR 300.301)**

There are two (2) allowable exceptions to the timeline for special education evaluation

1. The parent repeatedly fails or refuses to produce the child for the evaluation; or
2. The child enrolls in a school of another public agency after the evaluation timeline has begun, and prior to a determination of eligibility by the original LEA that started the evaluation process. (This exception requires an agreement between the parent and LEA on completion date of evaluation(s))

### **Topic: Eligibility Determination**

#### **Eligibility Determination (34 CFR Reg. 300.306)**

At the conclusion of a special education evaluation, the Evaluation Team must make a final determination based on evaluation results, whether a student meets the definition of a student with a disability for purposes of special education.

#### ***For initial evaluation/re-evaluation the team decides:***

1. Does the child have a disability;
2. That adversely affects educational performance;
3. To the degree the student requires special education and related services [specialized instruction provided by a special educator]

***Note: always ask: What is the specially designed instruction that is being provided by a special educator? Identify it. Determine if the service must be provided by a special educator. (ie. Counseling services, reading instruction are not provided by special educator)***

### **Topic: Definition of Student with Disability**

#### **Definition of Student with a Disability (34 CFR 300.8)**

##### **300.8 Child with a disability.**

(a) *General.* (1) *Child with a disability* means a child, aged 3 to 21, evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as —emotional disturbance), an orthopedic impairment, autism spectrum disorder, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

### **Topic: Definition of Specially Designed Instruction**

#### **Specially Designed instruction (34 CFR 300.39(b)(3))**

(3) *Specially designed instruction* means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—  
(i) To address the unique needs of the child that result from the child's disability; and  
(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

***Note: Special education must be provided/supervised by properly certified special educators.***

# QUICK START: SPECIAL EDUCATION

## REFERRAL, EVALUATION, ELIGIBILITY

### Topic: Free Appropriate Public Education (FAPE)

#### FAPE—Special Education

- 1) The IEP must meet procedural compliance (Procedural Prong)? *and*
- 2) The IEP must meet substantive compliance—meaning the IEP must be reasonably calculated to enable the child to receive some educational benefit appropriate in light of the student's circumstances. (Substantive Prong)  
The IEP ***“must be reasonably calculated to enable a child to make progress that is appropriate in light of his/her circumstances.”*** The standard adds to the ***“some educational benefit.”***

#### Summary of Procedure Referral, Evaluation, Eligibility Determination

1. Referral made by: Parent or School or as part of Child Find activities
2. Referral must be acted on by Evaluation Team (w/in 10 school days)
3. Evaluation team decides if evaluation is needed.
4. If yes, parent consent for testing is needed
5. Once consent is obtained, evaluation and eligibility determination w/in 60 calendar days
6. If eligible, IEP team develops IEP for student w/in 15 school days of eligibility
7. Prior Written Notice sent to parent following IEP meeting
8. W/in 10 school days, the IEP is implemented unless parent refuses consent or request due process.

***If questions arise during these proceedings, check with your school administration on how to proceed.***

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**Quick Start:  
504**

# QUICK START—SECTION 504/TITLE II ADA

## REFERRAL, EVALUATION, ELIGIBILITY, 504 PLAN

### Quick Start: SECTION 504

*Educator's Toolbox*

## REGIONAL RESOURCE CENTER

### Topics covered in this handout:

#### SECTION 504

1. Referral—Child Find Section 504
2. Evaluation
3. Eligibility Determination
4. Definition of Student with Disability--504

### SECTION 504 Referral

#### Referral for Section 504 Eligibility—Child Find 34 CFR 104.32 (a)

**Child Find:** The regulations implementing Section 504 state that districts must "undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education." 34 CFR 104.32 (a).

#### Process

- All referrals must go to the 504 team for appropriate action
- 504 Team can
  - Accept referral and conduct school sponsored evaluations
  - Review existing data/evals and determine eligibility
  - Determine no evaluation is needed at this time
  - Decide additional data is needed before conducting evaluation

### SECTION 504 Evaluation

#### Evaluation Procedures 34 CFR 104.35

- Schools must have evaluation procedures
- Child Find responsibilities create an affirmative obligation for schools to evaluate even if the parent doesn't request.
- A district or parent may initiate a referral for a preplacement evaluation (same as under the IDEA)
- OCR requires Parent consent to evaluate.
- An evaluation can be provided by the school, parent or other agency.
- A 504 "Team" should review the evaluations and make eligibility determinations.

# QUICK START—SECTION 504/TITLE II ADA

## REFERRAL, EVALUATION, ELIGIBILITY, 504 PLAN

### SECTION 504 Definition of Student with Disability

#### Definition of Student with a Disability—504 34 CFR 104.3 (j)

Section 504 regulations define an individual with a disability (with respect to elementary and secondary education programs) to mean an individual with a disability [*Handicapped person*] who:

- (i) has a physical or mental impairment which substantially limits one or more major life activities,
- (ii) (ii) has a record of such an impairment, or
- (iii) (iii) is regarded as having such an impairment.

