

### What is special education?

Special education means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including instruction in the classroom, in the home, in hospitals and institutions, and in other settings.

This term also includes instruction in physical education.

Special education programs in Mississippi are governed by **both state and federal law**

Under both federal and state law, school districts must provide each student with a disability with a **free appropriate public education** (FAPE).

### Who is eligible for special education?

All children with disabilities between ages three and twenty (or twenty-one, if they have not completed school) who live in Mississippi and have an eligible disability may receive special education services.

### What are eligible disabilities?

Intellectual disability;

A hearing impairment;

A speech or language impairment;

A visual impairment;

A serious emotional disturbance;

An orthopedic impairment that affects the child's educational performance;

Autism;

A traumatic brain injury;

Other health impairments that result in limited awareness of the educational environment;

A specific learning disability;

Multiple disabilities (such as deaf-blindness); or

A developmental delay in cognitive, language, motor, or behavioral skills.

20 U.S.C. § 1401(3) (2015); 34 C.F.R. § 300.8 (2016); Miss. Code Ann. § 37-23-133, 37-23-135 (2015).

## Who is not eligible for special education services?

Children with disabilities who have graduated from high school with a standard high school diploma; or

If the main factor in the eligibility determination is a lack of instruction in reading, math, or limited English proficiency.

Miss. Code Ann. § 37-23-137 (2015); 20 U.S.C. § 1414(b)(5) (2015); 34 C.F.R. § 300.306(b) (2016).

Infants and toddlers under age three may be eligible for early intervention if they have experienced developmental delays in cognitive, physical, communication, social, emotional, or adaptive development, or if they have been diagnosed with a condition that has a high probability of resulting in developmental delay. Miss. Code Ann. § 41-87-5 (2015)..

## What type of education are children with a qualifying disability entitled to? What is a “free appropriate public education”?

Under both federal and state law, school districts must provide each student with a disability with a **free appropriate public education** (FAPE).

"Free appropriate public education" means special education that:

Has been provided under public supervision and direction, and without charge;

Meets the standards of the State Department of Education;

Includes an appropriate preschool, elementary, or secondary school education; and

Are provided according to the individualized education program requirements under IDEA, applicable federal and state regulations and relevant court cases. Miss. Code Ann. § 37-23-133

FAPE instruction may include:

Speech and language services,

Physical education,

Travel training, and

Vocational education. 20 USCS § 1401(2015).

## In addition to a free appropriate public education, are there other services a child with a disability is entitled to? What are “related services”?

Mississippi provides all children with disabilities access to special education and “related services.” Miss. Code Ann. § 37-23-135 (2015).

Related services include:

Transportation;

Speech/Language services (including identification of children with hearing loss, medical referral and evaluation, counseling and guidance regarding hearing loss, routine checking of hearing aids, and auditory training);

Interpreting services;

Psychological services;

Physical and occupational therapy;

Recreation services;

Early identification and assessment of disabilities;

Counseling services (including parental counseling);

Orientation and mobility services (provided to visually impaired children so that they may safely move around the school, home, and community environments);

Medical services for diagnostic or evaluation purposes;

School health services;

Social work services;

Extended school year services (beyond the normal 180 day school year, as necessary to provide FAPE); and

Non-academic and extracurricular services (meals, recess, homeroom, activities, field trips, athletics, special interest groups and clubs, referrals to agencies that provide assistance to individuals with disabilities, and employment of students or assistance in making employment available.) 20 U.S.C. § 1401(26)(A) (2015); 34 C.F.R. § 300.34 (a) (2016); Miss. CODE ANN. § 37-23-133(h) (2015).

These services do not include services for surgically implanted medical devices for children with surgically implanted medical devices. 34 C.F.R. § 300.34 (b) (2016).

## Who Provides Special Education?

State educational agencies are responsible for providing special education. 20 U.S.C. § 1412(a)(11) (2015).

These include:

The Mississippi Department of Education,

Local educational agencies,

Educational Service Agencies,

Nonprofit public charter schools, and

Other political subdivisions of Mississippi that provide education. 34 C.F.R. § 300.33 (2016).

## Where should a child receive his/her special education and related services? What is a “least restrictive environment”?

Special education must occur in a “least restrictive environment”

Children with disabilities must be educated as much as possible with nondisabled peers.

