

# Notice of Special Education Services

The public school districts of Berks County, Pennsylvania, and the Berks County Intermediate Unit ("the Berks County school entities"), provide special education and related services to resident children with disabilities who are ages three through twenty-one. The purpose of this notice is to describe (1) the types of disabilities that might qualify the child for such programs and services, (2) the special education programs and related services that are available, (3) the process by which each of the Berks County School entities screens and evaluates such students to determine eligibility, and (4) the special rights that pertain to such children and their parents or legal guardians.

## What types of disability might qualify a child for special education and related services?

Under the Individuals with Disabilities Education Act, commonly referred to as the "IDEA," children qualify for special education and related services if they have one or more of the following disabilities and, as a result, demonstrate a need for special education and related services: (1) mental retardation, (2) hearing impairments, including deafness, (3) speech or language impairments, (4) visual impairments, including blindness, (5) serious emotional disturbance, (6) orthopedic impairments, (7) autism, including pervasive developmental disorders; (8) traumatic brain injury, (9) other health impairment, (10) specific learning disabilities, (11) multiple disabilities, or (12) for preschool age children, developmental delays. If a child has more than one of the above-mentioned disabilities, the child could qualify for special education and related services as having multiple disabilities. Children ages three through nine years old may also be eligible if they have developmental delays and, as a result, need special education and related services.

The legal definitions of these disabilities, which the public schools are required to apply under the IDEA, may differ from those used in medical or clinical practice. Moreover, the IDEA definitions could apply to children with disabilities that have very different medical or clinical disorders. A child with attention deficit hyperactivity disorder, for example, could qualify for special education and related services as a child with "other health impairments," "serious emotional disturbance," or "specific learning disabilities" if the child meets the eligibility criteria under one or more of these disability categories and if the child needs special education and related services as a result.

Signs of developmental delays or risk factors that might indicate a disability could include, but are not limited to, poor prenatal care, birth trauma, febrile or other seizure activity, severe reaction to early medication or inoculation requiring extended medical care, or severe trauma to the head, followed by failure to attain developmental milestones for communication, motor development, socialization, emotional development, self-help skills, or cognition; unexplained failure to attain developmental milestones in these areas; failure to use toys and other objects in a developmentally appropriate manner; persistent inability to sustain attention at levels sufficient to complete age-appropriate tasks; easy frustration with developmentally-appropriate tasks or activities; difficulty with coloring, letter formation, or drawing lines and shapes within age-appropriate parameters; difficulty building or sustaining age-appropriate relationships or conversations; persistent difficulty tolerating the presence of or interactions with peers or adults; persistent and severe disciplinary actions in preschool or school settings; failure to develop age- or grade-level appropriate reading, writing, mathematical, listening, or speaking skills after exposure to sound instruction in these areas by qualified teachers; and failure to pass routine vision or hearing screenings. Other information regarding potential signs of developmental delays and other risk factors that could indicate disabilities can be found in student handbooks available through your school district of residence or the Berks County Intermediate Unit at the addresses indicated below on the Berks County Intermediate Unit Website: <http://www.berksu.org>.

Under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, some school age children with disabilities who do not meet the eligibility criteria under the IDEA might nevertheless be eligible for special protections and for adaptations and accommodations in instruction, facilities, and activities. Children are entitled to such protections, adaptations, and accommodations if they have a mental or physical disability that substantially limits or prohibits participation in or access to an aspect of the school program, whether academic or non-academic in nature.

## What programs and services are available for children with disabilities?

Each of the Berks County school entities must ensure that children with disabilities are educated to the maximum extent appropriate in settings with their non-disabled peers, commonly referred to as the least restrictive environment. Programs and services available to students with disabilities, in descending order of preference, are (1) regular class placement with supplementary aides and services provided as needed in that environment, (2) regular class placement for most of the school day with itinerant service by a special education teacher either in or out of the regular classroom for 20 percent or less of the school day, (3) regular class placement for some of the school day with supplemental instruction provided by a special education teacher for more than 20 percent, but less than 80 percent of the school day, (4) instruction provided by a special education teacher for more than 80 percent of the school day, and (5) special education services, with or without regular classroom placement, either in an alternative public school setting or in a private school, treatment facility, hospital, detention center or prison, on a day or residential basis.

Depending on the nature and severity of the disability, a Berks County School entity can provide special education programs and services in (1) the public school the child would attend if not disabled, (2) an alternative regular public school either in or outside the school district of residence, (3) a special education center operated by a public school entity, (4) an approved private school or other private facility licensed to serve children with disabilities, (5) a residential school, (6) an approved out-of-state program, or (7) the home.

Special education services are provided according to the primary educational needs of the child, not the category of disability. The types of service available are (1) learning support, for students who primarily need assistance with the acquisition of academic skills, (2) life skills support, for students who primarily need assistance with development of skills for independent living, (3) emotional support, for students who primarily need assistance with social or emotional development, (4) deaf or hearing impaired support, for students who primarily need assistance with compensatory skills to address deafness, (5) blind or visually impaired support, for students who primarily need assistance with compensatory skills to address blindness, (6) physical support, for students who primarily require physical assistance in the learning environment, (7) autistic support, for students who primarily need assistance in the areas affected by autism spectrum disorders, and (8) multiple disabilities support, for student who primarily need assistance in multiple areas affected by their disabilities.

Related services are designed to enable the child to participate in or access his or her program of special education. Examples of related services are speech and language therapy, occupational therapy, physical therapy, nursing services, audiologist services, counseling, and family training.

Children of preschool age are served by the Berks County Intermediate Unit in a variety of home and school-based settings that take into account the chronological and developmental age and primary needs of the child. As with school age programs, preschool programs must ensure that to the maximum extent appropriate, children with disabilities are educated with non-disabled peers.

