Individuals with Disabilities Education Act (IDEA)

Guide To "Frequently Asked Questions"

Committee on Education and the Workforce
John Boehner (R-OH), Chairman
Subcommittee on Education Reform
Mike Castle (R-DE), Chairman

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Frequently Asked Questions

Individuals with Disabilities Education Improvement Act

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General

What is the Individuals with Disabilities Education Act (IDEA)?

The Individuals with Disabilities Education Act (IDEA) is the nation's special education law. First enacted three decades ago, IDEA provides billions of dollars in federal funding to assist states and local communities in providing educational opportunities for approximately six million students with varying degrees of disability who participate in special education.

In exchange for federal funding, IDEA requires states to provide a free appropriate public education (FAPE) in the least restrictive environment (LRE). The statute also contains detailed due process provisions to ensure the provision of FAPE. Originally enacted in 1975, the Act responded to increased awareness of the need to educate children with disabilities and to judicial decisions requiring states to provide an education for children with disabilities if they provide an education for children without disabilities.

Part A of IDEA contains the general provisions, including the purposes of the Act and definitions. Part B, the most frequently discussed Part of the Act, contains provisions relating to the education of school-aged and preschool children, the funding formula, evaluations for services, eligibility determinations, Individualized Education Programs (IEPs) and educational placements. It also contains detailed requirements for procedural safeguards (including the discipline provisions) as well as withholding of funds and judicial review. Part B also includes the Section 619 program, which provides services to children aged 3 through 5 years old.

Part C of IDEA provides early intervention and other services for infants and toddlers with disabilities and their families (from birth through age 3). These early intervention and other services are provided in accordance with an Individualized Family Service Plan developed in consultation between families of infants and toddlers with disabilities and the appropriate state agency. Part C also provides grants to states to support these programs for infants and toddlers with disabilities. Part D provides support for various national activities designed to improve the education of children with disabilities, including personnel preparation activities, technical assistance, and special education research.

The services and activities outlined above are discussed in greater detail throughout this document.

Key Definitions

What is a free appropriate public education (FAPE)?

IDEA recognizes that, to the extent possible, children with disabilities are entitled to the same educational experience as their non-disabled peers. IDEA further recognizes that the expenses associated with providing for the special needs of children with disabilities are a public responsibility. Therefore, the centerpiece of the law is the FAPE concept. Generally, FAPE means that children with disabilities are entitled to a publicly financed education that is appropriate to their age and abilities.

Specifically, FAPE means special education and related services that are available to all children with disabilities in a state that:

- are provided at public expense, under public supervision and direction, and without charge;
- meet the standards of the state educational agency (SEA);
- include an appropriate preschool, elementary school, or secondary school in the state; and
- are provided in conformity with the Individualized Education Program established for the child.

What is the least restrictive environment (LRE)?

When IDEA was originally enacted in 1975, Congress recognized that many children with disabilities were unnecessarily separated from their peers and educated in alternative environments. Therefore, IDEA requires that states provide a free appropriate public education (FAPE) to children with disabilities in the least restrictive environment (LRE). The general goal is to allow children with disabilities to be educated with their peers in the regular classroom to the extent possible.

IDEA recognizes that there is an array of placements that meet the general requirements of providing FAPE in the least restrictive environment. LRE may change from child to child, school to school, and district to district. In developing the IEP, parents and the local educational agency are empowered to reach appropriate decisions about what constitutes LRE for the individual child, including placements that may be more or less restrictive in order to maximize the child's benefit from special education and related services.

What is an Individualized Education Program (IEP)?

The Individualized Education Program, or IEP, is the key document developed by the parent and his or her child's teachers and related services personnel that lays out how the child receives a free appropriate public education in the least restrictive environment. Among other components, the IEP lays out the child's academic achievement and functional performance, describes how the child will be included in the general education curriculum, establishes annual goals for the child and describes how those goals will be measured, states what special education and related services are needed by the child, describes how the child will be appropriately assessed including through the use of alternate assessments, and determines what accommodations may be appropriate for the child's instruction and assessments.

What is an Individualized Family Service Plan (IFSP)?