They may be educated separately only when the nature of their disability makes it impossible for them to receive a satisfactory education with supplementary aids and services in a regular general education classroom. 20 U.S.C. § 1412 (a)(5)(A) (2015); 34 C.F.R. § 300.114 (2016); MISS. CODE ANN. § 37-23-133(f) (2015).

Parents of a child with a disability must be involved in any decision-making regarding educational placement of their child. MISS. CODE ANN. § 37-23-137(1), 37-23-137(7) (2015); 34 C.F.R. §§ 300.327, 300.501 (2016).

Parents must consent to the evaluation of a child for special education services. MISS. CODE ANN. § 37-23-137(1) (2015); 20 U.S.C. § 1414 (a)(1)(D) (2015); 34 C.F.R. § 300.300 (2016).

The child’s placement is determined yearly, and should be as close as possible to the child’s home, and should be based on the child’s IEP. Unless otherwise required, the child should be educated in the school that he or she would attend if nondisabled. 34 C.F.R. § 300.116(b), (c) (2016).

## How is a child determined to be eligible for special education? Is there an assessment or evaluation?

**Either a parent or a public agency may request an initial evaluation** to determine if a child needs special education services. 34 C.F.R. § 300.301(b) (2016).

- An evaluation team must meet within fourteen school days to consider the request. 7 Miss. CODE R. § 34:300.301(b) (2013).
- No initial evaluation may be made without parental consent. 34 C.F.R. § 300.300(a) (2016).
- A parent’s consent to an evaluation is voluntary and may be revoked at any time. 34 C.F.R. § 300.9 (2016).
- If parents do not consent to an initial evaluation, a school may obtain an evaluation through hearing procedures provided through IDEA (Individuals with Disabilities Education Act). 34 C.F.R. § 300.300(a)(3) (2016).

In the evaluation, **a variety of assessment tools** must be used to determine if the child needs special education services. 34 C.F.R. § 300.304 (2016).

This includes looking at existing information about the child, including information from parents and teachers.

When assessments are complete, the parent and a group of professionals go over the results to determine whether the child has a disability. 34 C.F.R. § 300.305(a) (2016).

## Can a child be re-evaluated? How do re-evaluations work?

Requests for re-evaluation are made through the same process as the evaluation process.

Re-evaluations cannot occur more than once per year, unless the parent and public agency agree otherwise. 34 C.F.R. § 300.303(b)(1) (2016).

Re-evaluations must occur at least once every three years, unless the parent and public agency agree otherwise. 34 C.F.R. § 303(b) (2016).

A child must also be re-evaluated before special education services are discontinued, or before a change in the child's disability category. 34 C.F.R. § 300.305(e) (2016).

## Once a child is identified as eligible for special education, what are the next steps? What is an "IEP"? Do parents have any say in the IEP?

An Individualized Education Program (IEP) outlines in writing the child's educational program.

- It must be developed, reviewed, and revised in accordance with IDEA. MISS. CODE ANN. § 37-23-133(e) (2016).
- For infants and toddlers with a disability, an Individualized Family Service Plan (IFSP) must be developed. 34 C.F.R. § 300.112 (2016); MISS. CODE ANN. § 41-87-9 (2015).

## Who designs the IEP?

An **IEP Committee** must include parents and (when appropriate) the child with a disability. 34 CFR § 300.321(a) (2016).

- Parents must be notified early about the IEP committee meeting so they may attend. If no parent can attend the meeting, the agency must try to involve the parents through conference calls or other methods. 34 CFR § 300.322 (2016).

The only way an agency may have an IEP meeting without the parents is if all attempts to involve the parents are rejected by the parents themselves. 34 CFR § 300.322(d) (2016).

The IEP committee must also include:

- At least one of the child's general education teachers;
- At least one of the child's special education teachers;
- A person representing the public agency;
- A person who can understand and interpret the evaluation results, and,
- If the parents or the agency decide, others who know the child or have special expertise. 20 U.S.C. § 1414 (2015); 34 CFR § 300.321 (2016).

## What does an IEP need to include?

The IEP must include:

The child's current level of performance (a description of how the child's disability affects his or her involvement and progress in the general education curriculum or appropriate activities);

A statement of measurable yearly goals;

A measurement of the child's progress toward meeting those goals;

A statement of the special education and related services to assist the child in achieving the yearly goals and to progress and participate in the general education curriculum and nonacademic activities;

A start date, location, duration, and frequency of the educational services;

An explanation for how much time the child will spend separated from nondisabled children; and

If necessary, reasons why the child cannot participate in any statewide tests and specified alternative assessments. 34 CFR § 300.320 (2016).