Each Berks County School entity, in conjunction with the parents of each identified child, determines the type and intensity of special education and related services that a particular child needs based exclusively on the unique program of special education and related services that the school develops for that child. The child's program is described in writing in an individualized education program, commonly referred to as an "IEP," which is developed by an IEP team consisting of educators, parents, and other persons with special expertise or familiarity the child. The parents of the child have the right to be notified of and to participate in all meetings of their child's IEP team. The IEP is revised as often as circumstances warrant but at least annually. The law requires that the program and placement of the child, as described in the IEP, be reasonably calculated to ensure meaningful educational progress to the student at all times. IEPs contain, at a minimum, the projected start date and duration for the IEP, a statement of the child's present levels of educational and functional performance, an enumeration of annual goals, a description of how the child's progress toward meeting the annual goals will be measured and reported, a statement of the special education, program modifications, and related services to be provided, an explanation of the extent, if any, to which the child will not participate with non-disabled children, the anticipated frequency and location of the services and a statement of any accommodations necessary to measure academic achievement and functional performance of the child on state and district wide assessments. For children aged sixteen and older, the IEP must also include a transition plan to assist in the attainment of measurable post-secondary objectives. The public school must invite the child to the IEP team meeting if a purpose of the meeting will be the consideration of the post-secondary goals and transition services needed for the child.

All Berks County School entities are required to allow parents of children with disabilities reasonable access to their child's classrooms, subject to the provisions of each entity's school visitation policy or guidelines.

## How do the public schools screen and evaluate children to determine eligibility for special education and related services?

### Multidisciplinary team evaluation

Berks County School entities must conduct a multidisciplinary team evaluation of every child who is thought to have a disability. The multidisciplinary team is a group of professionals who are trained in and experienced with the testing, assessment, and observation of children to determine whether they have disabilities and, if so, to identify their primary educational strengths and needs. Parents are also members of

the multidisciplinary team. Berks County School entities must reevaluate school-age students receiving special education services every three years and must reevaluate children with mental retardation and pre-school-age children receiving special education services every two years.

Parents may request a multidisciplinary team evaluation of their children at any time. They must do so in writing. Every public school has a procedure in place by which parents can request an evaluation. For information about each Berks County School entity's procedures applicable to your child, contact the elementary, middle, or high school which your child attends. Telephone numbers and addresses for these schools can be found in the blue pages section of the telephone book under the heading "Schools." Parents of preschool age children, age three through five, may request an evaluation in writing by addressing a letter as follows: Berks County Intermediate Unit, Early Intervention Services, River's Chase Business Center, 1111 Commons Boulevard, Reading, Pennsylvania 19612. The telephone number for the Early Intervention Program is (610) 987-8543.

Parents of children in private schools may request a multidisciplinary team evaluation of their children without enrolling in their public schools. However, while some services might be available to some private school children who are found eligible by the responsible Berks County School entity, that entity is not required to provide all or any of the special education and related services those children would receive if enrolled in the public schools. If, after an evaluation, the multidisciplinary team determines that the child is eligible for special education and related services, the responsible Berks County School entity must offer the parents an IEP and a public school-sponsored placement, unless the parents of the child are not interested in such an offer. If parents wish to take advantage of such an offer, they may have to enroll or re-enroll their child in the responsible Berks County School entity to do so.

Before a Berks County School entity can proceed with an evaluation, it must notify the parents in writing of the specific types of testing and assessment it proposes to conduct, of the date and time of the evaluation, and of the parents' rights. The evaluation cannot begin until the parent has signed the written notice indicating that he or she consents to the proposed testing and assessments and has returned the notice to the public school.

### Screening

All Berks County School entities undertake screening activities before referring students for a multidisciplinary team evaluation. Screening activities could involve an instructional support team, commonly referred to as the "IST," or an alternative screening process. Regardless of the particular screening method employed, the screening process must include (1) periodic vision and hearing assessments by the school nurse as mandated by the School Code and (2) screening at reasonable intervals to determine whether all students are performing based on grade-appropriate standards in core academic subjects.

If screening activities produce little or no improvement after a reasonable period of intervention or remediation, the child will then be referred for a multidisciplinary team evaluation.

For information about the dates of various screening activities in your child's school or to request screening activities for a particular child, contact the local public school directly. Telephone numbers and addresses for these schools can be found in the blue pages section of the telephone book under the heading "Schools." Parents of preschool age children, age three through five, may obtain information about screening activities, or may request a screening of their children, by calling or writing the Berks County Intermediate Unit, Early Intervention Services, River's Chase Business Center, 1111 Commons Boulevard, Reading, Pennsylvania 19612. The telephone number for the Early Intervention Program is (610) 987-8543.

Private school administrators, teachers, and parent groups, or individual parents of students in private schools, who are interested in establishing systems in those schools for locating and identifying children with disabilities who might need a multidisciplinary team evaluation may contact the Berks County Intermediate Unit, Early Intervention Services, River's Chase Business Center, 1111 Commons Boulevard, Reading, Pennsylvania 19612. The telephone number for the Early Intervention Program is (610) 987-8543.

## What special rights and protections do children with disabilities and their parents have?

State and federal law affords many rights and protections to children with disabilities and their parents. A summary of those rights and protections follows. Interested persons may obtain a complete written summary of the rights and protections afforded by the law, together with information about free or low cost legal services and advice, by contacting their school district's special education or student services department at the address and telephone number listed in the blue pages section of the telephone book under the heading "Schools." The written summary is also available through the Berks County Intermediate Unit, River's Chase Business Center, 1111 Commons Boulevard, Reading, Pennsylvania 19612. The summary is also available on the Website of the Berks County Intermediate Unit, <http://www.berksu.org>, and on the Websites of most of the public school entities listed below.

### Rights and Protections

**Prior Written Notice.** The responsible Berks County School entity must notify you in writing whenever it proposes to initiate or to change the identification, evaluation, educational program or placement of a child or whenever it refuses to initiate or make a change in the identification, evaluation, educational program or placement requested by a parent. Such notice must be accompanied by a written description of the action proposed or rejected, the reasons for the proposal or refusal, a description of the evaluation information and other relevant factors used as a basis for the decision, the other options considered, if any, the reasons why such options were rejected and a statement that the parent has the right to procedural safeguards.

