

# Special Education

IN TENNESSEE CHARTER SCHOOLS



## Introduction

This information is relevant to students and families of students who have been deemed eligible for special education services. If you have a concern that a student who is not currently receiving special education services might have a disability that would qualify the student for those services, please contact the appropriate school district or State office using the contact information at the end of this brochure. Citations to the applicable federal or state law are included throughout the brochure.

## What is Special Education?

Special education is defined in Federal law as specially designed instruction to meet the unique needs of a child with a disability provided at no cost to the parents. See 34 C.F.R. § 300.39. Federal and state constitutions and laws, including the Individuals with Disabilities Education Act (IDEA), give parents of students with qualifying disabilities the right to determine the educational path for their children. Although the law places some limits on that determination, parents are afforded the right to participate in all stages of the special education process and are given the means to enforce the rights guaranteed by the IDEA and other laws. See 20 U.S.C. § 1400 et. seq.

## What is Child Find?

Child Find is the LEA's duty to identify, locate, and evaluate children who need special education and related services. 34 C.F.R. § 300.111(a)(1). When a child is suspected of having a disability under IDEA, the school must evaluate the child to determine whether he or she qualifies for special education services. See 34 C.F.R. § 300.111 (c).

### WHAT ARE THE BASIC SPECIAL EDUCATION RIGHTS OF CHILDREN WITH DISABILITIES?

Public school students in Tennessee who qualify for special education services are afforded certain rights. While special education law is lengthy and complex, there are three main things guaranteed to all special education students:

1. A Free, Appropriate Public Education (FAPE)
2. An Individualized Education Program (IEP)
3. Placement in the Least Restrictive Environment (LRE)

The purpose of the IDEA is to provide children with disabilities a Free Appropriate Public Education (FAPE) designed to meet their unique needs and prepare them for further education, employment, and independent living. See 20 U.S.C. § 1400(d)(1)(A); 34 C.F.R § 300.101; Tenn. Comp. R. & Regs. 0520-01-09-.09(b). A FAPE entitles a student with a disability to special education and related services that are provided in conformity with an individualized education program (IEP). 20 U.S.C. § 1401(9). An IEP is the agreement between all members of the students IEP team as to the educational goals of the individual child and the services and supports that will be utilized to help the child reach those goals. An IEP must confer a meaningful educational benefit gauged in relation to the potential of the child. Deal v. Hamilton County Bd. of Ed, 392 F.3d 840, 862 (6th Cir. 2004). Furthermore, the IDEA requires that special education services and supports be provided to the child in the least restrictive environment in which the child is capable of making meaningful progress on his or her specific goals. The presumed placement for a child with a disability, absent evidence to the contrary, is the general education setting, with the student’s non-disabled peers. However, school systems are required to offer a continuum of placements so that all students may be served in the appropriate environment for their specific needs. See 34 C.F.R. § 300.114, § 300.115.

## INCLUSIVE MODEL-CONTINUUM OF SERVICES



*West Tennessee RISE Project, 2007*

## What are Related Services, Supplementary Aids and Services, Accommodations and Modifications?

**Related Services:** Transportation and other developmental, corrective and supportive services required to allow a child to benefit from special education services. Examples: speech/language pathology services, interpreter services, psychological services, physical and occupational therapy, school health services. See 34 C.F.R. § 300.34.

**Supplementary Aids and Services:** Aids, services and other supports provided in school and extracurricular settings that enable students with disabilities to be educated with their non-disabled peers to the maximum extent appropriate. See 34 C.F.R. § 300.42.

**Accommodations:** Changes in the timing, formatting, setting, scheduling, response and/or presentation of an assignment or test, to allow a student with a disability to complete the same assignment or test as non-disabled students. Example: Braille version of a test given to a student with a visual impairment.

**Modifications:** Adjustments to an assignment or test that alter the standard taught or tested or otherwise alter what the assignment or test measures. Example: Alternative state assessments; shorter homework assignments.