**Note:** *The second and third prong of the definition are primarily limited to employment inquiries and seldom result in a section 504 plan—rather they require elimination of a discriminatory practice in violation of Section 504.*

### SECTION 504 Eligibility Determination

#### Eligibility Determination 34 CFR 104.3 (j)

- To be eligible under Section 504, a student must be evaluated and determined, as a result of an evaluation, to have a "physical or mental impairment that "substantially limits one or more major life activities."
- The criteria for determining eligibility under Section 504 and title II ADA are broader and more inclusive, than the categories of eligibility under special education & IDEA.
- Once the 504 team has sufficient documentation of the existence of a disability that meets the definition under Section 504, the student is eligible under Section 504.

#### What does “eligible under Section 504” mean?

- Guarantees freedom from discrimination based solely on disability condition.
- Requires Schools to offer eligible disabled students with access to school sponsored activities that are designed to meet individual educational needs of disabled students *as adequately* as the needs of nonhandicapped persons are met.
- Requires a free, appropriate public education (FAPE) for school aged students
- FAPE under 504 is different from IDEA. (see FAPE—504)

#### FAPE—Section 504

**504 FAPE:** The primary difference between the standards of FAPE under the IDEA and Section 504 is the type of educational benefit required.

**FAPE—IDEA:** The IDEA focuses on students' progress (adequate progress) in relation to their own potential and requires “specialized instruction” provided by a special educator.  
It is a “**Individual Standard**”

**FAPE—504:** Section 504 requires schools to consider whether students with disabilities are receiving educational services as effective as those made available to their nondisabled peers.  
It is a “**Comparative Standard**”

# QUICK START—SECTION 504/TITLE II ADA

## REFERRAL, EVALUATION, ELIGIBILITY, 504 PLAN

### Section 504 Plan

- The 504 Team decides if an eligible student requires a Section 504 Plan to provide FAPE.
- Not all eligible students will require 504 plan (most will).
- 504 plan designed to provide **access to school sponsored activities**. Not a “do better” standard.
- 504 plan addresses only needed accommodations due to disability—unlike IEP.
- 504 plan is general education responsibility.
- Students with medical needs frequently meet the definition of eligible student for Section 504.
- Individual Health Care Plans can serve as the Section 504 Plan.

### Section 504 for Private School Students

- Child find requires public schools to seek out, evaluate and identify students residing in the district.
- No Section 504 program or accommodations are required in a non public or private school.
- Public school does not write a 504 plan for private/non public school.
- Private and non public schools must meet 504 requirements.

### Summary of Procedure Referral, Evaluation, Eligibility Determination—504 Plan

1. Referral made by: Parent or School or as part of Child Find activities
2. Referral must be acted on by 504 Team
3. 504 Team decides if evaluation is needed.
4. If yes, parent consent for testing is needed
5. Once consent is obtained, evaluation and eligibility determination made by 504 Team (reasonable time period to evaluate-no set timetable)
6. If eligible, 504 Team decides if 504 Accommodation Plan is Needed to Provide FAPE
7. 504 Team with parent develops 504 Plan
8. Periodic Re-Evaluation (Annually or at least every 3 years)

***If questions arise during these proceedings, check with your school administration on how to proceed.***

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**R**EGIONAL **R**ESOURCE **C**ENTER

**Quick Start:  
Education  
Timelines**

# SPECIAL EDUCATION TIMELINES

**REGIONAL RESOURCE CENTER**  
*Educator's Toolbox*

## Quick Start: SPECIAL EDUCATION TIMELINES

Topics covered in this handout: **TIMELINES** in Special Education

### RI SPECIAL EDUCATION TIMELINES

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#### General

#### School Days

		IDEA Regs.
w/in 10 school days	<b><u>Schedule IEP Meeting</u></b>	<b>300.324 (4)(iii)</b>
10 school days	<b><u>IEP Meeting—Parent Participation in</u></b> LEA must provide parent with 10 school days prior notice of an IEP meeting—parent may waive 10 school day notice.	<b>300.322</b>
10 school days	<b><u>Prior Written Notice (PWN)</u></b> LEA must provide 10 school days prior written notice (PWN) every time the LEA proposes to initiate or change or refuses to initiate or change the identification, evaluation, or educational placement or the provision of a free appropriate public education to the child.	<b>300.503</b>
10 school days	<b><u>Preschool 30 Month Transition Meeting</u></b> LEA must respond within 10 school days to the EI transition notice and send a representative to the 30 month transition team meeting.	<b>300.124(c)</b>

#### Calendar Days

10 calendar days <i>after</i> receipt	<b><u>Access Rights to Records</u></b> LEA must permit parents to inspect and review educational records collected, maintained, or used by the district no more than 10 calendar days <i>after</i> receipt of request.	<b>300.613</b>
15 calendar days	<b><u>Independent Evaluation Request—LEA notice</u></b> LEA must notify the parent within 15 calendar days of receipt of a request for independent educational evaluation (IEE) whether the LEA will fund IEE or request a hearing.	<b>300.502(b)</b>
30 calendar days or less	<b><u>Temporary Placement</u></b> Temporary placement in a special education program for not more than 30 days to determine appropriate placement and educational objectives for student already eligible for special education services.	<b>300.115(B)</b>
60 calendar days	<b><u>Special Education Administrative Complaint</u></b> RIDE must conduct complaint investigation & issue findings within 60 calendar days.	<b>300.152</b>