**Consent.** Berks County School entities cannot proceed with an evaluation or reevaluation, or with the initial provision of special education and related services, without the written consent of the parents. However, a Berks County School entity may attempt to override the lack of consent for an initial evaluation or reevaluation by requesting the approval of an impartial hearing officer by filing a due process request. Additionally, in the case of a parent's failure to respond to a request to conduct a reevaluation, a Berks County School entity may proceed with the proposed reevaluation without parental consent if it can show that it made a reasonable effort to obtain parental consent and that the parent failed to respond. A public school may not seek a hearing to override the refusal of a parent to consent to an initial placement in special education. Parents have the right to withdraw their consent to special education services at any time. In doing so, they are agreeing to the discontinuation of all special education instruction, supplementary aides, program modifications, adaptations, and services. By withdrawing consent, they are also agreeing to forgo the special rights and protections that apply to children with disabilities and their parents.

**Protection in Evaluation Procedures.** Evaluations to determine eligibility and the current need for special education and related services must be administered in a manner that is free of racial, cultural, or linguistic bias and in the native language of the child. The evaluation must assess the child in all areas related to the suspected disability and include variety of technically sound instruments, assessment tools and strategies. The assessments and evaluation materials must be used for the purposes for which the assessments or measure are valid and reliable, must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment and must be talked to assess special areas of need. Moreover, evaluation determinations cannot be based upon any single measure or assessment.

**Educational Evaluation.** If parents disagree with the evaluation conducted by the responsible Berks County School entity, they may request in writing an independent educational evaluation, commonly referred to as an "IEE," at public expense. If an IEE is provided at public expense, the criteria under which the IEE is privately obtained must be the same as the criteria that the responsible Berks County School entity uses when it initiates an evaluation. Information concerning each school entity's evaluation criteria can be obtained through the Office of Special Education or Student Services of that entity. If the Berks County School entity refuses to pay for the IEE, it must immediately request a special education due process hearing to defend the appropriateness of its evaluation.

### Due Process Hearing Procedures

The parent or local educational agency, commonly referred to as the "LEA," may request a due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education, commonly referred to as "FAPE". The party requesting the hearing must submit a "Due Process Hearing Request" form to the Office for Dispute Resolution, 6340 Flank Drive, Suite 600, Harrisburg, Pennsylvania 17112; telephone (800) 222-3353; TTY (800) 654-5984. A due process hearing will not proceed until all required information is provided and procedures followed.

**Timeline for requesting Due Process.** The parent or LEA must request a due process hearing by filing a Due Process Hearing Request within two (2) years of the date to parent or the LEA knew or should have known about the alleged action that forms the basis of the request. There are limited exceptions to this timeline. This timeline will not apply to the parent if the parent was prevented from filing a Due Process Hearing Request due to either (1) specific misrepresentations by the LEA that it had resolved the problem forming the basis of the hearing request, or (2) the LEA's withholding of information from the parent that the LEA was required provide.

**Filing and Service of the Due Process Hearing Request.** The party requesting the hearing must send a copy of the Due Process Hearing Request to the other party and, at the same time, to the Office for Dispute Resolution by mail addressed to the Office for Dispute Resolution, 6340 Flank Drive, Suite 600, Harrisburg, Pennsylvania 17112, or by electronic mail addressed to [ODR.pattan.net](mailto:ODR.pattan.net), or by facsimile at (717) 657-5983.

**Contents of Due Process Hearing Request.** The Due Process Hearing Request must contain the following information:

1. The name of the child, the address where the child lives, and the

1. The name of the school the child is attending, if the child is homeless, available contact information for the child and the name of the school the child is attending;

2. A description of the nature of the problem, including facts relating to such problem; and

3. A proposed resolution of the problem to the extent known and available to the party filing the Due Process Hearing Request.

**Challenging Sufficiency of the Due Process Hearing Request.** The Due Process Hearing Request will be considered to be sufficient unless the party receiving it notifies the Hearing Officer and the other party in writing within fifteen (15) days of receipt that the receiving party believes the Request does not meet the requirements listed above.

**Response to Request.** If the LEA has not sent a prior written notice, such as a "NOREP", to the parent regarding the subject matter contained in the parent's Due Process Hearing Request, the LEA must send to the parent, within ten (10) days of receiving the Due Process Hearing Request, a response including the following information: (1) an explanation of why the LEA proposed or refused to take the action raised in the Hearing Request, (2) a description of other options the Individualized Education Program ("IEP") Team considered, if any, (3) and the reasons why those options were rejected, (4) a description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action and (5) a description of the factors that are relevant to the proposal or refusal. Filing this response to the parent's Due Process Hearing Request does not prevent the LEA from challenging the sufficiency of the Due Process Hearing Request. If it is the parent receiving the Due Process Hearing Request, then a response to the Due Process Hearing Request must be sent to the other side within ten (10) days of receipt of the request. The response should specifically address the issues raised in the Due Process Hearing Request.

**Hearing Officer Determination of Sufficiency of the Due Process Hearing Request.** Within five (5) days of receiving a party's challenge to the sufficiency of the Due Process Hearing Request, the Hearing Officer must make a determination based solely on the information contained within the Request whether the Request meets content requirements listed above. The Hearing Officer must immediately notify both parties in writing of his or her determination.

**Subject Matter of the Hearing.** The party requesting the due process hearing is not permitted to raise issues at the due process hearing that were not raised in the Due Process Hearing Request (or Amended Due Process Hearing Request) unless the other party agrees otherwise.

**Resolution Session.** Before a due process hearing can take place, the LEA must convene a preliminary meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the Due Process Hearing Request in an attempt to resolve those issues without the need to proceed to a due process hearing. This preliminary meeting must be convened within fifteen (15) days of the receipt of the Due Process Hearing Request. A representative of the LEA who has decision-making authority must be present at this meeting. The LEA may not have an attorney attend the meeting unless the parent is also accompanied by an attorney. Parent advocates may attend the meeting. At the meeting, the parent will discuss the Due Process Hearing Request, and the LEA will be provided the opportunity to resolve the Due Process Hearing Request unless the parent and the LEA agree, in writing, to waive this meeting, or agree to use the mediation process. If the parent and LEA resolve the issues in the Due Process Hearing Request at the preliminary meeting, they must put the agreement terms in writing, and both the parent and a representative of the LEA who has the authority to bind the LEA must sign the agreement. The agreement is a legally-binding document and may be enforced by a court. Either the parent or LEA may void the agreement within three (3) business days of the date of the agreement. After three (3) business days, the agreement is binding on both parties.