An IFSP is the Part C (formula program for infants and toddlers with disabilities) equivalent of an IEP. It is developed through an assessment and evaluation process, identifies the child's present levels of development and performance, establishes goals for future development and performance, and outlines how the child will receive early intervention and other services. Unlike an IEP, the IFSP explicitly integrates the needs of the family with those of the child and presents a comprehensive plan that enables the family to meet its goals.

Highly Qualified Teachers

Are special education teachers required to be "highly qualified" under the No Child Left Behind Act?

Yes. IDEA aligns "highly qualified" requirements for special education teachers with those requirements established under the No Child Left Behind Act (NCLB). This means that all special education teachers who teach core academic subjects must meet the "highly qualified" definition in NCLB by the end of the 2005-2006 school year. The core academic subjects, as defined in NCLB, are English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

However, IDEA clarifies the definition of a highly qualified teacher in NCLB to address the unique needs of special education teachers. IDEA requires that special education teachers obtain certification as a special education teacher or pass the state special education teacher licensing exam, and hold a license to teach in the state as a special education teacher. In addition, special education teachers may not have had their certification or licensure requirements waived on an emergency, temporary, or provisional basis, and they must hold at least a bachelor's degree.

Special education teachers can fall into one of several categories depending on whether they teach one or more core academic subject areas, and whether they teach students who are assessed using alternate achievement standards. Requirements for specific types of special education teachers are discussed in greater detail below.

What requirements apply to special education teachers who teach core academic subjects exclusively to children who are assessed against alternate achievement standards?

All teachers have the ability to demonstrate that they are highly qualified by meeting the requirements of NCLB. However, Congress recognized that these requirements did not completely reflect the needs of some special education teachers, and to assist special education teachers working to become highly qualified, added greater flexibility and modified those requirements in IDEA.

Special education teachers who teach exclusively to children who are assessed against alternate achievement standards (those children with the most significant cognitive disabilities) may demonstrate subject knowledge and teaching skills in the areas of the basic elementary school curriculum by passing a rigorous state test, or demonstrate competence in those core academic subject areas he or she teaches based on a high objective uniform state standard of evaluation (HOUSSE) as defined in NCLB. At the state's discretion, teachers who provide instruction above the elementary school level may demonstrate subject matter knowledge appropriate to the level of instruction provided, as defined by the state.

What requirements apply to special education teachers who teach multiple core academic subjects?

Special education teachers who teach multiple core academic subjects may simply meet the requirements of NCLB that apply to any new or veteran elementary, middle, or secondary school teacher for each academic subject they teach. Or, special education teachers may take advantage of

new flexibility that was added in the 2004 IDEA reauthorization. Under IDEA, veteran teachers may demonstrate their competence in all of the core academic subjects they teach through the state-developed high objective uniform state standard of evaluation (HOUSSE) option. Also, new special education teachers who are highly qualified in mathematics, language arts, **or** science may demonstrate competence in the other core academic subjects they teach by also completing the HOUSSE option for those subjects within two years of their initial date of employment.

What requirements apply to special education teachers who do not teach core academic subjects?

IDEA recognizes the important contributions of special education teachers who do not teach core academic subjects, but who provide special education services to students with disabilities. Such services may include adjustments to the learning environment, modifications of instructional methods, adaptation of curricula, the use of positive behavioral supports and interventions, supporting a regular education teacher in the classroom, or applying appropriate accommodations to meet the needs of individual children. Such teachers can meet the "highly qualified" requirement by obtaining special education certification as defined by the state and holding at least a Bachelor's degree.

Funding

How has spending for IDEA Part B increased since Republicans won control of the House in 1994?

When Congress first passed IDEA in 1975, many believe Congress committed to pay up to 40 percent of the national average per pupil expenditure to offset the excess cost of educating children with disabilities; talk about reaching "full funding" means reaching this 40 percent funding goal. Since taking control of Congress ten years ago, Republicans have dramatically increased spending for the IDEA Part B Grants to States program, which funds direct services to students. Funding has increased by **nearly 360 percent,** and the federal share of funding has increased from 7.3 percent of the average per pupil expenditure in FY 1996 to **18.7 percent in FY 2005**. Under Republican leadership, Congress has increased its rate of progress toward finally reaching the 40 percent level many believe Congress sought in 1975.