# SPECIAL EDUCATION TIMELINES

60 calendar days	<b><u>Special Education Evaluation</u></b> (see eval timelines)	<b>300.303</b>
1 year/3 years	<b><u>Statute of Limitation to file 60 day Complaint</u></b>	<b>300. 153(c)</b>

## R.I. Special Education timelines

### Referral, Evaluation, Eligibility, IEP and Re-evaluation

10 school days	<p><b><u>Referral</u></b> <span style="float: right;"><b>300.301</b></span>            Local Education Agency (LEA) conducts a meeting to review a referral for special education evaluation within 10 school days of receipt. Referral is reviewed by a team of qualified professionals <u>and</u> the parent (<i>Evaluation Team</i>).</p> <p><b><u>No Evaluation needed</u></b>            Consider referral to Response to Intervention Team or other pre-referral process.</p>
10 school days	<p><b><u>Evaluation needed</u></b> <span style="float: right;"><b>300.301</b></span>            If an evaluation is needed, it must start no later than 10 school days after the receipt of parental consent to evaluate.</p>
60 calendar days	<p><b><u>Evaluation/Eligibility</u></b> <span style="float: right;"><b>300.301</b></span>            Within 60 calendar days of parental consent to evaluate:            (i) Child is evaluated            (ii) Eligibility determination meeting is conducted            (iii) A written report of the evaluation team is made available to the LEA and the parent(s), and, if the child is determined eligible for special education services, the report is made available to the IEP Team.</p>
15 school days	<p><b><u>IEP</u></b> <span style="float: right;"><b>300.323</b></span>            If eligible, an IEP meeting is conducted within 15 school days and an IEP is developed for the child.</p>
10 school days	<p>Within 10 days special education &amp; related services are made available to the child. (RI Reg. 300.323)</p>
Not more than once per year. (Unless by agreement)	<p><b><u>Re-evaluation</u></b> <span style="float: right;"><b>300.303</b></span>            1) May occur not more than once a year, unless the parent and the local educational agency agree otherwise; and            2) Must occur at least every three (3) years, unless the parent and the local educational agency agree that a re-evaluation is unnecessary.</p>
60 calendar days	<p>Re-evaluation must be completed within 60 days of receipt of parent consent.</p>

# SPECIAL EDUCATION TIMELINES

## R.I. Special Education timelines Discipline Matters

10 school days cumulative	<b><u># of days of Removal without educational services</u></b>	<b>300.530(b)</b>
10+ school days cumulative	<b><u>Manifestation Determination needed</u></b> after student is suspended for more than 10 school days cumulative in a school year.	
10 school days	<b><u>Manifestation Determination conducted w/in 10 school days</u></b> of decision to suspend over 10 <sup>th</sup> day cumulative during school year. <i>(Suspension can take place pending MD).</i>	<b>300.530(e)</b>
45 school days	<b><u>Student placed in Interim Alternative Educational Setting (IAES)</u></b>	<b>300.532</b>
	<ul style="list-style-type: none"> <li>• <b>Hearing Officer</b></li> </ul>	<b>300.532 (b)</b>
	<ul style="list-style-type: none"> <li>• <b>School for weapons/drugs</b></li> </ul>	<b>300.530 (g)</b>

## Due Process Hearings

### Calendar Days

15 days (calendar)	<b><u>To Challenge Sufficiency of Complaint</u></b>	<b>300.508 (d)</b>
5 days (calendar)	<b><u>Hearing Officer rules on sufficiency of Complaint</u></b>	<b>300.508 (d)(2)</b>
10 days (calendar)	<b><u>Answer to complaint filed with Hearing Officer</u></b>	<b>300.508 (f)</b>
10 days (calendar)	<b><u>Unless PWN previously sent—Parent Notice by LEA</u></b>	<b>300.508 (e)</b>
15 days (calendar)	<b><u>LEA to schedule Resolution Session</u></b>	<b>300.510 (a)</b>
30 days (calendar)	<b><u>Resolution Timeline</u></b>	<b>300.510 (b)</b>
5 business days	<b><u>Timeline to disclose information prior to hearing</u></b>	<b>300.512 (b)</b>
45 days (calendar)	<b><u>Hearing Timeline—Decision Due</u></b>	<b>300.510 (c)</b>

### Business Days

20 calendar days	<b><u>Expedited Due Process Hearing</u></b>	<b>300.532 (c)(2)</b>
10 business days	<b><u>Expedited Due Process Hearing decision due</u></b>	<b>300.532 (c)(3)</b>
2 years	<b><u>Statute of limitation to bring Due Process Complaint</u></b>	<b>300.511(e)</b>

# SPECIAL EDUCATION TIMELINES

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**R**EGIONAL **R**ESOURCE **C**ENTER

**Quick Start:  
STUDENTS  
PARENTALLY  
PLACED**

# STUDENTS PARENTALLY PLACED

## GENERAL EDUCATION, 504 & SPECIAL EDUCATION

REGIONAL RESOURCE CENTER  
*Educator's Toolbox*

## Quick Start: STUDENTS PARENTALLY PLACED

Topics covered in this handout:

Parentally Placed Private School Students Rights

- i. General Education
- ii. Section 504
- iii. Special Education

### I. Topic: General Education & Parentally Placed Students

**Quick Facts:** Students who are placed in private schools by their parents or guardians:

**Parentally Placed Private School Students:**

- Are not enrolled in the Public School System
- Are not entitled to Public School Enrollment Status
- Are not entitled to tutoring services from the public school system for medical reasons
- Are not eligible to participate in Public School Interscholastic League competition representing their resident Public School. System