**Amended Due Process Hearing Request.** Either the parent or a LEA may amend its Due Process Hearing Request only if the other party consents in writing to the amendment and is given the opportunity to resolve the issues raised in the Due Process Hearing Request through a resolution session, or the Hearing Officer grants permission for the party to amend the Due Process Hearing Request. However, the Hearing Officer may grant this permission not later than five (5) days before a due process hearing occurs.

**Timeline for Completion of Due Process Hearing.** If the LEA has not resolved the Due Process Hearing Request within thirty (30) days of receiving it, or within thirty (30) days of receiving the Amended Due Process Hearing Request the due process hearing may proceed and applicable timelines commence. The timeline for completion of due process hearings is forty-five (45) days, unless the Hearing Officer grants specific extensions of time at the request of either party.

**Disclosure of Evaluations and Recommendations.** Not less than five (5) business days prior to a due process hearing, each party must disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations that the party intends to use at the due process hearing. Failure to disclose this information may result in a Hearing Officer prohibiting the party from introducing the information at the hearing unless the other party consents to its introduction.

**Due Process Hearing Rights.** The hearing for a child with a disability or thought to have a disability must be conducted and held in the LEA at a place and time reasonably convenient to the parent and child involved. The hearing must be an oral, personal hearing and must be closed the public unless the parent requests an open hearing. If the hearing is open, the decision issued in the case, and only the decision, will be available to the public. If the hearing is closed, the decision will be treated as a record of the child and may not be available to the public. The decision of the Hearing Officer must include findings of fact, discussion, and conclusions of law. Although technical rules of evidence will not be followed, the decision must be based upon substantial evidence presented at the hearing. A written or, at the option of the parent, electronic verbatim record of the hearing will be provided to the parent at no cost. Parents may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities. Parents or parent representatives must be given access to educational records, including any tests or reports upon which the proposed action is based. A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based. A party has the right to present evidence and confront and cross-examine witnesses. A party has the right to present evidence and testimony, including expert medical, psychological, or educational testimony.

**Decision of Hearing Officer.** A decision made by a Hearing Officer must be made on substantive grounds, based upon a determination of whether the child received a FAPE. In disputes alleging procedural violations, a Hearing Officer may award remedies only if the procedural inadequacies impeded the child's right to a FAPE; significantly impeded the parents opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or caused a deprivation of educational benefits. A Hearing Officer may still order a LEA to comply with procedural requirements even if the Hearing Officer determines that the child received a FAPE. The parent may still file a Complaint with the Bureau of Special Education within the Pennsylvania Department of Education regarding procedural violations.

**Civil Action.** A party that disagrees with the findings and decision of the Hearing Officer has the right to file an appeal in state or federal court. In notifying the parties of the decision, the Hearing officer shall indicate the courts to which an appeal may be taken. The party filing an appeal is encouraged to seek legal counsel to determine the appropriate court with which to file an appeal. A party filing an appeal to state or federal court has ninety (90) days from the date of the decision to do so.

**Attorney's Fees.** A court, in its discretion, may award reasonable attorney's fees to the parent of a child who is a prevailing party or to a State Educational Agency or LEA against the attorney of the parent who files a Due Process Hearing Request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of the parent who continued to litigate after the litigation clearly became frivolous, unreasonable or without foundation; or to a prevailing State Educational Agency or LEA against the attorney of the parent, or against the parent, if the parent's Due Process Hearing Request or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. Fees awarded will be based on rates prevailing in the community in which the action or proceeding arose for the kind and quantity of attorney services furnished.

The federal law imposes certain requirements upon the parent and LEA and in some circumstances may limit attorney fee awards. Parents should consult with their legal counsel regarding these matters. The following rules apply: Attorney's fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to the parent if the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or, in the case of an administrative hearing, at any time more than ten (10) days before the proceeding begins; the offer is not accepted within ten (10) days; and the court finds that the relief finally obtained by the parent is not more favorable to the parent than the offer of settlement. Attorney's fees may not be awarded for time spent attending any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action. A due process resolution session is not considered to be a meeting convened as a result of an administrative hearing or judicial action, nor an administrative hearing or judicial action for purposes of reimbursing attorney's fees. The Court may reduce the amount of any attorney's fee award when: (a) the parent, or the parent's attorney, during the course of the action or proceeding unreasonably protracted the final resolution of the controversy; (b) the amount of the attorney's fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (c) the time spent and legal services furnished were excessive considering the nature of the action or

proceeding; or (d) the attorney representing the parent did not provide LEA the appropriate information in the Due Process Hearing Request. These reductions do not apply in any action or proceeding if the court finds that the State or LEA unreasonably protracted the final resolution of the action or proceeding.

**Child's Status During Administrative Proceedings.** Except for discipline cases, which have specific rules, while the due process case, including appeal to a court of competent jurisdiction, is pending, the child must remain in his or her present educational placement unless the parent and LEA or State agree otherwise. If the due process hearing involves an application for initial admission to public school, the child, with parental consent, must be placed in the public school program until completion of all the proceedings, unless the parent and LEA agree otherwise.