What is the level of funding for IDEA for fiscal year '05?

For FY 2005, IDEA Part B Grants to States are funded at nearly $10.6 billion, the largest amount ever allocated for special education. This figure represents an increase of nearly 360 percent in special education state grant funding since FY 1995, the last year of a Democratic-controlled Congress.

The bulk of federal special education funding is contained in the part B Grants to States program, which provides much of the federal funding for direct special education and related services for children with disabilities.

What does the President's '06 budget include for IDEA?

Under President Bush's FY 2006 budget proposal, the IDEA Part B Grants to States program would receive $11.1 billion, a $508 million increase over FY 2005 levels. By devoting a significant amount of federal funds to IDEA, local schools will have greater discretion over how to spend local education funds, including how to fund school construction, teacher hiring, professional development, and the many other needs facing most local school districts.

Are local educational agencies (LEAs) allowed to reduce their own spending?

Yes. As a result of the significant increases in federal funding for IDEA and the maintenance of effort requirements, local educational agencies (LEAs) have been required to maintain artificially high levels of funding on special education, even as the federal share has increased. Accordingly, the reauthorized IDEA allows LEAs to reduce their own local spending on special education by an amount equal to 50 percent of the increase in federal funding from one year to the next. This will give local communities greater control over how their own, local dollars are spent on education.

For example, if the LEA receives an increase of $5,000 in federal funds over its allocation from the previous year, the LEA will be able to reduce its own local funding by $2,500. However, if the LEAs allocation of federal funds does not increase, then the LEA will not be able to reduce its local spending in that year.

Any reduction in the maintenance of effort level is permanent, so LEAs will be able to plan accordingly in making decisions about whether to use this authority and how to develop their own budgets and spending decisions. It is important to note, however, that the LEA still has the obligation to provide a free appropriate public education to students with disabilities.

Can schools provide additional services to children before they are identified as needing special education? What activities can local educational agencies (LEAs) support with early intervening funds? Are LEAs required to support these activities?

IDEA allows local educational agencies (LEAs) to use up to 15 percent of their total federal IDEA funding to provide services to students before they are identified as having a disability. This will allow LEAs to use their funds with flexibility and creativity to address difficulties young children may have; prevent a disability from developing; reduce the severity of any potential disability; or identify children earlier as needing to undergo the evaluation process of IDEA.

This is an optional activity at the local level. LEAs can choose whether to conduct this activity, and the authority and responsibility is intentionally broad and expansive. LEAs can use early intervening funds to support professional development activities, educational supports and services, positive behavioral supports and evaluations, or other activities to help children succeed in the general education curriculum.

Private Schools

What rights are provided to children with disabilities, and their parents, who voluntarily enroll in private schools?

Children with disabilities should not be excluded from special education evaluations or services simply because their parents choose to place them in private schools. Therefore, under IDEA children with disabilities who are enrolled in private schools by their parents are entitled to evaluations and, if necessary, special education and related services from the local educational agency (LEA) with jurisdiction over the district in which the private school is located. Such special education and related services must be equitable to what is provided to the LEA's public school children. In addition, the LEA must consult with representatives of the parents and the private schools to ensure that the design and delivery of evaluations and special education and related services meet the children's needs.

What are the obligations of local educational agencies (LEAs) in providing for children with disabilities who are enrolled by their parents in private schools?

Local educational agencies (LEAs) are required to provide special education and related services for children with disabilities who are enrolled by their parents in private schools located in the school district served by the LEA. LEAs can provide services, including direct services, such as professional development for teachers, physical therapy, occupational therapy, and provide educational materials in specialized formats. Funds for these services must be equal to a proportionate amount of the federal funds made available to the LEA under part B of IDEA as related to the number of private school students located in the LEA. State and local funds may be used to supplement federal funds, but may not be used in place of federal money to comply with this requirement.

