



EIGHT COMMON MYTHS ABOUT THE SPECIAL EDUCATION LAWS

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral or contact an attorney of your choice.

1. **MYTH:** *Your child can't get special education (or early intervention) services because there's a waiting list.*

FACT: "Waiting lists" for special education or early intervention are illegal. Of course, the school district is permitted to take a certain amount of time to evaluate your child and give you the evaluation report (*60 calendar days* minus the summers from the district's receipt of the signed Permission to Evaluation - Consent Form for school aged children, *60 calendar days* for preschoolers); to develop the child's education program (*30 calendar days* for school aged children and children three to five and *45 calendar days* total to evaluate and develop a program for children under three); and to begin providing the services (*10 school days* from completion of the Individualized Education Program (IEP) for school aged children, *14 calendar days* for children three to five, and *14 calendar days* for the youngest children). Longer delays violate the law.

If the school district has taken longer than these deadlines, you can send a complaint to the Division of Compliance, Monitoring and Planning, Bureau of Special Education, Pennsylvania Department of Education, 333 Market Street, Harrisburg, PA 17126. The Division has *60 calendar days* within which to issue a written report, and, if a violation is found, it must follow-up and make sure the problem is corrected. You can also ask for a Due Process Hearing. For more information on due process hearings and other dispute resolution mechanisms, visit our website at www.elc-pa.org, and download some of our "legal rights" brochures, especially the Fact Sheet entitled *Resolving Special Education Disputes*. You can also call our Philadelphia office at the number listed below and we will send the publications to you.

2. **MYTH:** *Your child needs a type of program or placement that isn't offered by your school district, so she will have to take what's available instead.*

FACT: Your child has the legal right to a program that is suited to her individual needs, and in which she can make meaningful educational progress. If the district doesn't have such a program, it must take steps to make one available - even if that involves special arrangements or expense.

3. **MYTH:** *Your child can't have physical (or occupational or speech) therapy because the district doesn't have a therapist available to provide the service.*

FACT: A child is entitled to the "related services" (such as physical, occupational, and speech therapy, psychological counseling, specialized transportation, school health services, and so forth) that are needed to assist the child to benefit from her special education program. If the district doesn't have the necessary personnel, it must hire them or "contract out" for the service. Remember, however, that the district must provide only those "related services" that are needed to help the child be maintained in school and benefit from her educational program as set forth on the IEP. If the therapy is not related to the child's educational program, the district is not required to provide it. (But remember, if your child is eligible for Medical Assistance, you may be able to get additional therapies, and physical and behavioral health care at school, through Medical Assistance.)

4. **MYTH:** *Your child's disability is too severe for her to qualify for vocational education, or your child is eligible for the vocational education program or the vocational-technical school only if she can do as well as children who do not have disabilities.*

FACT: A student cannot be denied vocational education because her disability is too severe. In addition, a student is entitled to apply for a limited admission program or vocational-technical school on the same basis as other students if the IEP Team decides that the child can benefit and achieve the IEP goals, even if the child can not meet the same standards as students who do not have disabilities. Not later than the first IEP after the student is 14, the IEP must address the student's transition to post-high school objectives such as training, education, employment, and, where appropriate, independent living skills, and

must include the transition services needed to achieve those objectives.

5. **MYTH:** *Your child has a severe disability, so she must be placed in a special "center" for children with disabilities, or in a private school.*

FACT: Your child must be educated with non-disabled children to the maximum extent appropriate to the child's needs. This means that, if your child could make reasonable progress in her IEP goals in a regular classroom in a regular school, the program must be offered there and must include those additional services needed to help the student succeed. These special supports (called supplementary aids and services) must be included in the student's IEP. Only if your child's IEP cannot be carried out appropriately in a regular classroom or school should a pull-out program or a special school be considered. And only if the child's needs cannot be met in a district or Intermediate Unit program can the district offer a placement in a private school.

6. **MYTH:** *You've already approved your child's Notice of Recommended Educational Placement and IEP. Therefore, you must wait until next year to request a change in your child's program or placement, or go to a due process hearing.*

FACT: Even if you approved the Notice and IEP, you may, at any time, request a change in your child's program or placement. The district must then notify you whether it is willing to make the change. If the district will not make the change that you have requested, you have a right to a Due Process Hearing. No matter what you have signed, you never lose or "waive" your right to change your mind and pursue that change through the Due Process procedures. You are also entitled to a re-evaluation once each year if you think it is needed.

7. **MYTH:** *You disagree with the program or placement that the district has proposed for your child, so you shouldn't sign the IEP or Notice of Recommended Educational Placement.*

FACT: On the contrary - you should immediately check "I disapprove," sign and return the IEP or Notice within the time period listed, and file a request for mediation or a special education hearing. To take no action, or to take action too late, in most cases, will permit the school district to make the proposed change. Even if you don't receive a form to sign

and return, you should promptly send the district a letter if you disagree with a proposed IEP or placement.

8. MYTH: *The district has decided that your child no longer needs one of the services or activities on the IEP, so the service will be terminated.*

FACT: The district must give you written notice of a proposal to change any significant aspect of the child's IEP or placement. If, after receiving the notice, you want to prevent the district from implementing a proposed change, you must object in writing, and can request a Due Process Hearing or agree with the school district to mediate the dispute. If you have objected in writing and requested a Due Process Hearing within applicable timelines, the proposed change cannot take place until the Hearing Officer has issued a decision agreeing with the proposed change (or, if appeals are taken from the decision, until all appeals have been completed). For more details on how this works, including a discussion of the applicable timelines, check *The Right to Special Education in Pennsylvania: A Guide for Parents*, which can be ordered from ELC or downloaded from our website at www.elc-pa.org. For more on dispute resolution options, see ELC's Fact Sheet *Resolving Special Education Disputes* (<http://www.elc-pa.org/pubs/downloads/english/dis-How%20to%20Resolve%20Special%20Education%20Disputes%208-07.pdf>) which can also be downloaded from our website or ordered by calling the Philadelphia number below.

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Prepared by: Education Law Center (Rev 8/08)
(215) 238-6970 (Philadelphia)
(412) 258-2120 (Pittsburgh)
www.elc-pa.org