Special Education Law

Individuals with Disabilities Education Act (IDEA)

1. Free Appropriate Public Education (FAPE)
2. Appropriate evaluation
3. Individualized Education Program (IEP)
4. Least Restrictive Environment (LRE)
5. Parent/student participation in making decisions
6. Procedural safeguards

Six Principles

- Acts or Statutes?
- Laws or Regulations?
- Policies or Guidelines?

Child with an Exceptionality

- mental retardation
- hearing impairments including deafness
- speech or language impairments
- visual impairments including blindness
- serious emotional disturbance
- orthopedic impairments
- autism
- traumatic brain injury
- other health impairments
- specific learning disabilities
- multiple disabilities
- deaf-blindness
- gifted

who, by reason of exceptionality, need special education & related services

Ages 3 through 21

Individuals with Disabilities

Education Act

Special Education Law

Families Together, Inc.

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**Parent**

PARENT means a biological or adoptive parent, a guardian, (but not the State if the child is a ward of the state), a *person acting as a parent, or a trained and officially appointed education advocate.*

*Person acting as a parent is defined as a person such as a grandparent or a stepparent with whom a child lives or a person other than a parent who is legally responsible for the welfare of a child.*

**FAPE**

Free, Appropriate Public Education (FAPE) means special education and related services that are provided:

- at public expense
- under public supervision
- at no cost to parents
- and that
  - meet the standards of the SEA
  - include preschool, elementary or secondary school
  - are provided in conformity with an IEP

...applies to all children with disabilities, including those who have been suspended or expelled from school.

**Initial Evaluation**

To determine:

- if child has an exceptionality and needs special education and related services
- present levels of academic achievement and functional performance needs

**Evaluation Procedures**

Tests and other evaluation materials:

- will not discriminate based on race or culture and are given in the child’s native language or mode of communication unless it is clearly not feasible to do so

A variety of tools and strategies are used to determine:

- if child is a “child with an exceptionality” and contents of the IEP

Any standardized tests given must be:

- validated for the purpose used by persons who are trained/knowledgeable and used according to test instruction

Any change from standard evaluation conditions:

- must be included in the evaluation report
**Evaluation Procedures**

Tests and evaluation materials must measure more than just I.Q.

Tests should accurately measure aptitude or achievement, and not simply reflect a child’s “impaired skills”

No single test can be used to determine if child has an exceptionality and/or what services are needed

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**Reevaluation**

Occurs...

- not more frequently than once a year, unless the parent and the LEA agree otherwise.
- at least once every 3 years, or more often if parent or teacher requests or conditions warrant.

A group of persons shall review existing data and identify any additional data needed to determine:

- If child continues to have an exceptionality, and continues to need special education and related services
- Present level of performance and educational needs
- If additions or modifications are needed to the special education and related services
- To meet the annual goals
- To progress in the general curriculum

Parents must give informed consent if additional assessment is needed

The group of persons that review the data is the same membership as an IEP team, and others, as appropriate.

The group may conduct its review without a meeting.
Re-evaluation

If additional data are not needed to determine that the child continues to be a "child with an exceptionality"

The public agency will notify parents in writing:
- of the determination and the reasons for it
- of the parents' right to request assessment to determine whether their child continues to qualify for special education and related services

The public agency is not required to conduct an assessment unless requested to do so by parents

Independent Education Evaluation (IEE)

If parent disagrees with public agency’s evaluation, the agency must:
- provide an IEE at public expense, or
- initiate a hearing to show that its evaluation is appropriate provided by a qualified person who is not an employee of the public agency

Independent Education Evaluation (IEE)

If a parent initiates a privately funded IEE:
- If evaluation meets public agency criteria, results must be considered in planning IEP
- IEE may be used as evidence at a due process hearing
- Parent is entitled to only one independent evaluation at public expense each time LEA conducts an evaluation.

Parental Consent

- The LEA must seek parental consent prior to evaluation or providing special education services.
- The LEA must make reasonable attempts to get consent of parents.
- If a parent refuses consent:
  - For evaluation: the agency may use due process to obtain authority for evaluation.
  - For services: the agency may NOT use due process in seeking to provide services; there is no fault to the LEA, and no IEP meeting is required.
**Individualized Education Program (IEP)**

A written statement for each child with an exceptionality that is developed, reviewed, and revised in accordance with the IDEA.

**Members of the TEAM**

- Parents/education advocate
- Not less than one regular education teacher of the child, if the child is or may be participating in the regular education environment
- Special education teacher of the child
- District representative*
- Someone to interpret evaluation results
- Child, when appropriate
- Others with special knowledge or expertise about the child, including related services personnel as appropriate

*qualified to provide, or to supervise provision of special education, and knowledgeable about the general curriculum and the availability of resources of the public agency

**Attendance**

- Members of the IEP team shall not be required to attend an IEP meeting if the parents and the LEA agree that the member’s area of curriculum or related services is not being modified or discussed in the meeting.