### II. Topic: Section 504 & Parentally Placed Students

**Quick Facts:**

**Parentally Placed Private School Students & Section 504:**

- As part of **child find**, students are entitled to **referral** and **evaluation** for Section 504 eligibility **BUT are NOT** entitled to Section 504 accommodations or programming from the public school (unless they disenroll from the private school and enroll in the public school system) .
- Students eligible for Section 504 accommodations are the responsibility of the private school they attend—not the public school system.
- If requested, the public school is responsible for developing a Section 504 plan to be administered in the public school system **BUT** the public school is **NOT** responsible for developing a Section 504 plan to be administered in a private school, non public or religious affiliated school.
- Non Public including religiously affiliated schools that receive federal financial assistance for education must comply with Section 504 requirements.
- Public Schools do not have to provide Section 504 accommodations or write 504 plans for non public and religious affiliated schools.
- Tutoring services for students attending private schools are not the responsibility of the public school system, even students who are not attending the private school for medical reasons.

# STUDENTS PARENTALLY PLACED

## GENERAL EDUCATION, 504 & SPECIAL EDUCATION

### III. Topic: Special Education & Parentally Placed Students

#### Quick Facts:

#### Parentally Placed Private School Students & Special Education:

- Rhode Island creates a right of a parent who elects to send their child to a private school to also receive Full FAPE including an IEP from their resident Public School System.
- The parent also has the rights afforded under the IDEA to a “Services Plan” made available by the public school system where the private school is located.
- **RI RIGHTS:** RI Regulations provide the parents of private school students with **all** of the rights afforded to public school students. RI Reg. 6.5.3.
- **CHILD FIND:** Carried out by LEA of residence and LEA where private school is located.
- **EVALUATION:** Carried out by LEA of residence (for FAPE) and LEA where private school is located. (Parent elects)
- **ELIGIBILITY DETERMINATION:** Carried out by LEA of residence (for FAPE) **and** LEA where private school is located. (Parent elects)
  - i. Both LEAs have the responsibility to evaluate and determine eligibility.
  - ii. Parent does not have to disclose that more than one LEA is conducting evaluation or determining eligibility (but full disclosure should be discussed, recommended and encouraged)
- **FAPE:** Responsibility of LEA of residence (ONLY).
  - o **Parent must request FAPE or no RI violation for failing to make FAPE available (BUT— LEA must still develop an IEP under RI Regs. 6.5.3)**
- **IEP:** LEA of residence must develop IEP for PPPSS. IDEA 300.129.
  - o LEAs should document notice to parent of right to receive FAPE and IEP.
- **SERVICES DETERMINED:** A PPPSS with a disability has a right to FAPE in RI (not a federal requirement).
  - o Decisions about the services that will be provided to PPPSS with disabilities **MUST** be made by the IEP Team. RI Reg. 6.5.3

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# STUDENTS PARENTALLY PLACED

## GENERAL EDUCATION, 504 & SPECIAL EDUCATION

*Continued from previous page*

- **SERVICES PLAN:** LEA where private school located responsible for consideration of child for participation in a services plan.
- **RECORDKEEPING:** Each LEA must keep records on # of kids evaluated, eligible and serviced under services plan.
- **EXPENDITURE:** Each LEA must spend the allotted IDEA funds for PPPSS. Carryover of one year permitted on use of PPPSS allocations.
- **CALCULATING AMOUNT:** Refer to RI Reg. 6.5.3
- **CONSULTATION:** Requirement of LEA where private school is located to conduct consultation consistent w/ RI Reg. 6.5.3
- **WRITTEN AFFIRMATION:** Requirement of LEA where private school is located to obtain written affirmation by private school indicating the consultation process was followed. RI Reg. 6.5.3.
- **PRIVATE SCHOOL COMPLAINT:** Private school (not individual parent) can file complaint with RIDE alleging the LEA failed to comply with the consultation process or give due consideration to private school views.
- **PARENT COMPLAINT:** RI Regulations provide the parents of private school students all of the rights afforded to public school students. (Including 60 day complaints) RI Reg. 6.5.3.

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**R**EGIONAL **R**ESOURCE **C**ENTER

**Quick Start:  
SPECIAL  
EDUCATION—PWN**

# QUICK START: SPECIAL EDUCATION – PWN

## PRIOR WRITTEN NOTICE

**REGIONAL RESOURCE CENTER**  
*Educator's Toolbox*

## Quick Start: SPECIAL EDUCATION—PWN

Topics covered in this handout: **SPECIAL EDUCATION PWN**

### Topic: PRIOR WRITTEN NOTICE (PWN)

#### Fast Facts:

- Prior Written Notice (PWN) applies to special education students only
- PWN requires notice sent to a parent or guardian **after** a meeting or decision has been made with respect to the identification, evaluation, educational placement or the provision of a free appropriate public education (FAPE) and **before** the decision goes into effect, providing the parents with 10 school days prior notice.
- PWN is not needed for Section 504.

