



Special Education Rights of Children In Nursing Facilities and Intermediate Care Facilities

A child with significant medical issues may be admitted to a nursing home (SNF) or Intermediate Care Facility (ICF) for residential treatment if needed. Children with longterm disabilities are entitled to a free appropriate public education (FAPE) in the least restrictive environment (LRE). When a child's residence is a nursing facility or ICF, families and school divisions often face challenges in providing special education and related services. Who is responsible for meeting the child's needs? How does a parent determine who is responsible for providing special educational and related services to a child in a nursing facility or ICF? What if the child resides in a facility far from their home school and their parent's residence? How can parents remain involved in educational decisions that affect their child?

The child's home school district is usually responsible for providing a Free Appropriate Public Education (FAPE).

In Virginia, the school district where the parents reside is responsible for providing FAPE to a child residing in a NSF or ICF. The home school division may contract with another school division or other providers of special education and related services, but the the responsibility for ensuring that the child receives FAPE remains with the home school division.

Participation in Individualized Education Program (IEP) Meetings

Parents are important members of the IEP team and have a right to participate in their child's IEP meetings. Parents must be given sufficient notice of scheduled IEP meetings to ensure that they have an opportunity to participate. If neither parent can attend the IEP meeting in person, the school must provide other methods of remote

participation, such as video or telephone conferencing. It is important that parents participating remotely should communicate with the school and request advance copies of any documents or other material that may be discussed or distributed during the meeting. Parents should provide copies of any documents or other material that they would like considered by the IEP team in advance, such as recent treatment plans or assessments.

Parents also have a right to invite other individuals with special knowledge or expertise about their child to the IEP meeting. For children with complex medical needs, this may include medical providers, or other persons with specialized knowledge about their child's needs. While it is not required, it is a good idea to communicate with the school about individuals whom you will invite to an IEP meeting.

Special Education and Related Services

The child's home district must provide for provision of all special education and related services contained in the child's IEP. Schools may not have a policy that restricts or limits the type or amount of services to be provided to children who reside in, or who must receive services in nursing homes or ICFs. Instead, the type and amount of special education and related services must be based on the child's individualized needs as determined by the IEP team and set forth in the IEP.

Related services allow a child to access and benefit from special education. They may include nursing services, for instance, that enable a child with specialized medical needs to be served in a regular education classroom; or assistive technology that enables a child to access the curriculum.

While schools are responsible for the provision of FAPE, schools may contract with the school division where the facility is located, provide educational services from the facility itself, or choose to provide educational services through an itinerant teacher.

Schools are not responsible for the provision of services that are not related to the child's education. Children may be eligible for non-educational services through other programs however. Some children may receive services through Medicaid or a Medicaid Waiver, for instance, or wrap-around services through Children's Services Act programs.

Other Involved Providers and Services

Education and related services comprise only a portion of those services that a child in a nursing facility or ICF will receive. Children may receive non-education related nursing services, rehabilitative services, social services, medical and mental health services. These services may be provided by the facility in which the child resides, or may be provided by one or more additional providers, and may be funded through one or more funding sources, such as Medicaid, Children's Services Act, or private insurance.

It is sometimes difficult to distinguish between services that are the responsibility of the school and those that are the responsibility of another entity. For this reason, it is very important that the child's IEP be specific as to the types and amounts of special education and related services the child is to receive. The applicable school division is ultimately responsible for ensuring that the child receives the services included in the IEP, even if those services may be funded or provided by other entities.

Parents may wish to ensure that the individuals responsible for planning and providing non-educational services have copies of their child's current IEP, and that the IEP team has current copies of any additional service plans developed for the child by, for example, a Family Assessment and Planning Team (FAPT) or other service planning team. The IEP is just one piece of the network of planned services to meet the needs of children with complex needs. That network works best when each component of it is visible to the others

Least Restrictive Environment (LRE)

Children with disabilities who reside in nursing facilities and ICFs have a right to be educated in the Least Restrictive Environment (LRE). This means that:

- Children with disabilities must be provided special education and related services alongside their nondisabled peers in regular education classes, unless the nature or severity of the child's disability is such that education in regular classes, even with supplementary aids and services, cannot be satisfactorily achieved.
- Schools may not categorically exclude students with disabilities from regular education classes based solely on their status as a resident of a nursing facility or an ICF.
- Educational placement decisions must be made by the IEP team based on the individualized needs of the child.

Although many children with special healthcare needs can be accommodated in regular education classrooms, the IEP team may determine that the nursing facility or ICF is the LRE for a child with substantial medical or behavioral needs. In these cases, it is the school division's responsibility to ensure that the child's IEP is implemented in the nursing facility or ICF. The school may contract with the facility or another third party to deliver the services, but the school remains responsible for ensuring their delivery.

Advocacy Tips

Children with complex needs are often surrounded by experts, such as professionals with medical, rehabilitative, educational, and other expertise. Parents are experts too! It is important for the voices of the parents of children who reside in nursing facilities, ICFs, and other long term care settings to be heard when planning for the delivery of services to this population. Parents can and should become active participants in their child's care planning. Here are some tips that will help you work together with the other experts working to provide services to your child:

- 1) **Do not be afraid to ask questions:** Sometimes medical, educational, and other professionals can use obscure language that those of us without their expertise do not fully understand. You are an expert in your child; you do not need to be an expert in everything. If you do not understand something that is discussed at an IEP or other planning meeting, you have a right to ask for clarification.
- 2) **Preparation is key:** Take some time before you meet with the rest of the IEP team to make a list of your child's needs, your concerns, and any questions that you may have. IEP meetings can move quickly, and it can be difficult to remember everything that you wanted to address during the meeting.

3) **Be prepared to listen:** Some, but not all disagreements are the product of miscommunication or a failure of each side to understand the other side's perspective. Do what you can to listen to all perspectives, and then state your own clearly and calmly.

Know your options: Refer to this factsheet and other available materials prior to your next IEP meeting. Learn what resources are

available in your community to assist you in making your case. While collaboration with educational professionals is typically the most effective approach to meeting your child's needs, it is also important to understand your dispute resolution options, including VDOE complaints, mediation, and due process hearings. You can learn more about dispute resolution options and other special education matters on our website: <https://www.dlcv.org/special-education>.

For information on other disability agencies visit the Virginia Disability Services website at: www.vadsa.org.

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