**Excusal**

- Members of the IEP team may be excused from the IEP meeting, in whole or in part, if
  - the parent and the LEA consent in writing to the excusal and the member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

**Written Agreement for Excusal Required**

- Regular education teacher
- Special education teacher
- District Representative
- Individual who can interpret evaluation results
1. Present levels of academic achievement and functional performance needs of the child:

- how the exceptionality affects involvement and progress in the general education curriculum
- or for preschool age children, how disability affects participation in appropriate activities

Example of what NOT to write:
 Marcus’ learning disability affects his progress in the general curriculum.

Example of what TO write:
 Marcus’ weakness in applying strategies, such as making inferences and making complex predictions, affect his progress in comprehending six-grade literacy materials.

2. Measurable annual goals related to meeting:

- the child’s needs so the child can be involved and progress in the general education curriculum
- other educational needs that result from the exceptionality

NOTE:
For children with disabilities who take alternate assessments, a description of benchmarks or short term objectives.
Developing SMART IEP Goals ...

- Specific—based on the student’s Present Level of Academic Achievement/Functional Performance
- Measurable—progress is objectively determined at frequent data points
- Achievable—realistic, related to the most critical needs
- Results-oriented—developed with the standards’ outcome in mind
- Time-bound—clearly defined beginning and ending dates

IEP Components

Written Statements of...

3. Special education and related services and other supports and services for child to:
   - Advance toward annual goals
   - Progress in general education curriculum
   - Participate in extracurricular and non-academic activities
   - Be educated and participate with children who do and do not have exceptionalities

4. Extent the child will not participate with non-disabled children in regular classes or non-academic activities
   5 (i). Accommodations/modifications in administration of state or district-wide assessments
   (ii). If IEP team determines that a child cannot participate in such assessment:
       - why the particular alternate assessment selected is appropriate for the child

6. Date services and modifications begin, including frequency, location, and duration

How progress toward the annual goals will be measured.

How parents will be regularly informed:
   - of progress toward meeting the annual goals and when periodic reports on the progress the child is making towards meeting the annual goals will be provided.
   - such as quarterly or other periodic reports, concurrent with the issuance of report cards.
IEP Components

The IEP must include:

**Age 14** (earlier, if needed) - a statement of transition service needs (addressing courses of study) including appropriate measurable postsecondary goals.

**Age 16** (earlier if needed) - a statement of needed transition services, including any interagency responsibilities or linkages

*At least one year before the age of majority, a statement that the student has been informed of his or her rights that transfer to the student upon reaching majority.

Participation in Meetings

Parents are part of the group that makes the decision regarding their child’s **eligibility**

Parents are part of the group that makes the decision regarding their child’s **educational placement**

Parents must be given the opportunity to participate in all meetings related to the identification, evaluation, educational placement and the provision of FAPE for their child.

IEP Development

The IEP Team Shall...

In the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, including positive behavioral interventions, strategies, and supports to address that behavior.

IEP Development

The IEP Team Shall Consider...

- The communication needs of children
- For a child who is deaf or hard of hearing, the child’s language and communication needs
  - Opportunities for direct communication in the child’s language and communication mode
  - Academic level
  - Full range of needs, including opportunity for direct instruction in the child’s language and communication mode
- Whether a child requires assistive technology devices and services
**IEP Development**

If the IEP team believes a child needs a device or service, a statement to that effect must be included in the IEP.

A regular education teacher must, to the extent appropriate, participate in the IEP, including the determination of:

- positive behavioral interventions and strategies for the child
- supplemental aids and services
- program modifications
- supports for school personnel

**Linking IEPs to State Standards**

- Ensures access to the general education curriculum (does not necessarily mean in the general education classroom).
- Holds schools accountable (with the reauthorization of IDEA 2004 the link between No Child Left Behind (NCLB) and IDEA is strengthened).

**Least Restrictive Environment (LRE)**

“...special classes, separate schooling or other removal of the child from the regular education environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplemental aids and services cannot be achieved”

**Least Restrictive Environment (LRE)**

...supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.
**Least Restrictive Environment**

Continuum of alternative placements must include:
- Regular classes
- Special classes
- Special schools
- Home instruction
- Instruction in hospitals and institutions

Placement is:
- Made by a group of persons, including parents
- In conformity with LRE
- Determined annually
- Based on the IEP
- As close to home as possible

**Least Restrictive Environment**

A public agency must ensure that:
- A child will attend the school he or she would attend if nondisabled unless the IEP requires otherwise.
- In choosing placement, consideration is given to any potential harmful effect on the child or the quality of services he or she needs.
- A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications.

**Changes, Consolidation and Amendments to the IEP**

- Changes to an IEP may be made without a team meeting if parents and LEA agree and subsequently develop a written document to amend or modify the IEP.
- Amendments to IEP may be made by the IEP team or the parents and the LEA rather than redrafting an entire document.