The first IEP after the child turns 14, and every year after, must include postsecondary goals (involving training, employment, and independent living skills), and transition services needed to help the child reach those goals. 34 CFR § 300.320 (2016).

The public agency must give the parent a free copy of the child's IEP. 34 CFR § 300.322(f) (2016).

## What are the differences between an IFSP and an IEP? Who develops an IFSP?

An IFSP is similar to an IEP, but written for infants and toddlers.

A team, including the parents, works together to develop an IFSP

An IFSP includes:

- An assessment of the infant or toddler's current level of development
- The family's resources, concerns and goals for the child, and services needed to meet the child's needs
- Steps to support the child's transition to preschool. 20 U.S.C. § 1436 (2016).

Both an IEP and IFSP allow a parent to participate in the placement and plan design for their child with a disability. 34 C.F.R. § 300.116, 300.501 (2016).

## What if a parent believes the school district is not doing its job (i.e. failing to implement a valid Individualized Education Plan (IEP))?

A parent **can file a written formal state complaint** with both the Mississippi Department of Education and the local educational agency (within 1 year of the alleged violation), which must include:

A statement that a public agency has violated a statutory or regulatory requirement;

Facts on which the statement is based;  
Signature and contact info for the parent;  
The name and address of the child;  
The name and address of the school the child is attending;  
A description of the nature of the problem of the child; and  
A proposed solution to the problem. 34 C.F.R. § 300.153 (2016).

Parents may find a model complaint form at:

[http://www.mde.k12.ms.us/docs/sped-for-parents/Formal\\_Complaint\\_Revised\\_06-24-11.doc](http://www.mde.k12.ms.us/docs/sped-for-parents/Formal_Complaint_Revised_06-24-11.doc).

Use of the model form is not required. 34 C.F.R. § 300.509 (2016).

The complaint should be sent to the child's local educational agency (LEA) and forwarded to the MDE:

Parent Consultant  
Mississippi Department of Education  
Office of Special Education  
Post Office Box 771, Suite 331  
Jackson, MS 39205-0771

**Within 60 days of the complaint**, the Mississippi Department of Education will address the complaint. 34 C.F.R. § 300.152 (2016).

## What options does a parent have if s/he disagrees with the proposed IEP placement or services? What are the procedures for due process?

Disagreements between a parent and public agency regarding a program for a child are subject to **due process procedures**. 34 C.F.R. §§ 300.148(b), 300.507 (2016).

Due process complaints must be filed **within two years** of the alleged violation. 34 C.F.R. § 300.507(a)(2) (2016).

There is no need to file both a formal State complaint and a due process complaint for the same issue.

Parents may find a summary of their due process at <http://www.mde.k12.ms.us/docs/sped-for-parents/procedural-safeguards-december-17-2013.doc>.

The parent must forward a copy of the complaint to:

Mississippi Department of Education  
Office of Special Education  
Post Office Box 771  
359 North West St.  
Jackson, MS 39205

The complaint must include:

The child's name and address;  
The name and address of the child's school;  
A description of the problem; and  
A proposed solution to the problem.

Parents may find a model due process request form at:

[http://www.mde.k12.ms.us/docs/sped-for-parents/Formal Complaint Revised 06-24-11.doc](http://www.mde.k12.ms.us/docs/sped-for-parents/Formal_Complaint_Revised_06-24-11.doc).

Use of the model form is not required. 34 C.F.R. § 300.509 (2016).

For assistance in filing a complaint, a parent should contact the Office of Special Education at (877) 544-0408.

A due process complaint may also be resolved through a **mediation process**, paid for by the state, if both the parent and the agency agree to the process. MISS. CODE ANN. § 37-23-141 (2015); 34 C.F.R. § 300.506 (2016).

## Who responds to due process complaints?

The local educational agency must respond to a due process complaint **within 10 days of receiving it** and must explain why the agency proposed or refused to take the action raised in the complaint. 34 C.F.R. § 300.508 (2016).

**Within 15 days**, the local educational agency will convene a meeting with the parent and a group chosen by the parent and the local agency to discuss and resolve the due process complaints. 34 C.F.R. § 510(a)(1) (2016).