## What Must Be in an IEP?

An IEP (individualized education program) must be developed for each child eligible for special education services. An IEP must contain the following:

1. A statement of the child's present levels of academic achievement and functional performance;
2. A statement of how the child's disability affects his or her involvement in the general education curriculum;
3. A statement of measurable annual goals, academic and functional, designed to meet the specific educational needs of the child, including meeting needs to enable him or her to be involved in and make progress in the general education curriculum [Note: for students who take alternative assessments, benchmark or short-term objectives are also required];
4. An explanation of how the child's progress towards the goals will be measured;
5. A statement of the special education and related services and supplementary aids and services and program modifications that will be provided to the student;
6. An explanation of the extent, if any, to which the child will not participate with non-disabled students in the general education environment;
7. Beginning and ending dates for the services and supports; and
8. Transition services for students who will turn 16 years of age during the terms of the IEP.

See 34 C.F.R. § 300.320.

## WHO PARTICIPATES IN THE DEVELOPMENT OF AN IEP?

Each child's IEP is developed by a team consisting of the child's parents, the child (when appropriate), both general education and special education teachers, a representative of the school district who is knowledgeable about the general education curriculum and the availability of resources (usually a principal or vice principal), an interpreter of test results and any others who may have information or expertise related to the child. Parents are a critical part of the IEP team and have the power to bring others with them to support the development of the child's IEP. See 20 U.S.C. § 1414(d)(1)(B).

## What Rights Do All Parents of Students Receiving Special Education Share?

Parents have significant rights when it comes to the development and implementation of their child's IEP. Some of those rights include:

**Parent Participation** – The school must take steps to ensure that one or both of the parents of a student with a disability are present at each IEP team meeting or that parents are afforded the opportunity to participate, including:

- Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend
- Scheduling the meeting at a mutually agreed upon time and place

The school must give parents notice of the IEP meeting that indicates the meeting's purpose, time, location and a list of expected attendees.

If the school is unable to convince the parents that they should attend, a meeting may be held without the parent in attendance. In such cases, the school must keep of a record of attempts to arrange a mutually agreed on time and place, such as:

- Detailed records of phone calls or attempted calls and results of calls
- Copies of correspondence sent to parents and responses received
- Records of visits made to parent's home or place of employment and results of those visits

**Alternative Means of Participation** – When conducting IEP meetings and placement meetings, the parent of a child with a disability and the school may agree to use alternative means of participation, such as video conferences and conference calls. See 34 C.F.R. § 300.328.

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***The school must take whatever action is necessary to ensure that the parent understands the proceeding of the IEP team meeting, including providing an interpreter. See 34 C.F.R. § 300.322.***

**Educational Placements** – The school must ensure that the parents of a child with a disability are members of any group that makes decisions about the educational placement of their child. See 34 C.F.R. § 300.327.

**Note:** What is an educational placement? Placement is not necessarily where a child receives services. Rather, placement is a child's educational program: the package of special education and related services, including the amount of time a child spends with their non-disabled peers. A change in placement is a fundamental change in a child's educational program or elimination of a basic element of an educational program. For example, a reduction in special education services or an expulsion would constitute a change of placement.

