

Special Education Policy

Annual Public Notice of Special Education Services and Programs and Rights for Students with Disabilities And Notifications of Rights Under the Family Educational Rights and Privacy Act.

Lincoln Park Performing Arts Charter School
One Lincoln Park
Midland, PA 15059

2008-2009 School Year

It is the responsibility of the Pennsylvania Department of Education to ensure that all children with disabilities residing in the Commonwealth, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated. This responsibility is required by a federal law called the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. 1200 et. seq. ("IDEA 2004"). IDEA 2004 requires the publication of a notice to parents, in newspapers or other media, before any major identification, location, or evaluation activity. IDEA 2004 requires this notice to contain certain information.

In addition, the federal Family Educational Rights and Privacy Act of 1974 (FERPA), which protects confidentiality, requires educational agencies to notify parents annually of their confidentiality rights.

The Charter School fulfills its duties with this annual notice. The Charter School also directs parents to the procedural safeguards notice available through the school.

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 the public schools screen and evaluate such students to determine eligibility,
4. the special rights that pertain to such children and their parents or legal guardians and
5. the confidentiality rights that pertain to student information.

How a child might qualify for special education and related services

Under the federal Individuals with Disabilities Education Improvement Act of 2004, or "IDEA 2004," children qualify for special education and related services if they have one or more of the following disabilities and, as a result, need such 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, or physical disabilities;
7. autism, including pervasive developmental disorders;
8. traumatic brain injury, or neurological impairment;
9. other health impairment; and
10. specific learning disabilities.

Children with more than one of the foregoing disabilities could qualify for special education and related services as having multiple disabilities.

The legal definitions of the above-listed disabilities, which the public schools are required to apply under the IDEA 2004, may differ from those used in medical or clinical practice. The legal definitions, moreover, could apply to children with disabilities that have very different medical or clinical disorders. A child with attention deficit hyperactivity disorder, for example, might 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.

Under Section 504 of the federal Rehabilitation Act of 1973, and under the federal Americans with Disabilities Act, some school age children with disabilities who do not meet the eligibility criteria outlined above 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.

If a Charter School admits children below school age, the Commonwealth provides early intervention services to eligible children with special needs who are at least 3 years of age but younger than the age of beginners through agencies which hold Mutually Agreed Upon Written Agreements (MAWAs).

Available Programs and Services for Children with Disabilities

Public schools must ensure that children with disabilities are educated to the maximum extent possible in the regular education environment, and that the instruction they receive conforms as much as possible to the instruction that non-disabled students receive. Programs and services available to students with disabilities, in descending order of preference, may include: (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; (3) regular class placement for most of the school day with instruction provided by a special education teacher in a resource classroom; (4) part time special education class placement in a regular public school or alternative setting; and (5) special education class placement or special education services provided outside the regular class for most or all of the school day, either in a regular public school or alternative setting.

Depending on the nature and severity of the disability, the public school can provide special education programs and services in areas such as (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) 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 include: (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 deafness; (5) blind or visually impaired support, for students who primarily need assistance with 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 students 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 include but are not limited to, speech and language therapy, occupational therapy, physical therapy, nursing services, audiologist services, counseling, and family training.

The public school, in conjunction with the parents, 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, or "IEP," which is developed by an IEP team consisting of educators, parents, and other persons with special expertise or familiarity with 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 reviewed 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, a statement of present levels of academic achievement and functional performance, an enumeration of the annual goals established for the child, and a statement of the special education and related services that the child needs to make meaningful educational progress. For children aged sixteen and older, the IEP must also include an appropriate transition plan to assist in the attainment of post-secondary objectives. The Charter School must invite the child to the IEP team meeting at which the transition plan is developed.

Screening and Evaluation Process for Children to Determine Eligibility for Special Education and Related Services

Screening

Each educational agency must establish and implement procedures to locate, identify and evaluate children suspected of being eligible for special education. These procedures involve screening activities which include but are not limited to: review of group-based data (cumulative records, enrollment records, health records, and report cards); hearing screening (at kindergarten, first, second and third grades); vision screening (every grade level); motor screening; and speech and language screening.

Except as indicated above or otherwise announced publicly, screening activities take place in an on-going fashion throughout the school year. Screening is conducted at the Charter School unless other arrangements are necessary.