#### Legal Citation

Federal IDEA (34 CFR Part 300) and R.I. Board of Education Regulations require an LEA provide parents with prior written notice whenever it proposes or refuses "to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child." 34 CFR 300.503(a)(1) through 34 CFR 300.503(a)(2).

#### Content of PRIOR WRITTEN NOTICE

**IDEA 34 CFR 300.503(b)(1) through 34 CFR 300.503(b)(7).**

- Prior written notice must include:
  - o A description of the action proposed or refused by the district.
  - o An explanation of why the district proposes or refuses to take the action.
  - o A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
  - o A statement that the parents have protection under Part B's procedural safeguards, and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
  - o Sources for parents to contact to obtain assistance in understanding the provisions of Part B.
  - o A description of other options that the IEP team considered and the reasons why those options were rejected.
  - o A description of other factors relevant to the district's proposal or refusal.

#### MODEL FORM

- Most LEAS use a model form that meets the substantive requirements of 34 CFR 300.503 and R.I. Regs.

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**R**EGIONAL **R**ESOURCE **C**ENTER

**Quick Start:  
Bullying,  
Harassment,  
Hostile  
Environment,  
Discrimination**

# QUICK START: GENERAL EDUCATION BULLYING, HARASSMENT, HOSTILE ENVIRONMENT, DISCRIMINATION IN A SCHOOL SETTING

REGIONAL RESOURCE CENTER  
*Educator's Toolbox*

## Quick Start: Bullying, Harassment, Hostile Environment, Discrimination

Topics covered in this handout: **Bullying, Harassment, Hostile Environment, Discrimination**

### PART ONE: TERMS

#### I. Topic: BULLYING

**Bullying** means the use by one or more students of a written, verbal or electronic expression or a physical act or gesture or any combination thereof directed at a student that:

- Causes physical or emotional harm to the student or damage to the student's property;
- Places the student in reasonable fear of harm to himself/herself or of damage to his/her property;
- Creates an intimidating, threatening, hostile, or abusive educational environment for the student;
- Infringes on the rights of the student to participate in school activities; or
- Materially and substantially disrupts the education process or the orderly operation of a school.

The expression, physical act or gesture may include, but is not limited to, an incident or incidents that may be reasonably perceived as being motivated by characteristics such as:

- Race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression or mental, physical, or sensory disability, intellectual ability or by any other distinguishing characteristic.**
- Bullying most often occurs as repeated behavior and often is not a single incident between the bullying/cyber-bullying offender(s) and the bullying victim(s).**

\* **Note:** *Bullying based on* Race, color, religion, ancestry, national origin, gender, sexual orientation, gender identity and expression or mental, physical, or sensory disability, intellectual ability or by any other distinguishing characteristic will require further investigation to rule out or confirm the existence of prohibited discrimination.

#### *Notes:*

- ❖ In all instances of alleged student bullying, the school must also consider if additional harassment has occurred as part of the investigation process. (Title IV, VI, IX, Disability Harassment)
- ❖ Once a school knows or reasonably should know of possible student-on-student harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred.
- ❖ If harassment has occurred, a school must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment, and prevent its recurrence. These duties are a school's responsibility even if the misconduct also is covered by an anti-bullying policy and regardless of whether the student makes a complaint, asks the school to take action, or identifies the harassment as a form of discrimination.

# QUICK START: GENERAL EDUCATION BULLYING, HARASSMENT, HOSTILE ENVIRONMENT, DISCRIMINATION IN A SCHOOL SETTING

## II. Topic: Harassment

### HARASSMENT

Harassment in schools can occur when a student is discriminated against on the basis of national origin, race, religion, disability, sexual orientation, gender, or other identifiable class. Schools can also be held responsible for the consequences stemming from a failure to take immediate, appropriate steps to respond to a complaint about harassment or bullying, terminate it, and discipline the offending party, be it an employee or another student.

## III. Topic: Hostile Environment

### HOSTILE ENVIRONMENT

Occurs in school occurs when prohibited conduct in question was sufficiently serious to interfere with or limit a student's ability to participate in or benefit from the services, activities or opportunities offered by a school. *(Prohibited conduct may be bullying, sexual harassment or harassment based on disability)*

Hostile environment can be result from bullying, sexual harassment, harassment based on disability, race or national origin and occurs from verbal, non-verbal and/or physical conduct

The determination is made on a case-by-case basis looking at the whole record, including the circumstances (such as the nature of the harassment) and the context in which the alleged incidents occurred.

## IV. Topic: Discrimination

### DISCRIMINATION

**General**—Denied benefits afforded others based on protected status:

*Age, Ethnicity, Gender, Marital Status, National Origin, Race, Religion, and Sexual Orientation, Disability*

- **Discrimination**—Prohibited actions or affirmative obligations.

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## PART TWO: SCHOOL ACTION TAKEN

SCHOOL RESPONSIBILITY: **Bullying, Harassment, Hostile Environment, Discrimination**

### Fast Facts:

- All bullying allegations must be fully investigated
- All bullying investigations must include ruling out: harassment, hostile environment, discrimination
- Found instances of harassment, hostile environment, discrimination must be properly handled

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**R**EGIONAL **R**ESOURCE **C**ENTER

**Quick Start:  
CONFIDENTIALITY,  
RECORDS, FERPA**

## Quick Start: CONFIDENTIALITY, RECORDS, FERPA

Topics covered in this handout: Confidentiality, Records, FERPA

### I. Topic: CONFIDENTIALITY

#### What information is “Confidential” and considered Private?

- Personally identifiable information about a student or family
- All educational records
- Health records
- Information shared with staff about the student or family

#### What is the definition of an Educational Record?

- (a) The term means those records that are:
  - (1) Directly related to a student containing personally identifiable information on student/family; and
  - (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.
- (b) **The term does not include:** (1) Records kept in sole possession of maker, used only as a personal memory aid, and not accessible or revealed to any other person except a temporary substitute for the maker of the record.