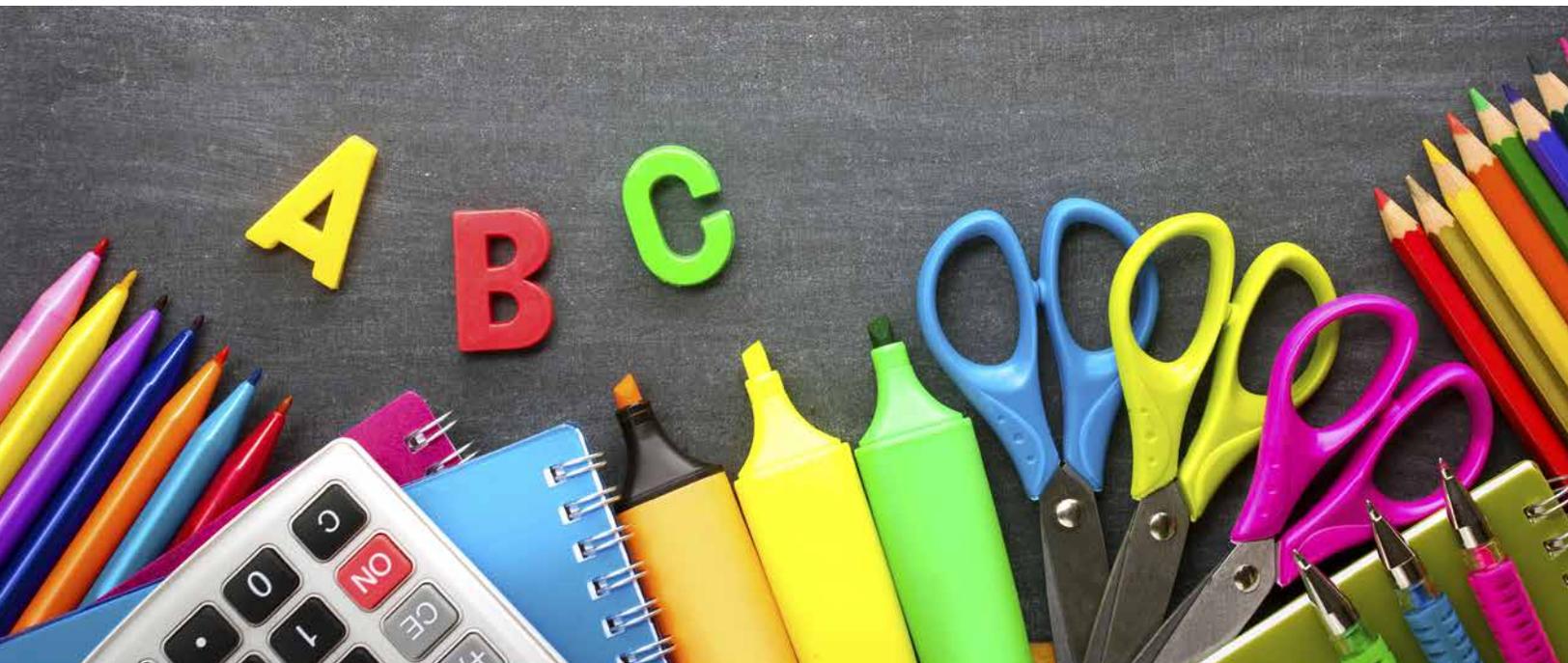
**Opportunity to Examine Records; Parent Participation in Meetings** – The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child AND the provision of FAPE to the child.

Each school must provide notice to ensure that parents have the opportunity to participate in these meetings.

Each school must ensure that a parent is a member of any group that makes decisions on the educational placement of the parent's child.

If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school must use other methods to ensure participation, including individual or conference telephone calls or videoconference.

A placement decision can be made without the involvement of the parent if the school is unable to obtain participation of the parent. In this case, the school must have a record of its attempt to ensure parental involvement. See 34 C.F.R. § 300.501.



## What is a Public Charter School?

Charter schools are public schools operated by independent, non-profit governing bodies. Charter schools are opened after reaching an agreement with the local school district, the Achievement School District, or the State Board of Education (the “authorizer”). Test scores and performance results from charter school students count toward the results of the school district they are a part of.

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***Like other public schools, charter schools must provide learning opportunities for students of all abilities, and may not charge tuition.***

Authorizers of public charter schools ensure that only those charter schools open and remain open that are meeting the needs of their students. Authorizers do this through rigorous authorization processes, ongoing monitoring of the academic and financial performance of charter schools, and, when necessary, through the revocation or non-renewal of charters. Charter schools and authorizers agree on what they need to provide for students, and the schools determine how they will accomplish those goals.

## Special Education in the Charter School Context

### **I’m considering a public charter school for my child. What do I need to know about special education in public charter schools?**

Every child who attends a public school, including a public charter school, has the same right to access educational programs regardless of eligibility for special education services. Education oversight bodies such as school districts (sometimes called local education agencies or LEAs) may grant individual schools more control over their budgets and operations through chartering or policy changes. Such arrangements may include changed roles regarding special education. However, those changes do not affect a child’s right to access special education services, a parent’s right to participate in the arrangement of such services, or a local education agency’s responsibility to comply with relevant laws.

Though charter schools may not presently have the infrastructure or personnel to meet the needs of a child with a disability identified in the child’s individualized education program (IEPs), charter schools are responsible for ensuring their students receive special education and related services in the least restrictive environment.