If parents need additional information regarding the purpose, time, and location of screening activities, they should call or write the CEO of Charter School at:

Lincoln Park Performing Arts Charter School
One Lincoln Park
Midland, PA 15059
(724) 643-9004

Screening activities are often undertaken before the Charter School refers most children for a multidisciplinary team evaluation. When concerns raised either by school staff or parents warrant screening, the child is referred to an "instruction support team" ("IST"), sometimes called the "child study team." The IST is responsible for assessing the current achievement and performance of the child, for designing school-based interventions to address concerns raised, and for assessing the effectiveness of those school-based interventions. If the concern that resulted in the referral can be addressed without special education services, or is the result of the lack of English proficiency or appropriate instruction, the IST will recommend interventions other than multidisciplinary team evaluation. Parents nevertheless have the right to request a multidisciplinary team evaluation at any time, regardless of the outcome of the screening process.

Evaluation

When screening indicates that a student may be eligible for special education, the Charter School will seek parental consent to conduct an evaluation. Evaluation means procedures used in the determination of whether a child has a disability and the nature and extent of the special education and related services needed by the child. The term evaluation refers to procedures used selectively with an individual child and does not indicate basic tests administered to or procedures used with all children. Before the public school 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. Once parental consent for evaluation is obtained, the school has timelines and procedures specified by law that it must follow. The law contains additional provisions and due process protections regarding situations in which parental consent for an initial evaluation is absent or refused discussed more fully below and in the Procedural Safeguards Notice.

This evaluation is conducted by a Multi-Disciplinary Team (MDT) which includes a teacher, other qualified professionals who work with the child, and the parents. The MDE process must be conducted in accordance with specific timelines and must include protection-in-evaluation procedures. For example, tests and procedures used as part of the Multi-Disciplinary Evaluation may not be racially or culturally biased.

The MDE process results in a written evaluation report called an Evaluation Report (ER). This report makes recommendations about a student's eligibility for special education based on the presence of a disability and the need for specially designed instruction.

Parents who think their child is eligible for special education may request, at any time, that the Charter School conduct a Multi-Disciplinary Evaluation. Requests for a Multi-Disciplinary Evaluation must be made in writing to the CEO of the Charter School at One Lincoln Park Midland, PA 15059.

If a parent makes an oral request for a Multi-Disciplinary Evaluation, the Charter School shall provide the parent with a form for that purpose. If the public school denies the parents' request for an evaluation, the parents have the right to challenge the denial through an impartial hearing or through voluntary alternative dispute resolution such as mediation.

Educational Placement

The determination of whether a student is eligible for special education is made by an Individualized Education Program (IEP) team. A single test or procedure may not be the sole factor in determining that a child is exceptional. The IEP team includes: the parents of a child with a disability; not less than one regular education teacher, if the child is, or may be, participating in the regular education environment; not less than one special education teacher, or when appropriate, not less than one special education provider; a representative of the school who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the School; an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above; other individuals, at the discretion of the parent or the agency, who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and whenever appropriate, a child with a disability. If the student is determined to be eligible for special education, the IEP team develops a written education plan called an IEP. The IEP shall be based in part on the results of the Multi-Disciplinary Evaluation. The IEP team may decide that a student is not eligible for special education. In that instance, recommendations for educational programming in regular education may be developed from the ER.

An IEP describes a student's current levels, goals, and the individualized programs and services, which the student will receive. IEPs are reviewed on an at least an annual basis. The IEP team will make decisions about the type of services, the level of intervention, and the location of intervention.

Placement must be made in the least restrictive environment in which the student's needs can be met with special education and related services. All students with disabilities must be educated to the maximum extent appropriate with children who are not disabled.

Services for Protected Handicapped Students

Students who are not eligible to receive special education programs and services may qualify as handicapped students and therefore be protected under federal statutes and regulations intended to prevent discrimination (in particular, 34 CFR Part 104 and 28 CFR Part 35). The Charter School must ensure that qualified handicapped students have equal opportunity to participate in the school program and extracurricular activities to the maximum extent appropriate for each individual student. In compliance with federal law, the Charter School will provide to each protected handicapped student without discrimination or cost to the student or family, those related aids, services or accommodations which are needed to provide equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities to the maximum extent appropriate to the student's abilities. In order to qualify as a protected handicapped student, the child must be of school age with a physical or mental disability that substantially limits or prohibits participation in or access to an aspect of the school program.

These services and protections for "protected handicapped students" may be distinct from those applicable to eligible or thought-to-be eligible students. The Charter School or the parent may initiate an evaluation if they believe a student is a protected handicapped student. For further information on the evaluation procedures and provision of services to protected handicapped students, parents should contact the school CEO.