**Private School Tuition Reimbursement.** In some cases, parents of children who were identified by the public school as eligible for special education and related services and who received such services can recover in a due process hearing or from a court an award of private school tuition reimbursement. Parents can also receive such awards if their child was in need of special education and related services but were not offered such services in a timely manner. To obtain an award of tuition reimbursement, parents must notify their public school of their intent to enroll their child in a private school either verbally at the last IEP team meeting prior to withdrawing their child or in writing received by the public school at least ten days prior to the date on which the child is withdrawn from public school. Parents can obtain tuition only when they can prove at a special education due process hearing that (1) the public school failed to offer an appropriate program or placement to the child, (2) the parents therefore placed their child in a private school, and (3) the private school placement was proper. Tuition reimbursement awards can be denied or reduced if the parent's behavior was improper or if the parents delay unreasonably in asserting a claim against the public school in a due process hearing. **Such awards can also be denied or reduced if the parents fail to do one of the following: (1) notify the public school of their intent to place the child in a private school at public expense during the last IEP team meeting prior to the planned placement, or (2) notify the public school in writing of their intent to place the student in a private school at public expense at least ten days before withdrawing the student for that purpose.**

**Mediation.** Parties may agree to submit their dispute to the mediation process by requesting mediation from the Office for Dispute Resolution. Mediation may be requested in place of or in addition to a due process hearing. If a hearing is also requested, mediation cannot delay the scheduling of the due process hearing, unless the Hearing Officer grants a continuance for that purpose at the request of a party. An impartial, trained mediator facilitates the mediation process, which is scheduled at a time and location convenient to the parties. The parties are not permitted to have attorneys participate in the process. Any resolution reached through mediation must be reduced to writing, which will be binding on the parties.

**Rights under Section 504 of the Rehabilitation Act of 1973.** As noted above, some students with disabilities who are not in need of special education and related services are nevertheless entitled to adaptations and accommodations in their school program or in the physical environment of school buildings, grounds, vehicles, and equipment, when such adaptations or accommodations are required to enable the student to access and participate meaningfully in educational programming and extracurricular activities. Parents are entitled to a written description of the adaptations and accommodations that the public school is willing to offer. This written description is called a "service agreement" or "accommodation plan." The rights and protections described above under the headings "Notice," "Consent," "Protection in Evaluation Procedures," and "Maintenance of Placement" apply to students receiving adaptations and accommodations under Section 504. Parents who have complaints concerning the evaluation, program, placement, or provision of services to a student may request either an informal conference with the public school or a due process hearing. The hearing must be held before an impartial hearing officer at a time and location convenient to the parents. Parents have the right to request a free written or electronic transcript or recording of the proceedings, to present evidence and witnesses disclosed to the public school, to confront evidence and testimony presented by the public school, to review their child's complete educational record on request before the hearing, to receive a written decision from the hearing officer, and to be represented by counsel or an advocate of their choice. An appeal may be taken from the decision of the hearing officer to a court of competent jurisdiction.

**Compliance Complaints.** In addition to the above hearing rights, parents and others with complaints concerning the education of a child with disabilities or violations of rights guaranteed by either the IDEA or Section 504 may file complaints with the Pennsylvania Department of Education, which must investigate such complaints and issue written findings and conclusions. Information concerning such complaints can be obtained at the following address:

Pennsylvania Department of Education  
Bureau of Special Education  
Division of Compliance Monitoring and Planning  
333 Market Street, 7th Floor  
Harrisburg, PA 17126-0333  
(800) 879-2301

### Students Who are Mentally Gifted

All Berks County School entities, except charter schools, also offer special education services, in the form of acceleration or enrichment, for students who are identified by a gifted multidisciplinary team ("GMDT") as "mentally gifted." A child is considered mentally gifted when his or her cognitive ability or other factors, as determined by a multidisciplinary team evaluation, indicate that he or she has outstanding intellectual ability the development of which requires special programs and services not ordinarily available in the general education program. The school entity engages in screening activities during regular classroom instruction and uses the data thus generated to determine whether a GMDT evaluation is warranted. In addition, parents may request gifted screening or a GMDT evaluation at any time. Parents are part of the GMDT and, if their child is determined to be mentally gifted, are part of the development and annual review and revision of their child's gifted individualized educational program ("GIEP") as a member of the GIEP team. The GIEP describes the present levels, annual goals and measurable objectives, and specially designed instruction and related services through which the District will provide the enrichment or acceleration, or both, that is needed to develop the outstanding mental ability of the child. Parents of students who are mentally gifted have the right to request a special education due process hearing or to file a compliance complaint with the Pennsylvania Department of Education at the above address. Details concerning the procedures governing hearing requests can be found on the Website of the Office for Dispute Resolution at <http://www.pattan.k12.pa.us>.

A child can be identified as both a child with a disability and mentally gifted. In such cases, the rights of the child and his or her parents are governed by the rules applicable to children with disabilities and their parents, as described above.

### Student Records

All Berks County School entities maintain records concerning all children enrolled in public school, including students with disabilities. Records containing personally identifiable information about or related to children with disabilities could include, but are not limited to, cumulative grade reports, discipline records, enrollment and attendance records, health records, individualized education programs, notices of recommended assignment, notices of intent to evaluate and reevaluate, comprehensive evaluation reports, other evaluation reports by public school staff and by outside evaluators, work samples, test data, data entered into the Penn Data system, correspondence between school staff and home, instructional support team documents, referral data, memoranda, and other education-related documents. Records can be maintained on paper, on microfiche, on audio or videotape, and electronically. Records can be located in the central administrative offices of the public school, the administrative offices of the Berks County Intermediate Unit, the school building or building at which the student attended or attends school, private schools and facilities at which the public school has placed the child for educational purposes, central storage facilities and electronic storage systems, and in the secure possession of teachers, building administrators, specialists, psychologists, counselors, and other school staff with a legitimate educational interest in the information contained therein. All records are maintained in the strictest confidentiality.

Records are maintained as long as they remain educationally relevant. The purposes of collecting and maintaining records are (1) to ensure that the child receives programs and services consistent with his or her IEP; (2) to monitor the ongoing effectiveness of programming for the child; (3) to document for the public school and the parents that the student is making meaningful progress; (4) to satisfy the requirements of state and federal agencies who have an interest in inspecting or reviewing documents concerning particular students or groups of students for purposes of compliance monitoring, complaint investigation, and fiscal and program audits; and (5) to inform future programming for and evaluations of the child. When educational records, other than those which must be maintained, are no longer educationally relevant, the public school must so notify the parents in writing and may destroy the records or, at the request of the parents, must destroy them. Public schools are not required to destroy records that are no longer educationally relevant unless the parents so request in writing.