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***Charter schools may not refuse to enroll students because of their eligibility for special education services. T.C.A. § 49-13-111(b).***

When applications for admission to a charter school exceed capacity, charter schools are required to hold a lottery. Some traditional public schools may also use a lottery to determine acceptance when applications exceed capacity. In those situations, students with disabilities would be treated the same in the lottery as students without disabilities.

## WHEN ENROLLING IN OR TRANSFERRING TO A DIFFERENT PUBLIC SCHOOL, INCLUDING A PUBLIC CHARTER SCHOOL, THE LAW REQUIRES THE FOLLOWING:

- If the amount or type of services to be provided will change from what was provided at the prior school, an Individualized Education Program (IEP) Team meeting is required. Changes must be based on data.
- The services outlined in the current IEP must be provided until the IEP changes following a meeting.

Regardless of the differences that may occur from school to school, all public school students in Tennessee who qualify for special education services are entitled to a FAPE, an IEP and all of the rights discussed above.

## Special Education Procedures through RTI

**Special Education Referral Process through RTI:** The Tennessee Board of Education has approved Special Education Guidelines and Standards regarding Evaluations for Specific Learning Disabilities (SLD). This change in current standards from use of a discrepancy model of identification to a Response to Intervention (RTI) model became effective on July 1, 2014. This change requires all districts and schools to use RTI to determine eligibility of students to receive Special Education service in the category of Specific Learning Disability. Special Education referrals for other disabilities – such as Other Health Impairment, Speech Impairment, Emotional Disturbance, etc – will continue to be made through the previous Child Find process. These procedures apply at any public school, including public charter schools.

Before making a Special Education referral for a student suspected of a Specific Learning Disability, schools are required to provide tiered interventions, and provide data showing that the interventions were not successful in closing any academic gaps of the student. A student may be referred for Special Education during Tier III – the most intense intervention, but eligibility for Special Education will not be determined until interventions have been given time to show academic progress or a lack thereof. Schools are required to make data-based decisions from the data collected in the interventions prior to moving student to more intense interventions OR referring for a Special Education evaluation. However, if at any point in the RTI process it is suspected that a child is a child with a disability, a special education referral should be made. See 34 C.F.R. § 300.11 (outlining Child Find). RTI cannot be used to delay or deny

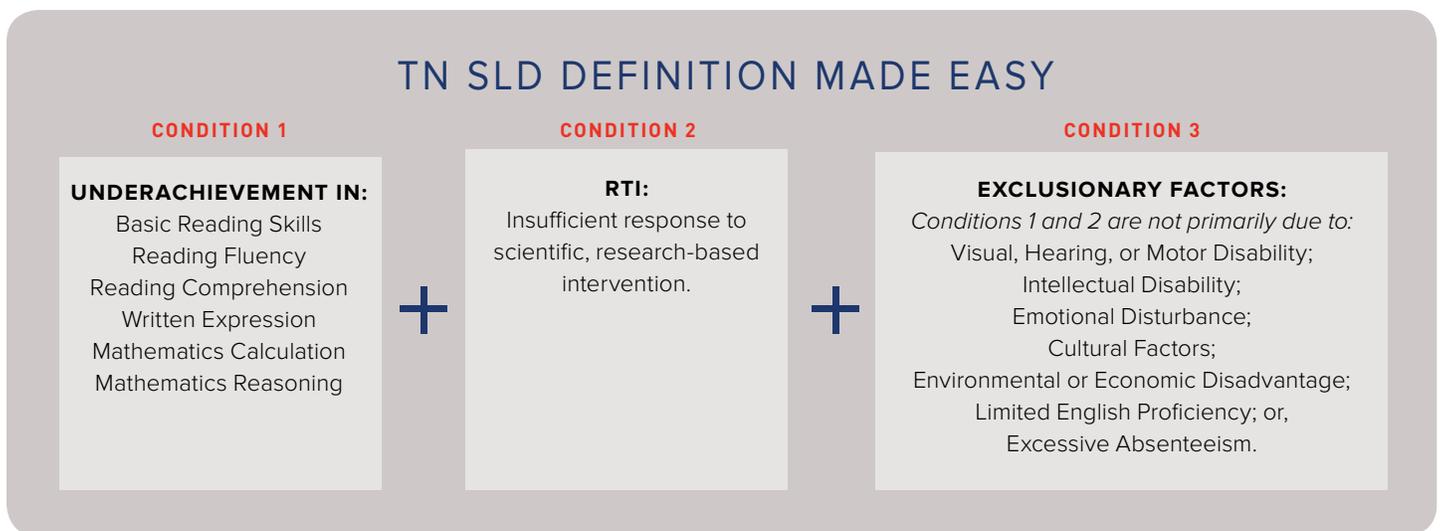
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***RTI is a part of the general education program. RTI is not the same as special education. Nor is it a process for referring students for support or interventions based on behavior. Instead, RTI is an organized, data-driven way to make every effort to keep students accessing education in the most inclusive setting (see the Inclusive Model - Continuum of Services pyramid earlier in this document).***