Protections for Eligible Students

State and federal law grant many rights, protections and procedural safeguards to children with disabilities and their parents, including mediation and due process hearing request rights. A written summary of those procedural safeguards and protections is available to parents and students upon request to the CEO of the Charter School.

Rights and Protection

The Charter School must notify parents in writing whenever it: (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child; (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child; (3) Proposes or refuses to make changes regarding the provision of a free appropriate public education (FAPE) to the child; and (4) No later than the date on which the decision to take disciplinary action is made, a Charter School must notify the parent of that decision and of all available procedural safeguards. Such notice must be accompanied by a full written description of the parents' rights.

What prior written notice must contain:

Prior written notices must be written in the native language of the parent, unless it clearly is not feasible to do so. Prior written notice must contain:

1. A description of the action proposed or refused by the school;

2. An explanation of why the Charter School proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the Charter School used as a basis for the proposed or refused action;
3. A description of other options considered by the Individualized Education Program (IEP) Team and the reasons why those options were rejected;
4. A description of the factors that are relevant to the Charter School's proposal or refusal;
5. A statement that the parent of a child with a disability has procedural safeguards protection and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
6. Sources the parent may contact to obtain assistance in understanding these provisions;
7. A statement informing the parent about the state complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

*In Pennsylvania, prior written notice is provided on the form "Notice of Recommended Educational Placement" (NOREP).

Procedural Safeguards Notice

When a Procedural Safeguards Notice must be provided:

A copy of the Procedural Safeguards Notice must be given to the parent one (1) time a year, except that a copy must also be given to the parent:

1. Upon initial referral for evaluation;
2. Upon the parent's request for evaluation;
3. receipt of the first occurrence of the filing of a request for due process; and
4. request by the parent

The Procedural Safeguards Notice must include a full explanation of available procedural safeguards, written in the native language of the parent, unless it is clearly not feasible to do so. It must be written in an easily understandable manner, describing the procedural safeguards available relating to:

1. Independent educational evaluation;
2. Prior written notice;
3. Parental consent;
4. Access to educational records;
5. Opportunity to present and resolve complaints, including the time period in which to file a Due Process Hearing Request;
6. The opportunity for the Charter School to resolve the Due Process Hearing Request;
7. The availability of mediation;
8. The child's placement while due process proceedings are pending;
9. Procedures for children who are subject to placement in an interim alternative educational setting;
10. Requirements for unilateral placement by the parent of a child in private school at public expense;
11. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
12. State level appeals;
13. Civil actions, including the time period in which to file such actions;
14. Attorneys' fees; and
15. State complaint procedures, including applicable time periods.

When Prior Parental Consent Must Be Obtained

Parental consent must be obtained by the Charter School prior to conducting an initial evaluation to determine if the child qualifies as a child with a disability, and before providing special education and related services to the child. Parental consent for an evaluation shall not be construed as consent for their child to receive special education and related services. The screening of a

child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services; therefore, parental consent is not required in this instance.

Consent for Wards of State.

The Individuals with Disabilities Act of 2004 contains language about seeking parental permission for initial evaluations when a child is a ward of the State. In Pennsylvania, however, if a child is designated a ward of the State, the whereabouts of the parent is not known or the rights of the parent have been terminated in accordance with State law; someone other than the parent has been designated to make educational decisions for the child. Consent for an initial evaluation should therefore be obtained from the individual designated to represent the interests of the child.

Absence of Parental Consent

If the parent does not provide consent for an initial evaluation, or the parent fails to respond to a request to provide consent, the Charter School may pursue an initial evaluation of the child through mediation or due process procedures. If the parent does not provide consent for the child to receive special education and related services, the Charter School will not provide special education and related services, nor will the Charter School use mediation or due process procedures.

If the parent refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide consent, and therefore the child does not receive special education and related services, the Charter School will not be in violation of its requirement to make a free appropriate public education (FAPE) available to the child for its failure to provide special education and related services to the child; and the Charter School does not have to convene an Individualized Education Program (IEP) meeting or develop an Individualized Education Program (IEP) for the child regarding special education and related services.

Independent Educational Evaluation

The parent has the right to obtain an independent educational evaluation of their child at public expense if the parent disagrees with an evaluation obtained by the Charter School. An independent evaluation is an evaluation by a qualified professional who is not an employee of the Charter School responsible for the child.