Special education and related services may be provided to children with disabilities on the premises of private schools to the extent consistent with state and federal law or, when appropriate, at a location and in a manner deemed appropriate by the LEA in consultation with representatives from the private schools and the parents. Special education and related services must be provided by employees of a public agency or through contract by the public agency with another entity, and be secular, neutral, and non-ideological. The funds used to provide the special education and related services must be controlled and administered by a public agency. In addition, the LEA must provide the state educational agency (SEA) the number of children enrolled by their parents in private schools evaluated by the LEA, the number of such children determined to be children with disabilities, and the number of children served.

Charter Schools

Are charter schools required to serve students with disabilities?

Yes. Charter schools are required to serve children with disabilities in accordance with IDEA, state law, and the state's charter school statute.

How and when must charter schools that are part of a local educational agency (LEA) receive funds?

A local educational agency (LEA) must provide charter schools in its district with IDEA funds on the same basis that it provides funds to its other public schools, including proportional distribution based on the relative enrollment of children with disabilities. These funds must be distributed by the LEA at the same time as it distributes other federal funds to its other public schools.

Must a local educational agency (LEA) provide services to students with disabilities that are attending charter schools within the LEA?

If the local educational agency (LEA) has a policy or practice of providing supplementary services, including related services, to its other public schools, then the LEA must also serve children with disabilities attending its charter schools in the same manner and to the same extent, including direct services.

New State Policies

What are the new requirements to address over-identification of children, particularly minority children, for special education?

Based on numerous studies and reports, Congress concluded that some students are being inappropriately identified as having a disability, or being identified in the wrong disability category, largely due to their race or ethnicity. This is an unacceptable practice, and states and school districts should take positive steps to eliminate this problem. Accordingly, IDEA requires states to develop policies and procedures to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children as having a disability, or as having a particular disability. States are also required to collect and report data on this issue.

Based on these policies and data, states will be required to help LEAs reduce inappropriate identification and over-identification, or disproportionate identification, by reviewing their policies and procedures, updating evaluation and referral procedures, and potentially requiring school districts to use early intervening funds to address the problem. It is important that the Department of Education and the states use their significant flexibility to develop appropriate policies to reduce inappropriate identification and over-identification, or disproportionate identification, without resorting to quotas. For example, states can examine historical trends in districts and review records to ensure that a pattern of over-identification does not inappropriately place a larger number of students of a particular ethnic or racial background in special education.

What are the new requirements about medication for children?

Parents should not be forced to medicate their children as a condition of the child attending school, and school personnel should not attempt to make medical diagnoses that should rightly be made by trained medical personnel. To ensure the rights of parents are protected, the law requires that each state prohibit state and local educational agency personnel from requiring a child to obtain a prescription for a controlled substance as a condition of attending school, receiving services, or receiving an evaluation for a disability. This requirement was included to ensure that parents are not coerced into placing their children on certain drugs (e.g., Ritalin) so that their children can go to

school. School personnel are not licensed medical practitioners, and should not be making medical decisions or imposing such decisions on parents.

The law does allow school personnel to continue to share observations about a child's academic achievement, functional performance, or behavior management with parents so that parents are aware of the child's performance during the school day. Parents can then use that information and consult with appropriate medical practitioners for more information if they feel medication is necessary or beneficial to helping improve their child's academic achievement.

Does IDEA create a national special education curriculum?

No. IDEA clearly prohibits the Department from mandating, directing, or controlling the curriculum decisions of state or local educational agencies or the specific instructional content, academic achievement standards, assessments, or programs of instruction. The federal government plays a supporting role in funding education and shaping overall policy goals, but these important decisions are appropriately left to states and local school districts.

Individualized Education Program

What is the timeline for getting a child evaluated for a disability?

In order for a child to be eligible for special education and related services, the child must first be determined to have a disability. Parents, teachers, or other school officials who suspect that the child may have a disability would request that the child be evaluated by a multi-disciplinary team to determine if the child has a disability and needs special education or related services as a result of the disability. Generally speaking, IDEA requires that a child be evaluated within 60 days once the parent has given consent for the evaluation. States may establish shorter or longer timeframes in their own state legislation or regulation, and those state-developed timelines would be binding.