an evaluation for Special Education. Interventions used by schools must have research supporting its use in remediating the area of suspected disability and will focus on specific academic needs. It is the LEA's responsibility to document that the student received intervention and data was collect throughout the intervention. For more about the RTI process for parents, teachers, and administrators, see the memos linked below.

Documentation already provided throughout tiered interventions will be important to the Special Education referral process. Additional forms will also be used to gather information during this process, including parent input, teacher input, and identifying the concerns with the student's academic performance. This information is reviewed at a team meeting with the student's parents prior to making a Special Education referral. Once a referral is made, parents will sign the consent for initial assessment form and will be provided a copy of their procedural safeguards and prior written notice. This documentation applies at any public school, including public charter schools.

**Components of a Special Education Evaluation/Re-evaluation:** The table below shows the three different conditions that need to be met for a student to qualify for a Specific Learning Disability (SLD) under Special Education. A student must meet at least one criterion from each condition to qualify for SLD.



**Specific Learning Disabilities Eligibility Criteria:** The term Specific Learning Disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may show in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and that unfavorably affects a child's educational performance. Such term includes conditions such as perceptual disabilities (e.g., visual processing), brain injury that is not caused by an external physical force, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific Learning Disability does not include a learning problem that is primarily the result of Visual Impairment; Hearing Impairment; Orthopedic Impairment; Intellectual Disability; Emotional Disturbance; Limited English Proficiency; or, Environmental or Cultural Disadvantage.

## Additional information on RTI

Tenn. Dept. of Education Memo on RTI: <http://www.tn.gov/education/instruction/rti2.shtml>

U.S. Dept. of Education Memo on RTI: <https://www2.ed.gov/policy/special/guid/idea/memosdcltrs/osep11-07rtimemo.pdf>

## Secondary Transition

### Secondary Transition is a Process

Secondary Transition is the process of moving from high school to adult life and community living. It is a “bridge” between the structure schools provide, and the opportunities and risks of adult life. Students with disabilities need help during the Secondary Transition process. Families, educators, and the community play an important role in the student’s success. The Secondary Transition process should be based on outcomes. It begins with the learning about his/her preferences, interests, needs and strengths.

#### Begin by:

- Identify student preferences, interests, and needs - Dream!
- Develop a vision for the future;
- Develop the Secondary Transition Plan;
- Implement the plan, and
- Evaluate the results.

#### Identify Needed Services and Supports

- Instruction;
- Accommodations;
- Course Selection;
- Training; and,
- Assistive Devices.

#### The Secondary Transition plan is the student’s plan in the IEP. It is flexible and focused on:

- Individual’s long-term life goals;
- Short term objectives;
- Student services and supports;
- Programs and personnel; and
- Actions to reach these goals.

#### Develop a Written Plan

- Measurable Secondary Transition Goals;
- Action Statements; and,
- IEP Objectives.

#### When?

IDEIA requires the IEP Team begin Secondary Transition planning no later than a student’s sixteenth birthday, or earlier if needed. §300.320(b). Tennessee policy requires beginning no later than the student’s fourteenth birthday, Tenn. Comp. R. & Regs. 0520-01-09-.02(4). The longer the journey, the longer it takes to get there, and the earlier planning should begin.