Once the parent requests an independent evaluation at public expense, the Charter School must, without unnecessary delay, either request a due process hearing to demonstrate that its evaluation is appropriate, or ensure that an independent evaluation is conducted. If a due process hearing is requested by the school, and the final decision is that the Charter School's evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense.

If the parent asks for an independent evaluation, the Charter School may ask for the parent's reason why he or she objects to the evaluation. However, the parent is not required to give this explanation and the Charter School may not unreasonably delay either providing the independent evaluation at public expense or requesting a due process hearing.

If the parent obtains an independent evaluation at private expense, the results of the evaluation must be considered by the Charter School if the evaluation meets Charter School criteria, in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child; and may be presented as evidence at a due process hearing.

If a Hearing Officer requests an independent evaluation as part of a hearing, the cost of the evaluation must be at public expense. The Charter School will provide, on request, information about where an independent evaluation may be obtained.

Whenever an independent evaluation is conducted at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the Charter School uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent evaluation.

Dispute Resolution Systems

When disputes arise between the parent and the Charter School, the following formal systems are available to assist in resolving the dispute:

1. Mediation

Mediation is a voluntary process in which the parent and Charter School involved in a dispute regarding special education both agree to obtain the assistance of an impartial mediator to resolve the conflict. Mediation is available for parties to special education disputes involving any special education matter, including matters arising prior to the filing of a Due Process Hearing

Request. Mediation can be requested alone, or in conjunction with due process. Mediation cannot be used to deny or delay the parent's right to a due process hearing or to deny any other rights of the parent.

The Pennsylvania Department of Education's Bureau of Special Education, through the Office for Dispute Resolution, maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations regarding the provision of special education and related services. Mediators are not employed by any local or state agency providing direct services to the child, and the mediator must not have a personal conflict of interest. The mediator's services are paid for by the Pennsylvania Department of Education.

Mediations are scheduled in a timely manner and are held in a location that is convenient for the parties to the dispute. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearing or court proceeding. The mediator may not be called as a witness in future proceedings.

In the event the parties resolve the dispute through mediation, they are required to execute a legally-binding agreement that sets forth the resolution terms; states that all discussions that occurred during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings; and is signed by both the parent and a representative of the Charter School who has the authority to bind the school. This agreement is enforceable by a court.

2. Due Process Hearings

The parent or Charter School 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 (FAPE) by filing a "Due Process Hearing Request". A due process hearing will not proceed until all required information is provided and procedures followed.

[Timeline for requesting Due Process.](#)

The parent or Charter School must request a due process hearing through the filing of a Due Process Hearing Request within two (2) years of the date the parent or the Charter School knew or should have known about the alleged action that forms the basis of the Due Process Hearing Request.

There are limited exceptions to this timeline. This timeline will not apply to the parent if the parent was prevented from requesting the due process hearing due to the specific misrepresentations by the Charter School that it had resolved the problem forming the basis of the Due Process Hearing Request; or if the Charter School withheld information from the parent which was required to be provided to the parent.

[Service of Due Process Hearing Request.](#)

A copy of the Due Process Hearing Request must be sent to the other party and, at the same time, to the Office for Dispute Resolution.

[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 name of the school the child is attending;
2. If the child or youth is homeless, available contact information for the child and the name of the school the child is attending;
3. A description of the nature of the problem, including facts relating to such problem; and
4. A proposed resolution of the problem to the extent known and available to the party filing the 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 Charter School has not sent a prior written notice (NOREP) to the parent regarding the subject matter contained in the parent's Due Process Hearing Request, the Charter School 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 Charter School proposed or refused to take the action raised in the parent's Due Process Hearing Request;
2. A description of other options the Individualized Education Program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the Charter School used as the basis for the proposed or refused action; and
4. A description of the factors that are relevant to the Charter School's proposal or refusal

Filing this response to the parent's Due Process Hearing Request does not prevent the Charter School from challenging the sufficiency of the Due Process Hearing Request. If the Charter School has already sent prior notice (NOREP) to the parent, or 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 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 requirements. The Hearing Officer must immediately notify both parties in writing of his or her determination.

Amended Due Process Hearing Request.

Either the parent or a Charter School may amend its Due Process Hearing Request only if:

1. 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 preliminary meeting/resolution session; or
2. The Hearing Officer grants permission for the party to amend the Due Process