Exceptions to the timeline exist if the child moves from one district or state to another district or state after the evaluation was requested or if the parent refuses to make the child available for the evaluation. Under those circumstances, districts are required to make sufficient progress to ensure that a timely evaluation is conducted.

If a child moves from one district to another within the state, does the IEP follow the child?

No. The new LEA is required to continue to provide a free appropriate public education to the child with a disability including providing services that are comparable to those services outlined in the child's original IEP. The new LEA is not required to implement the pre-existing IEP, but may choose to do so at its own discretion. If the new LEA does not implement that IEP, the new LEA must work with the parent through the IEP Team process to develop an IEP that is consistent with federal and state law.

If a child moves from one state to another, does the IEP follow the child?

No. The new local educational agency (LEA) in the new state is required to provide a free appropriate public education to the child with a disability including providing services that are comparable to those services outlined in the child's original IEP. The new LEA in the new state is

not required to implement the pre-existing IEP, but may choose to do so at its own discretion. If the new LEA does not implement that IEP, the new LEA in the new state must work with the parent through the IEP Team process to develop an IEP that is consistent with federal and state law.

Additionally, because definitions of disability and eligibility vary from state to state, the new LEA in the new state may require the child to be evaluated to determine whether the child is eligible to be identified as a child with a disability under state law. If the child is eligible for services under IDEA in the new state, an IEP must be developed and implemented for the child.

What if a parent doesn't provide consent for evaluation or for services?

If a parent does not provide their consent for an evaluation, the local educational agency (LEA) does have the authority to use the due process procedures to seek an order from a hearing officer requiring an evaluation. LEAs should use this authority sparingly.

If a parent does not provide their consent for the provision of services, no special education or related services may be provided. The right of a parent to decide what educational services their child receives cannot be overturned using IDEA's due process procedures. If a parent indicates that they will refuse both consent for evaluations and consent for services, nothing in IDEA requires that an LEA use the due process procedures to proceed through the evaluation phase.

What methods are local educational agencies (LEAs) allowed to use to identify a child as having a specific learning disability?

Almost half of the students identified as being disabled under IDEA are placed in the category of 'specific learning disability.' In order to eliminate out-dated methods of determining whether a child actually has a specific learning disability, and to respond to the need to identify children before they start to fail academically because of their disability, IDEA allows local districts significant new flexibility in developing appropriate methods of determining whether a child has a specific learning disability. However, IDEA does prohibit states from requiring that LEAs routinely use an IQ test as a part of the determination of specific learning disabilities. This means that the IQ-achievement discrepancy model in which a specific learning disability is identified when there is a discrepancy between achievement and intellectual ability cannot be mandated. States and LEAs are encouraged to look to research-based practices, especially models using response-to-intervention strategies, to determine whether a child has a specific learning disability. The Department of Education will develop guidance and provide technical assistance to states and LEAs using effective, scientifically-based research to help states and LEAs develop effective models of identification practices.

Must all children with disabilities participate in state assessments?

Yes. Under the No Child Left Behind Act (NCLB), for the first time ever states and local schools are held accountable for ensuring all children – including children with disabilities – are learning. Children with disabilities must be included in the assessment system required under the No Child Left Behind Act and schools must report their results through NCLB's adequate yearly progress structure. IDEA requires that the IEP Team determine <u>how</u> the child with a disability is assessed, not <u>whether</u> the child is assessed. IDEA recognizes that children learn in different ways, with different methods of instruction and assessment. The IEP Team is required to determine which

accommodations are necessary, how to instruct the child, and how to assess the child. The IEP Team can have a child with a disability take the regular state assessment; the regular state assessment with appropriate accommodations such as Braille, additional time, or having the instructions read to the child multiple times; an alternate assessment aligned to grade level standards; or an alternate assessment aligned to alternate achievement standards. This array of assessment opportunities ensures that all students with disabilities can be assessed appropriately for individual and systemic accountability efforts.

Should all states have alternate assessments?

Yes. IDEA builds on the education reforms of the past decade by allowing states to develop appropriate alternate assessments aligned to grade level standards for students with disabilities so that they can demonstrate what they know. Since 1997, IDEA has required that all states have alternate assessments. In 2004, IDEA was updated to allow states to develop alternate assessments tied to alternate achievement standards to allow for maximum flexibility in appropriately assessing students with disabilities. However, all decisions about which assessment a child with a disability should take are to be made by the IEP Team.