- The meeting must include a representative of the public agency who has decision-making authority. 34 C.F.R. § 300.510(a)(1) (2016).
- This meeting may not be held if the parents and local educational agency agree to waive the meeting or agree to use the mediation process. 34 C.F.R. § 300.510(a)(4) (2016).

If a resolution is reached at the meeting, it must be written, signed by both the parent and local agency representative, and executed in a legally binding document. 34 C.F.R. § 300.510(d) (2016).

If the complaint has not been resolved to the parent's satisfaction **within 30 days of the receipt of the complaint**, a due process hearing may occur. 34 C.F.R. § 300.510(b) (2016).

## How does a due process hearing work?

The due process hearing will be conducted by an **impartial hearing officer**

The officer must not be an employee of the Mississippi Dept. of Education or have any conflicts of interest. 34 C.F.R. § 300.511 (2016).

Both the parent and the local agency **have the right to be accompanied and advised by a lawyer**. MISS. CODE ANN. § 37-23-143(2) (2015); 34 C.F.R. § 300.512(a) (2016).

Both parties can present evidence, call, examine, and cross-examine witnesses. MISS. CODE ANN. § 37-23-143(2) (2015); 34 C.F.R. § 300.512(a) (2016).

**Written or electronic records** of the hearing and findings of facts and decisions will be provided to the parent. 34 C.F.R. § 300.512 (2016).

The hearing officer will make a determination of whether a child received FAPE based on the arguments and evidence presented at the hearing, and come to a final decision. 34 C.F.R. § 300.513 (2016).

If either party does not agree with the decision, that party may bring a civil action in a State court or a US District Court. 34 C.F.R. §§ 300.514, 300.516 (2016).

## What happens to the child during due process hearings?

**The child must remain in his/her current educational placement** during the course of these proceedings. If the child is applying for admission to a public school, with the consent of the parents, the child may be placed in a public school program until the proceedings are completed. MISS. CODE ANN. § 37-23-143(4) (2015); 34 C.F.R. § 300.518 (2016).

If the complaint involves an application admission to public school, the child must be placed in the public school during the due process proceedings. MISS. CODE ANN. § 37-23-143(4) (2015); 34 C.F.R. § 300.518 (2016).

During the appeal process, the child may be moved to an alternative educational setting for **not more than 45 days** if the hearing officer determines that the child would injure or be injured in his/her current educational setting. 34 C.F.R. § 300.532(b)(2) (2016).

## Can a special education student be suspended from school?

School personnel may consider unique circumstances on a case-by-case basis when determining whether suspension is appropriate for a child with a disability. 34 C.F.R. § 300.530(a) (2016).

Parents must be notified immediately of any decision to remove a student with a disability from his or her current placement. 34 C.F.R. § 300.530(h) (2016).

Federal law allows for up to **10 consecutive days** of suspension of special education students. 20 U.S.C. § 1415(k)(1)(B) (2015).

- Suspensions longer than 10 days and expulsions are considered a “**change in placement,**” which cannot occur without parental consent. 20 U.S.C. § 1415(k)(1)(C) (2015).

If the local agency, the IEP team, and parents determine that the bad behavior was caused by the child’s disability or a failure to implement the IEP:

- If the behavior was caused by a **failure to implement the IEP**, the local agency must correct the problem.
- If the behavior was caused by the child’s disability, the IEP team must conduct a **behavioral assessment** and start a behavioral intervention plan.
- If the behavior was not caused by the above, the child may be disciplined normally. 34 C.F.R. § 300.530(d), (e), (f) (2016).

The school can move the student to an alternative educational setting chosen by the IEP team **for 45 days** if the student:

- Carries a weapon to school;
- Knowingly possesses, uses, or sells illegal drugs at school; or
- Has inflicted serious bodily injury on another person at school. 34 C.F.R. § 34:300.530(g) (2016).

## Can parents see the school records of their special education child?

Each agency must allow parents to inspect, review, and obtain copies (at a reasonable fee) of any education records relating to their children within **45 days** of a request. 34 C.F.R. §§ 300.501, 300.613 (2016).

- Parents may request correction of any inaccurate records. 34 C.F.R. § 300.618 (2016).
- Parents may only inspect records concerning their own children. 34 C.F.R. §§ 300.615 (2016).

All rights of parents regarding educational records are transferred to the student at age eighteen. 34 C.F.R. § 300.625(b) (2016).