*Kansas law requires that a parent shall be provided with a revised copy of the IEP (with amendments incorporated).*

**IEP Review and Revision**

The LEA shall ensure that the IEP team:
- Reviews the child’s IEP periodically, but not less frequently than annually, to determine whether the goals for the child are being achieved.
- Revises the IEP as appropriate to address any lack of expected progress toward the goals and in the general education curriculum.
Prior Written Notice

*Written notice* – whenever the public agency proposes or refuses to initiate or change:

- identification
- evaluation
- educational placement
- provision of FAPE

Content of notice-
- proposed or refused action
- why action is proposed or refused
- options considered & rejected
- all records used by the district in reaching a decision
- other factors relevant to proposal or refusal
- where parents may obtain procedural safeguards
- who parents can contact about understanding their rights

Notice must be in understandable language
- Understandable to the general public
- in the parent’s native language

Procedural Safeguards Notice

Notice must be *given only once a year except* at:
- Initial referral
- Parental request for evaluation
- Initial filing of a DPHR; or
- At the request of the parent

Permits LEAs to post notices on their web sites

Adds content to the procedural safeguards notice related to timeframes for filing due process hearing requests, the opportunity for resolution process, mediation, and timeframes for lawsuits

Contents of notice:
Full explanation of specific procedural safeguards available to parents and the State complaint procedures

Notice must be in understandable language
Parental Consent

Written parental consent must be obtained before:
- Initial evaluation or reevaluation
- Initial provision of special education and related services

Parental consent is not required for a review of existing data as part of an evaluation or reevaluation.

Parental Consent

Required whenever there is a substantial change in placement or a material change in services for a student.

- Substantial change in placement means the movement of an exceptional child, for more than 25% of the child’s school day, from a less restrictive environment to a more restrictive environment or from a more restrictive environment to a less restrictive environment.

- Material change in services means an increase or decrease of 25% or more of the duration or frequency of a special education service, a related service, or a supplementary aid or service specified on the IEP of an exceptional child.

Revocation of Consent

Parents may withdraw their consent for continued IEP services for their child at anytime subsequent to their initial provision.

- The revocation must be in writing
- Parents are not required to provide an explanation, although the LEA may inquire
- Parents must revoke services in their entirety

The LEA must respond to the parents’ revocation with a prior written notice to the parent before ceasing the provision of services.

Revocation of Consent

No FAPE Violation

- If parent revokes consent for services, the LEA will not be held accountable for providing FAPE
- The parent may request at any time that the student be re-enrolled in special education
- In such a case, the request will be treated as a request for an initial evaluation

If the parent revokes consent for special education, the student is treated as a non-disabled student for disciplinary purposes. The student may be disciplined as a general education student.
School Records

Right to inspect and review all educational records in child’s file

An agency may presume that the parent has authority to inspect and review his or her child’s records unless the agency has been advised otherwise under applicable State laws.

State Complaint Procedures

A complaint is an allegation that the law is not being followed

- 60 days to investigate & issue written decision
- Time extension only if exceptional circumstances exist
- Procedures for implementing final decision

State Complaint Procedures

A Complaint Must Include:

- Statement of violation(s)
- Facts on which statement is based
- Violation occurred not more than one year from the date a complaint is received, unless:
  1. the violation is continuing, or
  2. the complainant is seeking compensatory education for a violation

Mediation

- Voluntary
- Timely
- Impartial
- No cost
- Confidential
- Written agreement
- May not delay right to hearing
- Mediation process is confidential and may NOT be used as evidence in subsequent legal actions

Can We Talk?
**Due Process**

Parent or public agency may initiate:

- Parent must provide notice in a request for a hearing:
  - child’s name, address and school
  - the problem the parent has
  - the solution the parent wants

Public agency must provide:
- information to parents about availability of mediation
- information on free or low-cost legal services
- a model form to assist parents with request

A parent’s right to hearing cannot be denied or delayed for failure to provide notice

**Resolution Sessions**

Within 15 days of Due Process Hearing Request, LEA must convene a meeting with:
- Parents;
- Relevant IEP team members; and
- An agency representative with decision-making authority.
- May not include an LEA attorney unless parents attorney is present.

Meeting is for discussing the facts and resolution of issues. Parents may agree, in writing, to waive such meeting or to use mediation in lieu of the resolution session.

**Resource**

Downloadable book, AUTISM SPECTRUM DISORDERS: SELECTED READINGS AND RESOURCES, designed as a parent resource by the Center for Autism Spectrum Disorders, Children’s National Medical Center. Go to:

[www.childrensnational.org](http://www.childrensnational.org)

Search for “Center for Autism Spectrum Disorders,” and click on “Resources for Families”.

This resource was shared with by:
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Thank YOU!

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