#### Who can school staff share confidential information with?

- Anyone identified by the parent in a signed release of information form
- Anyone with a “legitimate educational interest” in the information. (i.e. another teacher of the student, administration staff that needs the information to perform school requirements, etc.)
- Emergency Responders in an emergency if needed to assist the student



# QUICK START: CONFIDENTIALITY, RECORDS, FERPA

## II. Topic: FERPA

### FERPA BASICS

- ▶ FERPA—Family Educational Rights and Privacy Act
- ▶ FERPA—protects disclosures of confidential information
- ▶ Disclosure—by any means
- ▶ Educational Record—personally identifiable information on a student and family maintained by school
- ▶ Maintained by school—includes computer, records, emails, official student record
- ▶ Excluded: Personal records—exception—information not shared with others remains exempt from education record
- ▶ Information from student records—are education records including medical records
- ▶ FERPA controls over HIPAA in a school setting: (*Schools follow FERPA*)
- ▶ **Eligible Student means AGE 18 or attending post-secondary institution**

### Disclosures of Confidential Information

- ▶ Disclosures OK if made with *prior written authorization*—**PERMISSION**
- ▶ Disclosures OK if made to individuals with “Legitimate Educational Interest”

### Copies of Record—How many days do schools have to produce educational records?

- ▶ 10 calendar days in R.I.
- ▶ Copies must be made available. Schools may elect to charge a copy fee.

### Explanation of Records

- ▶ The educational agency or institution, (school) shall respond to reasonable requests for explanations and interpretations of the records. This also applies to records on students maintained by RIDE.
- ▶ The educational agency or institution, (school) shall respond to reasonable requests for explanations and interpretations of records.

## III. Topic: Parent Rights

### Parent Rights

- ▶ Access and copies of Education Record **within 10 calendar days.**
- ▶ **AMENDMENT to RECORD:**

If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, he or she may ask the school district to amend the record. The school district shall decide whether to amend the record as requested within a reasonable time after the school district receives the request. If the school district decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing.

# QUICK START: CONFIDENTIALITY, RECORDS, FERPA

## IV. Topic: Student Rights

### Student Rights

#### What are the rights of students?

- ▶ When a student becomes an adult (eligible student) at age 18, the rights accorded to, and consent required of, parents under law transfer from the parents to the student.
- ▶ Access and copies of Education Record ***within 10 calendar days***.
- ▶ Consent is provided by the student
- ▶ Parents retain notice of what is going on.

#### Violations

- ▶ Breach of Confidentiality/Privacy—damaged relationship
- ▶ FERPA violation
- ▶ Civil Rights Violation
- ▶ IDEA/Sp Ed violation
- ▶ State Law violation

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**R**EGIONAL **R**ESOURCE **C**ENTER

**Quick Start:  
EDUCATION—  
DEFINING TERM  
PARENT**

# QUICK START: GENERAL & SPECIAL EDUCATION PARENT

**REGIONAL RESOURCE CENTER**  
*Educator's Toolbox*

## Quick Start: EDUCATION—DEFINING TERM PARENT

Topic: PARENT for Education Purposes

### What is the definition of a parent?

The term “parent” means—

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, if assuming that role (check with Foster Parent & DCYF)
- (3) A Court appointed guardian.
- (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare; or
- (5) A surrogate parent (educational surrogate parent)

### What are the rights of parents? What about Parent(s) who are Divorced or Separated?

A school district must give full rights under FERPA to either parent, unless the school district has been provided with evidence that there is a court order or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights. Typically, a parent that has been granted superior rights over the other parent will provide the school with a legal document (court order) establishing those rights.

### What about Educational Advocates and Surrogate parents? What rights does an Educational Surrogate Parent or Advocate appointed by the RI Dept. of Ed. have?

The RI Department of Education appoints a surrogate parent also referred to as an educational surrogate parent or advocate in certain cases when DCYF is involved. The individual appointed as the educational surrogate parent in these cases will have a copy of the appointment letter from the RI Dept. of Ed. The school district should maintain a copy of the appointment letter on file. An individual appointed as the educational surrogate parent or advocate by the RI Dept. of Ed. assumes all of the rights of a biological parent, including consent and notice. Until such time as the biological parent re-establishes their role as the parent for education purposes, they do not have any rights under special education.

### What rights do “significant others” have?

Only individuals recognized as meeting the term “parent” have education rights.

