

# Special Education Eligibility

*(Does my student qualify for special education services?)*

## Who is eligible for special education services?

Children may be eligible for special education services if they have a physical or mental impairment that falls into one of a range of categories, including:

- Autism
- Hearing impairment
- Intellectual disability
- Orthopedic impairment
- Serious emotional disability (such as conduct disorder or depression)
- Specific learning disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment
- Other health impairment (such as ADHD)

To be eligible for special education services, the student must:

- be between the ages of 3 through 21;
- have a disability that fits into one of the categories above;
- suffer a negative impact on his/her educational performance due to the disability; and
- require specially designed instruction to address the school-related issues caused by the disability

## How does a child become eligible to receive special education services?

- School districts are required to be on the lookout for children who may need special education services. If teachers or administrators become concerned that a child might be in need of special education services, they must speak to the parent about their concerns and about initiating the special education evaluation process.
  - If a school staff member believes your student may have a disability, the school **must** get your permission before conducting an evaluation.
- A parent/guardian can also initiate the special education process at any time by submitting a written request to the principal or other senior school district staff that describes your concerns and ask that your child be evaluated to determine if he is in need of and qualifies for special education services.
  - The request can be in any format (email, letter, note, etc.) as long as it is written. If helpful, you can use the enclosed sample evaluation request letter as a guide to writing your request.

### *Could my student be in need of special education services?*

If any or some of these red flags exist, you may want to consider requesting an evaluation, using the attached sample form as a guide.

- ✓ Failing grades or test scores
- ✓ Trouble reading, writing, or doing math
- ✓ Repeated behavior problems in school; many suspensions
- ✓ Trouble concentrating or paying attention in school
- ✓ Trouble listening to others or expressing him/herself
- ✓ Difficulty with basic life skills
- ✓ Mental health or emotional issues that impact school performance



### **GOLD STAR TIPS!**



When you have concerns or requests that you want to share with the school, always **put them in writing and keep a dated copy of any communications for yourself**

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When you request an evaluation, be sure to **raise all areas of concern** – academic, behavioral, study skills, etc.

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If English is not your first language, you can **submit the request in your native language**

## What happens after an evaluation is requested?

- **Referral Meeting:** Once your child is identified as potentially being in need of special education services, the school must hold a meeting to determine next steps in the evaluation process. At that meeting, the team can determine eligibility based on information they already have or can refer the student for additional testing to gather more information. Generally, unless the school has already done a formal evaluation or you have provided the school with one, it is not appropriate to decide a child is ineligible without conducting some type of evaluation.
  - ❏ **RED FLAG:** Sometimes, if the school thinks your student has a disability, it may first try some general education intervention strategies in the classroom to see if those will help. The interventions may be implemented by a “multi-tiered system of support” (MTSS) approach or through a program called “responsiveness to instruction” (RTI). These interventions can be useful to avoid unnecessarily identifying a student as needing special education, **BUT:**
    - Schools **cannot** refuse to evaluate a child simply because the student hasn’t gone through the RTI or MTSS process
    - If a parent/guardian provides evidence that the child may be in need of special education services and requests an evaluation, the school **must** move forward with conducting an evaluation, even if RTI or MTSS is conducted at the same time as the formal evaluation
- **Evaluation:** The evaluation **must** assess the student in all areas related to your child’s suspected disability. This could include academic functioning, behavior and social/emotional functioning, ability to pay attention, ability to communicate, and ability to perform life tasks.
- **Eligibility Meeting:** After the evaluation is completed, the parent/guardian will meet with a group of school professionals, which must include someone qualified to interpret and explain the testing results, to decide whether the student is eligible for special education services.
  - To be eligible, your student must be “a child with a disability,” meaning: 1) the child’s disability meets the requirements of a listed category, 2) the child’s disability has a negative impact on his/her educational performance; **and** 3) the child must need specially designed instruction.
  - A student can have more than one area of eligibility.



### *Time is of the essence*

The school has **90 calendar days** from the date you submitted your request for an evaluation in writing to:

- complete the evaluation,
- determine your student’s eligibility for services, and
- if the student qualifies for services, create an IEP and begin providing services. (See the “Special Education Service Delivery” overview for more information about IEPs and services)

**\*\*\* The 90-day timeline does not stop for holidays, including summer vacation \*\*\***



### **GOLD STAR TIPS!**



You should ask to receive a copy of the evaluation report at **least 48 hours** before the eligibility meeting. You may also request a meeting with the school psychologist to review results and ask questions before the team meeting

If your student has **community-based supports**, including mentors or medical or mental health providers, you can ask that they can attend the eligibility meeting to share additional information about your child

If you disagree with the results of the evaluation conducted by the school system, you have a **right to a free independent educational evaluation (IEE)**

If your child is not eligible for an IEP because she does not actually need specially-designed instruction to address her disability, request that **eligibility be reviewed for a 504 plan**

Advocates for Children’s Services of Legal Aid of North Carolina  
919-226-0052      [acsinfo@legalaidnc.org](mailto:acsinfo@legalaidnc.org)      [www.legalaidnc.org/acs](http://www.legalaidnc.org/acs)



*You may want to contact a lawyer if the school refuses to evaluate your child, refuses to conduct an IEE, misses important timelines, or if you believe the school should have evaluated your student much earlier but failed to do so.*