**Parent consent.** Parent consent is required in writing prior to the release of any personally identifiable information concerning a child with disabilities. Parent consent is not required, however, prior to the release of information (1) to a hearing officer in a special education due process hearing; (2) to public school officials, including staff and contractors, with a legitimate educational interest in the information; (3) to officials or staff of other schools and school systems at which the student is enrolled or intends to enroll; (4) to federal or state education officials and agencies and to the Comptroller of the United States; (5) to accrediting organizations to carry out their accrediting functions; (6) to comply with a lawful subpoena or judicial order; (7) in conjunction with a health or safety emergency to the

**Derechos dentro de Section 504 of the Rehabilitation Act of 1973 (Sección 504 del Acta de Rehabilitación del 1973)** Como es destacado en la parte superior, algunos estudiantes/alumnos con impedimentos los cuales no necesitan educación especial ni servicios relacionados tienen el derecho a recibir adaptaciones y acomodaciones en su programa escolar o en el ambiente físico del edificio de la escuela, los alrededores, vehículos y equipos, cuando estas adaptaciones o acomodaciones son requeridas para ayudar al estudiante a tener acceso y participación significativa en el programa educacional y en las actividades extracurriculares. Los padres tienen derecho de hacer una descripción por escrito de las adaptaciones y acomodaciones que la escuela pública está dispuesta hacer. Estas descripciones son llamadas "acuerdo de servicios" o "plan de acomodación". Los derechos y protecciones descritas antes mencionadas dentro de los títulos "Noticia", "Consentimiento" "Protección en los Procesos de Evaluación" y "Mantenimiento de Ubicación", aplican a estudiantes/alumnos recibiendo adaptaciones y acomodaciones dentro de Section 504 (Sección 504). Los padres que tengan querellas en cuanto a la evaluación, programa, ubicación, o la provisión de servicios al estudiante pueden pedir una audiencia informal con la escuela pública o pedir una audiencia del proceso debido. La audiencia debe ser llevada a cabo ante un oficial de audiencia imparcial en una hora y lugar conveniente para los padres. Los padres tienen el derecho de pedir una transcripción escrita, electrónica gratuita o grabación de los procedimientos, a presentar evidencia y testigos, confrontar la evidencia y los testimonios presentados por la escuela pública, revisar todos los expedientes informativos educacionales del niño antes de la audiencia, recibir una decisión por escrito del oficial de audiencia y el ser representados por un consejero o asesor de su preferencia. Una apelación puede ser tomada de la decisión del oficial de audiencia a un tribunal de la jurisdicción competente.

**Procedimiento para Querellas.** Además de los derechos sobre audiencia, los padres y otras personas con problemas de querellas en cuanto a la educación del niño con incapacidad o violaciones de los derechos garantizados por IDEA o la Section 504 (Sección 504) pueden levantar una querella con el Pennsylvania Department of Education (Departamento de Educación de Pennsylvania), el cual investigará las querellas y emitirá un escrito sobre los fallos y conclusiones. La información sobre las querellas puede ser obtenida de la siguiente dirección:

Pennsylvania Department of Education  
Bureau of Special Education  
Division of Compliance Monitoring and Planning  
333 Market Street, 7th Floor  
Harrisburg, PA 17126-0333  
(800) 879-2301

#### **Estudiantes que son Mentalmente Dotados**

Todas las entidades escolares del Condado de Berks, excepto por las escuelas contratadas, también ofrecen servicios de educación especial, en la forma de aceleramiento o enriquecimiento, para alumnos que son identificado por el grupo multidisciplinario dotado ("GMDT" siglas en inglés) como "mentalmente dotado". Un niño es considerado mentalmente dotado cuando, su habilidad cognoscitiva (del conocimiento) u otros factores, determinado por el grupo multidisciplinario de evaluación, indica que él, ella tiene una habilidad intelectual sobresaliente lo cual requiere programas especiales y servicios no comúnmente disponibles en el programa de educación general. El distrito participa en actividades de exámenes durante instrucciones de aulas/salón de clase regular y usa estos datos para de este modo generar el determinar si una evaluación GMDT es garantizada. Los padres pueden requerir un examen o una evaluación GMDT en cualquier momento. Los padres son partes del GMDT y, si el niño es determinado ser mentalmente dotado, los padres toman parte del desarrollo, revisión anual y revisión de programa educativo individualizado dotado del niño ("GIEP" siglas en inglés) como miembro del grupo GIEP. El GIEP describe los niveles actuales, metas anuales y objetivos mensurables/calculados e instrucción especial designada y servicios relacionados a través del cual el distrito ofrecerá el enriquecimiento o aceleración, o ambos, que sean necesarios para desarrollar la habilidad mental dotada del niño. Los padres del estudiante/alumno el cual es mentalmente dotado tienen el derecho de pedir una Audiencia del Proceso debido de educación especial para radicar una querella al Pennsylvania Department of Education (Departamento de Educación de Pennsylvania) a la dirección antes mencionada. Detalles sobre los procedimientos de cómo se lleva a cabo un pedido de audiencia pueden ser encontrado en la página de la red cibernética informativa (website) del Office for Dispute Resolution en [www.pattan.k12.pa.us](http://www.pattan.k12.pa.us). (Oficina para Resolución de Disputas)

Un niño puede ser identificado tanto como un niño con una discapacidad como mentalmente dotado. En tales casos, los derechos del niño y sus padres son regidos por las reglas aplicables a niños con discapacidades y sus padres, como ha sido descrito anteriormente en la parte superior.