Is there a conflict between IDEA and NCLB on assessments for students with disabilities?

No. IDEA and NCLB work in concert to ensure that students with disabilities are included in assessments and accountability systems. While IDEA focuses on the needs of the individual child, NCLB focuses on ensuring improved academic achievement for <u>all</u> students.

Is the IEP required to include benchmarks and short term objectives for all students with disabilities?

No. IDEA was updated to be aligned carefully with NCLB to ensure that parents of students with disabilities get access to the same level of information about their children's academic performance as all other students. For most students with disabilities, the IEP Team will include a statement of the child's current performance, establish annual goals, describe how those goals will be measured, and establish a reporting cycle similar to all other students.

However, for those students with disabilities taking an alternate assessment aligned to alternate achievement standards, the IEP Team will be required to include benchmarks and short-term objectives. Since these students will typically not perform at or near grade-level, measuring their progress requires a different approach that can be accommodated through the use of benchmarks and short-term objectives.

Who has to be part of the IEP Team?

The IEP Team is responsible for developing the IEP and ensuring its effective implementation so that the child can receive special education and related services. The IEP Team must include the parents of the child with a disability, a regular education teacher (if the child is participating in the regular education environment), a special education teacher, and a representative of the school district. In addition, the parent and the school district can agree to add other members knowledgeable about related services or with expertise about the child.

Do IEP Team members need to be at every meeting?

To provide efficient and effective use of IEP Team meetings, the parent and the LEA may agree to excuse any member of the IEP Team from the IEP Team meeting if their area of curriculum or related services is not being addressed.

The parent and the LEA may also agree to excuse any member of the IEP Team from the IEP Team meeting if their area of curriculum or related services is being addressed, but the Team member will be required to submit their input in writing to the parent and the LEA prior to the IEP Team meeting.

The parent must provide written consent to the excusal of any IEP Team member.

Can the IEP be amended without reconvening the whole IEP Team?

Yes. To provide greater flexibility for parents and schools, IDEA allows the parent and the LEA to agree to amend or modify the IEP without reconvening the whole IEP Team. Such an amendment or modification must be in writing to clearly lay out what has been modified or amended.

Can IEP Teams use modern technology to develop the IEP and conduct meetings?

Yes. In order to facilitate the meeting process, reduce paperwork, and make meetings more efficient, IDEA allows IEP Teams to use computers to develop an IEP for a child with a disability instead of using typewriters or written documents. Additionally, to better accommodate busy work schedules for parents and school personnel, IDEA allows the parents to agree to use conference calls, video conferencing, or other alternative means of participation to conduct IEP meetings and other meetings required under IDEA, including resolution session meetings.

Procedural Safeguards

The procedural safeguards of IDEA provide the foundation for ensuring access to a free appropriate public education. Procedural safeguards provide the ability of parents to understand the rights of their child, facilitate communication between parents and schools, and detail the due process procedures if a complaint about the implementation of the Act as it relates to an individual child. The procedural safeguards section of the Act also includes the discipline provisions.

What is the procedural safeguards notice? When must it be provided?

The procedural safeguards notice is a copy of the procedural safeguards available to parents and children with disabilities. IDEA requires state and local educational agencies to provide parents with this notice. Generally, the agency is only required to provide the notice once a year. However, the notice must also be provided when parents request an initial evaluation or when a child is initially referred to the agency, the first time parents file any complaint, and whenever parents request the notice.

Does IDEA place a statute of limitations on when a due process complaint can be filed?

Yes. While parents are permitted under IDEA to file due process complaints when they feel that their child's rights under IDEA have been violated, any complaints must be filed no later than two years after the violation is alleged to have occurred.

Are there exceptions to the statute of limitations?

Yes. IDEA provides a number of exceptions to the two year statute of limitations. First, if a state's law provides a different time limit on the presentation of a complaint, that state-imposed limit prevails.