In situations where the school district knows the whereabouts of the parent, it is advised to get a release of information signed and on file prior to the disclosure of confidential student information. In situations requiring parental consent the school district should deal with the biological parent or individual meeting the definition of the term “parent”. (Usually not a significant other)

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**R**EGIONAL **R**ESOURCE **C**ENTER

# **Quick Start: Discipline**

# QUICK START: RI EDUCATION DISCIPLINE

**REGIONAL RESOURCE CENTER**  
*Educator's Toolbox*

## RI DISCIPLINE CHECKLIST

### General Education Students

#### **Less than 10 days of suspension (consecutive)**

1. Notice of the charges (verbal or written);
2. Explanation of the evidence against the student;
3. Opportunity for the student to tell their side of the story;
4. Notice/decision in writing to the parent/guardian of any action taken against the student

#### **More than 10 days of suspension (consecutive)**

1. written notice of the following:
  - a) A clear, written statement of the reason for suspension or long term removal (expulsion);
  - b) Notice of the right to prompt public or private hearing, at the student's election, and right to be represented by counsel at such hearing;
  - c) If hearing is requested—the student shall be given a prompt notice setting the time and place of such hearing, said time and place to be reasonably set to allow sufficient time for preparation, without delay.
  - d) Notice of possible penalties involved;
2. If a hearing is requested—afford the student the following:
  - a) Opportunity to present evidence;
  - b) Opportunity to cross examine witnesses and to present witnesses;
  - c) Record of the hearing and copy to student (stenographic or electronic);  
and
  - d) Written decision without cost.

# QUICK START: RI EDUCATION DISCIPLINE

## 504 Protected Students

### **Less than 10 days of suspension (Consecutive)**

1. Notice of the charges (verbal or written);
2. Explanation of the evidence against the student;
3. Opportunity for the student to tell their side of the story;
4. Notice/decision in writing to the parent/guardian of any action taken against the student

### **More than 10 days of suspension (Consecutive)**

1. Written notice of the following:
  - a. A clear, written statement of the reason for suspension or long term removal (expulsion);
  - b. Notice of the right to prompt public or private hearing, at the student's election, and right to be represented by counsel at such hearing;
  - c. If hearing is requested—the student shall be given a prompt notice setting the time and place of such hearing, said time and place to be reasonably set to allow sufficient time for preparation, without delay.
  - d. Notice of possible penalties involved;
2. If a hearing is requested—afford the student the following:
  - a. Opportunity to present evidence;
  - b. Opportunity to cross examine witnesses and to present witnesses;
  - c. Record of the hearing and copy to student (stenographic or electronic); and
  - d. Written decision without cost

***Note: 504 Protected Students suspended for more than 10 consecutive days must be re-evaluated prior to suspension. Re-eval can consist of file review and manifestation determination.***

# QUICK START: RI EDUCATION DISCIPLINE

## Special Education Students

### Less than 10 days of suspension (Cumulative)

1. Notice of the charges (verbal or written);
2. Explanation of the evidence against the student;
3. Opportunity for the student to tell their side of the story;
4. Notice/decision in writing to the parent/guardian of any action taken against the student

### More than 10 days of suspension (Cumulative)

*Note: To be followed in addition to more than 10 days of suspension requirements once a child hits 10 cumulative days of suspension.*

1. **CONTINUED EDUCATIONAL SERVICES.** Provide continued educational services so as to enable the child to participate in the general education Curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
2. **MANIFESTATION DETERMINATION conducted after suspension and within 10 days.** Conduct a manifestation determination w/in 10 school days of decision to remove student beyond 10 school days cumulative during the school year (*See **Manifestation Determination***)
3. **FUNCTIONAL BEHAVIORAL ANALYSIS.** Conduct a functional behavioral assessment (unless the LEA had conducted a FBA prior to the behavior that resulted in the disciplinary removal for more than 10 school days cumulative)
4. **BEHAVIORAL INTERVENTION PLAN.** Develop a behavioral intervention plan & provide behavioral intervention services and modifications that are designed to address the behavioral violation so that it does not recur (unless one had already been developed in which case modify it, as necessary, to address the behavior)

### More than 10 days of suspension (Consecutive)

1. written notice of the following:
  - a. A clear, written statement of the reason for suspension or long term removal (expulsion);
  - b. Notice of the right to prompt public or private hearing, at the student's election, and right to be represented by counsel at such hearing;
  - c. If hearing is requested—the student shall be given a prompt notice setting the time and place of such hearing, said time and place to be reasonably set to allow sufficient time for preparation, without delay.
  - d. Notice of possible penalties involved;



# QUICK START: RI EDUCATION DISCIPLINE

2. If a hearing is requested—afford the student the following:
  - a. Opportunity to present evidence;
  - b. Opportunity to cross examine witnesses and to present witnesses;
  - c. Record of the hearing and copy to student (stenographic or electronic); and
  - d. Written decision without cost

## DANGEROUS STUDENT

### General Points for Consideration

- **School Removals**—short term removals are permitted if a student presents as a danger to themselves or others, regardless of special education or 504 status.
- **Consider removals for Health and Safety** reasons and not disciplinary action when appropriate.
  
- **RI General Law § 16-2-17. Right to a safe school.**

(a) Each student, staff member, teacher, and administrator has a right to attend and/or work at a school which is safe and secure, and which is conducive to learning, and which is free from the threat, actual or implied, of physical harm by a disruptive student. A disruptive student is a person who is subject to compulsory school attendance, who exhibits persistent conduct which substantially impedes the ability of other students to learn, or otherwise substantially interferes with the rights stated above, and who has failed to respond to corrective and rehabilitative measures presented by staff, teachers, or administrators.
  