#### **Expedientes del Estudiante/Alumno**

Las entidades escolares del Condado de Berks mantienen expedientes informativos sobre todos los niños matriculados en la escuela pública incluyendo a los estudiantes/alumnos con impedimentos. Los expedientes que contienen información personal identificable sobre o en relación con niños con incapacidad pueden incluir, pero no limitarse a, reportes de calificaciones acumulativas, expedientes disciplinarios, matriculación y asistencia, registro de salud, programas de educación individualizado, noticia de la recomendación asignada, noticia del intento de evaluar y reevaluar, reportes de evaluaciones comprensivas, otros reportes evaluativos del personal escolar o de otros evaluadores, ejemplos de trabajo, datos de exámenes, datos puestos en el sistema de Datos Penn, correspondencia entre el personal de la escuela y el hogar, documentos de apoyo del grupo de instrucción, datos de referidos, memoranda, y otros expedientes educacionales relacionados. Los expedientes pueden ser mantenidos en papel o en microficha, audio, video filmico, y en forma electrónica. Los expedientes pueden ser localizados en la oficina central administrativa de la escuela pública, o en la oficina administrativa del Berks County Intermediate, el edificio escolar o edificio en el cual el estudiante asistió o en la escuela de asistencia, escuela privada y facilidades en la cual la escuela pública haya ubicado al niño con propósitos educacionales, oficina central de mantenimiento, y sistema de mantenimiento electrónico y en la posesión de maestros, administradores, especialistas, psicólogos, consejeros u otro personal escolar el cual tenga un interés educacional legítimo en el contenido de los mismos. Todos los expedientes informativos son mantenidos en una estricta confidencialidad.

Los expedientes informativos son mantenidos mientras los mismos permanezcan educacionalmente relevantes. Los propósitos de colección y mantenimiento de expedientes son (1) para asegurar que el niño recibe los programas y servicios consistentes con su Programa Educativo Individualizado; (2) vigilar constantemente la efectividad del programa para el niño; (3) documentar a la escuela pública y a los padres que el estudiante está haciendo progresos significativos; (4) para satisfacer los requerimientos de las agencias estatales y federales las cuales tienen interés en repasar y revisar documentos concernientes con estudiantes/alumnos en particular, o con un grupo de estudiantes/alumnos con propósitos de vigilancia por cumplimiento, investigación por querella, y programas de fiscalías o auditorías; y (5) para informar sobre futuros programas y evaluaciones en el niño. Cuando los expedientes educacionales, u otras informaciones que deben ser mantenidos, ya no son educacionalmente relevantes, la escuela pública debe informar esto a los padres por escrito y puede que destruya el expediente o por pedido de los padres destruir los mismos. Estudiantes/alumnos y los niños. Las escuelas públicas no requieren el destruir los expedientes que ya no son educacionalmente relevante a menos que los padres hagan este pedido por escrito.

**Consentimiento Paterno.** Consentimiento paternal es requerido por escrito antes de ofrecer cualquier información personal identificable en cuanto a niños incapacitados. El consentimiento de los padres no es requerido sin embargo, antes de ofrecer información a (1) un oficial de audiencia en educación especial por Audiencia del Proceso debido; (2) al personal público escolar y contratistas con un interés educacional legítimo en la información, (3) oficiales o personal de otras escuelas o sistema escolar en la cual el niño este matriculado o se intente matricular; (4) oficiales federales o estatales de educación y agencias y el Auditor de los Estados Unidos; (5) organizaciones acreditadas para cumplir sus funciones de acreditación; (6) para cumplir con una orden de emplazamiento u orden judicial; (7) en conjunto con la salud o seguridad de emergencia para extender la necesaria protección de la salud y seguridad del niño o de otros; o (8) que la escuela pública tiene designado como "directorio de información". La exposición sin el consentimiento paterno está sujeta a ciertas condiciones las cuales son completamente descritas en el Family Educational Rights and Privacy Act (Acta los de Derechos y Privacidad Educativa para la Familia), 20 U.S.C. § 1332g, y es una reglamentación implementada, 34 C.F.R. Part 99.

**Acceso a los Padres.** Después de someter un pedido por escrito, los padres tienen el derecho al acceso de los expedientes de su niño dentro de cuarenta y cinco días o antes de una Audiencia del Proceso debido o reunión del Programa Educativo Individualizado o lo que ocurra primero. Los accesos permiten a los padres de lo siguiente: (1) una explicación e interpretación de los documentos por el personal de escuela pública; (2) copias de los expedientes son ofrecidas tan solo si las copias son la única forma de que los padres pueden efectivamente ejercer su derecho de inspeccionar y revisar e; (3) inspección y revisión

de los expedientes por un representante de su preferencia después de la presentación de una autorización escrita por los padres la cual sea mostrada al encargado de los expedientes. Las escuelas públicas pueden cobrar una cuota no excesiva por el costo de hacer las copias.

**Directorio de Información.** Las entidades escuelas designan ciertas clases de información como "directorio de información". Las escuelas públicas del Condado de Berks han designado lo siguiente como "directorio de información": (1) nombre, dirección, número de teléfono del niño; (2) fecha y lugar de nacimiento del niño; (3) participación en clubes y actividades extracurriculares de la escuela; (4) peso y estatura de los miembros de una institución atlética; (5) días de asistencia; (6) diplomas y premios/certificados recibidos; (7) la más reciente institución o escuela en la cual el niño asistió; (8) nombre de los padres, hermanos y otros familiares. El Distrito ofrecerá esta información a cualquier persona, incluyendo reclutadores de las fuerzas armadas que pidan los mismos, sin buscar el consentimiento de los padres del estudiante o sin el consentimiento del estudiante/alumno. Los padres que no deseen que el Distrito ofrezca esta información deben notificar al Distrito por escrito en o antes del primer día del término de la escuela. La nota escrita debe identificar los tipos específicos de la información directa que los padres no quieren que Distrito revele sin su consentimiento. Si el padre falla de notificar al Distrito por escrito el primer día del término de la escuela, el Distrito puede revelar la información directa al ser pedida y sin consentimiento.

**Divulgación de los documentos conteniendo información personal identificable hacia otras escuelas e instituciones.** Las entidades escuelas públicas revelan información personalmente identificable con respecto a estudiantes/alumnos a agencias o instituciones educativas en la cual el estudiante quiera matricularse, piensa matricularse, o se matricula, o que el estudiante recibe los servicios, cuando esa agencia o la institución solicitan tales documentos.