## Who?

In Tennessee, the Secondary Transition Plan is developed by the IEP Team including (but is not limited to):

- The student;
- Parent(s) and/or other family members (should attend all IEP Team Meetings);
- Adult service providers (DIDD, etc.);
- Special Education Teacher(s) (should attend all IEP Team Meetings);
- General Education Teacher(s) (should attend all IEP Team Meetings);
- School Psychologist;
- LEA (Local Education Agency) Representative (should attend all IEP Team Meetings);
- Therapist(s)—related services;
- Peers, friends, and/or siblings;
- Vocational Rehabilitation (VR) Counselor; and
- Others who know the child or who may be helpful in some aspect of planning.

Parental rights transfer to the student at the age of majority, C.F.R. § 300.520(a), Tenn. Comp. R. & Regs 0520-01-09-.21, which is 18 in Tennessee. At this point the student has the right to sign for herself on all documents and to speak for herself in all situations.

Young adulthood is an exciting age. This is the time the IEP Team has the responsibility to focus on what the student wants and of helping the student reach for their own goals.

## Behavioral intervention and discipline of students

In developing the IEP of a child with behavioral challenges, the IEP team must consider the use of positive behavioral interventions and supports and other strategies to address the behavior. 34 C.F.R. §

300.324. Special education services, including behavioral services, should be based upon peer-reviewed research to the extent practicable. See 34 § C.F.R 300.320(a)(4). The IEP should include present levels of performance related to the child's specific behavioral challenges and measurable goals to address those specific needs. See 34 § C.F.R. 300.320(a). A Functional Behavior Assessment (FBA) and Behavior Intervention Plan (BIP) should also be considered. A Functional Behavioral Assessment is a method, based upon data collection, for determining the "function" or purpose of a child's behavior. For example, a child may be acting out in or trying to leave from a classroom to avoid difficult school work. For more information see: <http://www.wrightslaw.com/info/discipl.fab.starin.htm>. After an FBA is completed, a Behavior Intervention Plan is created to replace the problematic behavior by using intervention strategies that include positive behavioral supports.

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***When a child's disability affects their behavior at school, the law provides certain protections in the discipline process. In addition, it provides tools for helping a child make behavioral progress.***

## Protections for Students with Disabilities in Discipline

The law requires that a school hold a manifestation meeting for a child with a disability when:

- A child is suspended for more than 10 days consecutively (i.e. expelled from school) C.F.R. § 300.536 (a)(1).

**OR**

- A child is suspended for more than 10 days total in a school year for a pattern of similar behavior. See C.F.R. § 300.536 (a)(2).

**OR**

- The school files a truancy petition against a child with an IEP. T.C.A. § 49-10-1304(d)(3)(B)

Broadly put, the purpose of a manifestation meeting is to determine whether the behavior leading to disciplinary action is related to the child's disability. During the meeting, the team will consider two questions:

1. Did the child's disability cause or have a direct and substantial relationship to the conduct?  
34 C.F.R. § 300.530(e)(1)(i)
2. Was the conduct a direct result of the school's failure to implement the child's IEP?  
34 C.F.R. § 300.530(e)(1)(ii)

If the answer to either question is YES, then the behavior is considered to be a manifestation of the child's disability. 34 C.F.R. § 300.530(e)(2). The child may not be disciplined. Rather, the IEP team must conduct an FBA and implement a BIP (if one was not already in place) or review and modify an existing BIP to address the behavior. 34 C.F.R. § 300.530 (f). In addition, the IEP team should consider whether additional special education services or supports are necessary to enable the child to make behavioral progress.

However, a child who has been removed from school for more than 10 days in the same school year must continue to receive educational services to enable him or her to continue to participate in the general education curriculum and make progress towards the goals in his or her IEP. 34 C.F.R. § 300.530 (d)(1)(i). In addition, as appropriate, the child should receive an FBA/BIP to address the behavior so that it does not recur. C.F.R. § 300.530 (d)(1)(ii).

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***If the answer to both questions is NO, the child may be disciplined just as a child without a disability would be disciplined.***  
**34 C.F.R. § 300.530 (c).**

### Who is involved in the decision?

The manifestation determination is made by the LEA, the parent, and relevant members of the IEP team (as determined by the parent and the LEA.) 34 C.F.R. § 300.530(e)(1). It is best practice to include the school psychologist as a member of the team.