- **RI Basic Education Program Title 200, Chapter 20 Part 1.3 Safe, Healthy and Supportive Learning Environment**

*It is a good practice to check with the school administration on how to proceed in these matters.*

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# **Quick Start: Homebound Instruction**

# QUICK START: HOMEBOUND INSTRUCTION

## Quick Start: EDUCATION— Homebound Instruction

### ELIGIBILITY FOR HOME INSTRUCTION

#### I. **GENERALLY—All Students**

- **BEP**

Title 200 of the Rhode Island BASIC EDUCATION PROGRAM, (BEP) Chapter 20, Subchapter 10:  
Part 1.3 Safe, Healthy and Supportive Learning Environment,  
1.3.1 Academic Supports and Interventions for all Students, states:

(5) “Each LEA shall provide for students who are homebound, hospitalized, or capable of only intermittent school attendance for medical reasons, a sufficient degree of academic support, including tutoring if necessary, to allow for regular academic progress in the student’s program of study. These supports shall commence when the LEA becomes aware that the student’s sustained or intermittent absence will result in a significant regression in academic progress.”

See also R.I. Commissioner of Education decision in re: Student R. Doe v. Cumberland School Committee, December 9, 2013, (*ruling a school committee policy requiring a predetermined number of days of school absence before home instruction is provided violated the BEP.*)

- **Students with Medical Conditions**

Students presenting with short term medical conditions may qualify for home instruction consistent with the requirements set forth in the BEP discussed above. For students with medical conditions that also meet the definition of a student with a disability under Section 504 of the Rehabilitation Act or the Individuals with Disabilities, Act (IDEA) and/or the R.I. Board of Education Regulations, please refer to those sections within this document.

# QUICK START: HOMEBOUND INSTRUCTION

## ELIGIBILITY FOR HOME INSTRUCTION

### II. Students with Disabilities under Section 504

Students with a medical condition that meets the definition of a student with a disability as defined by Section 504 of the Rehabilitation Act will also qualify for protection under that federal Act.

#### **A student with a disability is defined by Section 504 as a qualified individual who--**

1. Has a physical or mental impairment which substantially limits one or more major life activities; or
2. Has a record of such an impairment; or
3. Is regarded as having such an impairment

Students receiving protection under Section 504 may require a Section 504 plan that outlines how the student will access the programs and services offered by the school/school district in order to receive a free appropriate public education (FAPE) as defined by the Act. Oftentimes a student's *Individual Health Care Plan* will also serve as the student's 504 Plan.

## ELIGIBILITY FOR HOME INSTRUCTION

### III. Students with Disabilities under IDEA and RI Board of Education Regulations

A student's IEP team may place a student on home instruction if the team determines that the student cannot receive an educational benefit or FAPE in a less restrictive setting. See 34 CFR 300.115(b)(1) (requiring districts to make available a continuum of educational placements that includes "instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions"). A district also may provide temporary homebound services if a student is unable to attend school due to a short-term illness or injury.

R.I. Board of Education Regulations Governing the Education of Children with Disabilities at 6.5.2 outlines the Continuum of Special Education Placements including Homebound 6.5.2 (E, 2) and Hospital Instructional Programs 6.5.2 (E, 3).

Usually, a student's placement at home is limited to situations when the student's unique health or safety needs requires that placement or the placement is necessitated by the health and safety of others.

**When Home Instruction is contemplated for Students with Disabilities—the following guiding practices should be considered:**

- ***The decision to place a student with a disability on home instruction is made by the IEP team or 504 Team. Questions and Answers on Providing Services to Children with Disabilities During an H1N1 Outbreak***, 53 IDELR 269 (OSERS 2009).
- ***Physician can't make the decision to place a student on homebound instruction for education purposes.***
- ***Parent Preference is not the standard when determining if homebound instruction is required.*** Federal and state courts as well as hearing officers have consistently held that the decision to place a student with a disability on home instruction cannot be appropriately based solely on parent preference.

# QUICK START: HOMEBOUND INSTRUCTION

- **Home Instruction may be necessary for a student with a disability who is unable to attend school for medical or psychological reasons.**
- **Home Instruction is not appropriate for students with disabilities whose needs can be met in a less restrictive setting. PARTICIPATION IN EXTRACURRICULAR ACTIVITIES**
- **Right to Participate in District Sponsored Activities.** OCR has consistently ruled that students with disabilities receiving home instruction or homebound services have the right to participate in district-sponsored activities to the extent they are able to do so, including the right to be notified of such activities.
- **Districts must ensure timely notice of extracurricular activities.**

## ELIGIBILITY FOR HOME INSTRUCTION

### IV. Parentally Placed Private School Students (PPPSS) and Homebound Instruction

- **Public School Responsibility:**

Students attending private schools through non LEA enrollment (parental choice) **are not** entitled to homebound instruction from the public school of residence unless the student enrolls in the public school. In those cases, the student will receive homebound instruction following the public school curriculum, not the private school.

- **Private School Responsibility**

Students attending private schools through non LEA enrollment (parental choice) are generally the responsibility of the private school and may be entitled to the protections of Section 504/Title II ADA.

Parents should inquire about their rights (and the rights of their children) in those settings.

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