IDEA also provides exceptions to protect the rights of children and their families. If a local educational agency falsely claims that it has resolved the complaint, or withholds information it was required to provide, then the two year statute of limitation does not apply.

What is the due process notice?

The due process notice is an official complaint from the parent about their child's individualized education program or services provided under IDEA. A party alleging a due process violation under IDEA is required to provide a due process complaint notice to the other party and the state educational agency (SEA). The notice must include the name and home address of the child, the name of the school the child attends, a description of the nature of the problem, and a proposed resolution. The party presenting the complaint must file this notice before a due process hearing can occur.

What actions must the LEA take when it receives a due process notice?

If the LEA has not provided a prior written notice to the parents regarding the subject matter of the complaint, the LEA must provide a response to the parents within ten days of receiving the due process notice that contains the following:

- an explanation of why the agency proposed or refused to take the action raised in the complaint;
- a description of other options that the IEP Team considered and the reasons those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
- a description of the relevant factors in the LEA's proposal or refusal.

What if the LEA believes the due process notice is not sufficient?

If the LEA believes that the due process notice fails to meet the requirements for such a notice, the LEA must notify the hearing officer in writing within fifteen days of receiving the complaint. Hearing officers then have up to five days to determine if the notice meets the requirements. Upon making a determination, the officer must immediately notify all parties in writing of the decision.

If the hearing officer determines that the complaint is sufficient, the LEA must respond to the complaint. If the hearing officer determines that the complaint is not sufficient, the parent has the opportunity to resubmit a new complaint and the timelines start over.

Does IDEA allow a party to amend its due process notice after the notice has been delivered to the hearing officer and other party?

The due process complaint notice may be amended if the other party consents to the amendment in writing and is given the opportunity to resolve the complaint through the resolution session. The hearing officer may also allow a due process notice to be amended, but only if the amendment is made more than five days before the due process hearing. When a due process complaint is amended, the applicable timeline for a due process hearing begins again when the party files the amended notice.

What requirements apply to a complaint?

When a parent files a complaint the parent must describe the nature of the problem, relevant facts relating to the problem, and a proposed resolution to the problem.

If the LEA feels that the complaint is not sufficient to inform them about the problem, the LEA has fifteen days from when the parent filed their complaint to ask a hearing officer to decide whether the complaint was sufficient.

The hearing officer has five days to make a determination that the complaint is sufficient. If the hearing officer decides that the complaint is not sufficient, the complaint is returned to the parent, and the parent is able to file a new complaint with greater specificity and the timeline starts over once a new complaint is filed.

When is mediation allowed?

To discourage unnecessary and costly litigation, IDEA requires states to establish and implement procedures to allow parties to resolve disputes through a mediation process. Any dispute, including matters that arise prior to the filing of a formal complaint, are eligible for mediation.

Mediation is defined as an attempt to bring about a peaceful settlement or compromise between parties to a dispute through the objective intervention of a neutral party. Mediation is an opportunity for parents and school officials to sit down with an independent mediator and discuss a problem, issue, concern, or complaint in order to resolve the problem amicably without going to due process. Mediation can be initiated at any time, if both parties agree, to expedite the development of a solution.

What requirements must states meet in developing mediation procedures?

To ensure that the mediation process is a valuable alternative to litigation, IDEA contains guidelines states must follow in developing a mediation program. First, mediation must be voluntary for both parties. Second, mediation may not be used to deny or delay a parent's right to a due process hearing, or to deny other rights guaranteed under IDEA. And, third, mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

Can state educational agencies (SEAs) or local educational agencies (LEAs) actively encourage parents and schools to participate in mediation?

Yes. IDEA allows state and local educational agencies to provide parents and schools that choose not to participate in mediation the option of meeting with a disinterested party who may encourage the use and explain the benefits of mediation. Such a meeting must be convened at a time and location that is convenient for the parents. The disinterested party must be under contract with a parent training and information center, community parent resource center, or an appropriate alternative dispute resolution entity.

How does IDEA make mediation a viable alternative to parents and schools?

IDEA requires states to pay for the mediation process and to maintain a list of qualified mediators who are knowledgeable about the laws and regulations pertaining to the provision of special education and related services. The state must also ensure that each mediation session is scheduled in a timely manner and held in a location that is convenient for the parties involved.