### What must be considered?

The team must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents. 34 C.F.R. § 300.530(e)(1).

## What is the timeline for a manifestation meeting?

The school *may* hold a meeting on as little as 24 hours of notice, Tenn. Comp. R. & Regs 0520-01-09-.15, but must complete the meeting within 10 school days of the decision to change the child's placement. 34 C.F.R. § 300.530(e)(1). A parent has a right to participate in any decision regarding the educational placement of their child. See 34 C.F.R. § 300.327, 300.501(b)(1)(i). Therefore, if a parent is unable to participate in a manifestation meeting upon 24 hours of notice, but wishes to participate in the meeting at another time, the meeting should be rescheduled to enable parental participation.

## Are manifestation meetings required for children who do not have an IEP?

Yes, if:

1. The child has a 504 plan and is being expelled or suspended for more than 10 days cumulatively in a school year. See <http://www2.ed.gov/documents/news/section-504.pdf>, pg 2.
2. The LEA "knew" that the child was a child with a disability. The LEA is held accountable for knowing that a child is a child with a disability when:
  - The parent of the child expressed concern in writing to administrators or supervisors of the LEA or to the child's teacher that the child is in need of special education services
  - The parent of the child requested an evaluation
  - The teacher of the child or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to supervisory personnel of the LEASee 34 C.F.R. § 300.534(b)

## What happens when a parent disagrees with the result of a manifestation determination meeting?

A parent may appeal the manifestation determination decision by filing for a due process hearing. The hearing will be expedited and occur within 20 school days after the complaint is filed. A hearing officer will make a decision within 10 school days of the hearing. 34 C.F.R. § 300.532 (a),(c). Hearing request forms are available here: [http://www.tn.gov/education/legal/special\\_ed/dueprocessform.pdf](http://www.tn.gov/education/legal/special_ed/dueprocessform.pdf)

Public charter schools can have discipline policies that differ from the local school district if mutually agreed upon in the charter agreement. However, the school is not released from following any applicable State or Federal laws concerning students with disabilities. This includes holding a manifestation determination hearing and other procedures outlined in this memo from the department: [http://tennessee.gov/education/student\\_support/eligibility/73112ideadisc.pdf](http://tennessee.gov/education/student_support/eligibility/73112ideadisc.pdf).

## Special day school placements

A special day school is a separate school in which a child receives special education services for 100% of their day. Special day schools serve only students with IEPs. A special day school often has additional therapeutic, medical, behavioral, or academic resources and supports to meet the needs of students with disabilities whose needs cannot be met in their school of zone or school of choice.

For some students, placement in a special day school (operated by the school district or another public or private entity) is required to provide a free, appropriate public education. Students with disabilities are “to be educated with nondisabled children to the maximum extent possible.” 34 C.F.R. § 300.42. “Unless the IEP of a child with a disability requires some other arrangement, the child [must be] educated in the school that he or she would attend if nondisabled.” 34 C.F.R. § 300.116(c).

Students placed in a special day school through their IEP have the same rights regarding access to education and transfers to other public schools when the special day school placement is no longer necessary for FAPE to be provided. Thus, a child placed in a special day school through the IEP may, upon leaving that special day school, attend either the school to which the child is geographically zoned, or an optional school (including any public charter schools) following the same procedure available to students without disabilities wishing to attend those optional schools.

Federal and State law provide room for schools and authorizers to determine the best way to handle placement of students returning to a charter school from a special day school.

## Where Can I Get More Information?

### SPECIAL EDUCATION CONTACTS BY STATE AND DISTRICT:

#### Department of Education

(615) 741-5158

[http://www.tn.gov/education/student\\_support/special\\_education.shtml](http://www.tn.gov/education/student_support/special_education.shtml)

#### Hamilton County Schools

(423) 209-8450

<http://hcde.org>

#### Knox County Schools

(865) 594-1540

<http://knoxcschools.org>

#### Metro Nashville Public Schools

(615) 259-4636

<http://mnps.org>

#### Shelby County Schools

(901) 416-5600

<http://scsk12.org>



# Special Education in Tennessee Charter Schools

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