**Acceso a los documentos por los oficiales de la escuela con "interés educacional legítimo".** Oficiales de escuela con un interés educacional legítimo a la información personal identificable contenida en los documentos educacionales puede tener acceso a la información personal identificable sin el consentimiento de los padres o del estudiante. Cada entidad escolar designa en sus documentos de reglamentos/normas educacionales las personas quienes tienen un "interés educacional legítimo" a los cuales se les permite tener acceso a los documentos educacionales. Estas personas típicamente incluyen maestros(a) del niño, administradores del edificio, consejeros los cuales son asignados para los niños, miembros del grupo de apoyo de instrucción y equipo multidisciplinario en el curso de las actividades de evaluaciones, administradores de escuelas públicas con responsabilidades para programas los cuales el estudiante/alumno esté matriculado o intenta asistir, miembros del concilio escolar en sesión ejecutiva en consideración a asuntos acerca del niño sobre el cual sólo el concilio escolar puede actuar, especialistas de programa y ayudantes educacionales que trabajan con el niño, personal terapéutico que trabaja con el niño y sustitutos de algunas de las personas ya mencionadas.

**Enmienda a los documentos/expedientes educacionales.** Después de recibir los documentos, los padres del estudiante que haya alcanzado la edad de 18 años pueden pedir que los documentos sean enmendados. La escuela puede hacer el cambio o rechazar el pedido dentro de cuarenta y cinco días de recibir el pedido por escrito. Si la escuela rechaza el pedido, los padres o el estudiante pueden pedir una audiencia informal. La audiencia puede ser llevarse a cabo frente a un oficina de escuela pública que no tenga interés en el resultado. Si los padres están insatisfechos con el resultado de la audiencia informal, ellos pueden someter a la escuela pública una declaración destacando su desacuerdo con el documento. La escuela debe incluir una copia de esa declaración en las todas copias de documentos entregados a terceras personas.

#### **Querellas al Departamento de Educación de los Estados Unidos.**

Querellas con respecto alegado o presunto incumplimiento de una entidad escolar pública para cumplir con los requerimientos de Family Educational Rights and Privacy Act (Ley de Privacidad y Derechos de Educación a la Familia) pueden ser dirigidas al Departamento Educación de los Estados Unidos como sigue:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, DC 20202-4605

**Este aviso es solo un resumen de los servicios de educación especial, evaluaciones, actividades de exámenes y derechos y protecciones pertenecientes a los niños con impedimentos, niños que se piensan que tienen impedimentos, y a los padres. Para más información o para requerir una evaluación y actividades de exámenes de escuela pública o privada para niños contacte la entidad responsable de la escuela en el Condado de Berks en el listado inferior. Para niños preescolares, la información también puede ser obtenida y exámenes y evaluaciones pueden ser pedidos contactando al Berks County Intermediate Unit (Unidad Intermedia del Condado de Berks).**

<b>Antietam School District</b> Special Education Department 201 N. 25th Street Reading, PA 19606 610/370-2898 ext. 222 (FAX) 610/370-2981	<b>Kutztown Area School District</b> Special Education Department 251 Long Lane Kutztown, PA 19530 610/683-3261 (FAX) 610/683-3492
<b>Boyertown Area School District</b> Special Education Department 120 N. Monroe St. Boyertown, PA 19512 610/473-3610 (FAX) 610/369-73533	<b>Muhlenberg School District</b> Special Education Department 827 Bellevue Ave. Laureldale, PA 19605 610/921-8034 ext. 3521 or 3522 (FAX) 484/334-6520
<b>Brandywine Heights Area School District</b> Special Education Department 200 W. Weis Street Topton, PA 19562 610/682-5181 (FAX) 610/682-5184	<b>Oley Valley School District</b> Student Services Office 17 Jefferson Street Oley, PA 19547 610/987-4100 ext. 1187 (FAX) 610/987-4138
<b>Conrad Weiser Area School District</b> Special Education Department 200 Lincoln Drive Wernersville, PA 19565 610/678-9236 (FAX) 610/678-9279	<b>Reading School District</b> Special Education Department 800 Penn St. Reading, PA 19602 484/258-7101 ext. 60203 (FAX) 610/371-4543
<b>Daniel Boone Area School District</b> Special Education Department 501 Chestnut Street Birdsboro, PA 19508 610/582-6167 (FAX) 610/582-6180	<b>Schuylkill Valley School District</b> Special Education Department 929 Lakeshore Drive Leesport, PA 19533 610/916-5744 (FAX) 610/916-4503
<b>Exeter Township School District</b> Special Education Department 200 Elm Street Reading, PA 19606 610/779-7102 (FAX) 610/779-7103	<b>Tulpehocken Area School District</b> Special Education Department 27 Rehersburg Rd. Bethel, PA 19507 717/933-4611 ext. 2109 (FAX) 717/933-9724
<b>Fleetwood Area School District</b> Special Education Department 801 N. Richmond Street Fleetwood, PA 19522 610/944-8111 ext. 1300 (FAX) 610/944-6714	<b>Twin Valley School District</b> Special Education Department 4851 N. Twin Valley Road Elverson, PA 19520 610/286-8621 (FAX) 610/286-8608
<b>Governor Mifflin School District</b> Special Education Department 10 S. Waverly Street Shillington, PA 19607 610/775-5085 (FAX) 610/603-2211	<b>Wilson School District</b> Special Education Department 2601 Grandview Boulevard West Lawn, PA 19609 610/670-0180 (FAX) 484/334-6435
<b>Hamburg Area School District</b> Special Education Department 701 Windsor Street Hamburg, PA 19526 610/562-6832 (FAX) 610/562-6736	<b>Wyomissing Area School District</b> Special Education Department 630 Evans Avenue Wyomissing, PA 19610 610/374-0739 ext. 1112 (FAX) 610/374-0948
<b>Berks County Intermediate Unit</b> 1111 Commons Blvd. PO Box 16050 Reading, PA 19612-6050 610/987-8511 (FAX) 610/987-8400	<b>Berks County Intermediate Unit Early Intervention Program</b> 1111 Commons Blvd. PO Box 16050 Reading, PA 19612-6050 610/987-8543 (FAX) 610/987-8400

**I-Lead Charter School**  
401 Penn Street  
Reading, PA 19601  
1-855-453-2327 ext. 2111