Does mediation produce a legally binding resolution?

Yes. If the parties resolve the complaint, they must execute a legally binding agreement. The agreement explains the resolution and states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; contains signatures from both the parent and a representative of the state or local educational agency who has the authority to legally bind the agency; is enforceable in any state court of competent jurisdiction or in a U.S. district court.

What is the impartial due process hearing?

Whenever parents or the local educational agency (LEA) file a complaint related to the provision of special education and related services to a child with a disability, the party filing the complaint has the opportunity for this hearing. The hearing is conducted by the state educational agency (SEA) or LEA, depending on state law, and is meant to provide the parties a fair, impartial venue for resolving the issues contained in the complaint.

What is the resolution session?

A resolution session is a new provision created under the 2004 IDEA reauthorization, which provides an opportunity for parents and local educational agencies (LEAs) to resolve any issues in the complaint in an efficient and effective manner so that parents and LEAs can avoid due process hearings and provide immediate benefit to the child. Within 15 days of when a complaint is filed, and prior to a due process hearing, the LEA must convene a resolution session between the parents and the relevant members of the IEP Team who have specific knowledge of the facts contained in the complaint (as determined by the LEA and the parents).

The resolution session must include a representative of the LEA who has decision making authority on behalf of the agency, but may not include an attorney for the LEA unless the parent is also accompanied by an attorney. The session provides an opportunity for the party who filed the

complaint to discuss that complaint and the facts forming the basis of it, and an opportunity for the responding party to resolve the complaint.

If the parties reach agreement through this process, they must execute a legally binding agreement that is signed by the parents and a representative of the LEA with the authority to legally bind the LEA, and that is enforceable in any state court of competent jurisdiction or district court of the United States. Either party may void the agreement up to three days after its execution.

In the event the complaint is not resolved through this process, the parties may then proceed to a due process hearing. The parties may agree not to conduct the resolution session if both agree in writing or decide to use mediation.

What topics may be covered during the due process hearing?

The due process hearing is limited to those issues covered in the complaint. The party requesting the hearing can only raise other issues if the other party agrees. The party filing the complaint should consolidate multiple issues into one complaint when possible.

Who presides over the due process hearing? What qualifications must he or she meet?

An impartial hearing officer presides over the due process hearing. The hearing officer must not be an employee of the state or local educational agency involved in the education of the child and must not have a professional or personal interest that conflicts with his or her objectivity in the hearing. The hearing officer must know and understand IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by the courts. The hearing officer must also be able to conduct hearings and render decisions in accordance with standard legal practice.

On what does a hearing officer base his or her decisions?

In general, a hearing officer's decision should be made on substantive grounds based on a determination of whether the child received a free appropriate public education (FAPE). If the complaint alleges procedural violations, the hearing officer may find that the child did not receive a FAPE only if the procedural violations impeded the child's right to a FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE for the child, or deprived the child of educational benefits. However, a hearing officer can order the LEA to comply with procedural requirements even if noncompliance does not result in a failure to provide a FAPE.

When a parent files a complaint, how long does the LEA or SEA have to resolve the complaint?

The LEA must convene the resolution session within 15 days of receiving a complaint. If the LEA has not otherwise resolved the complaint within 30 days of receiving it, the due process hearing may then occur.

Once the LEA has failed to resolve the complaint within 30 days and a due process hearing is required, the SEA must conduct the hearing and mail a written copy of the hearing officer's final decision to all parties involved.

How long does a party have to request a hearing after the alleged violation occurs?

The party requesting the hearing must submit the request within two years of when the alleged violation occurred. If state law provides for a different timeline, the state law prevails. The timeline does not apply to parents if the LEA falsely claims that it has resolved the complaint or withholds information it was required to provide.

Are there avenues for appeal when a party disagrees with the hearing officer's decision?

Yes. When the hearing is conducted by the LEA, either party may appeal the decision to the SEA. The hearing officer conducting the review on behalf of the SEA must conduct an impartial review of the findings and decision and make an independent judgment upon the completion of the review. The SEA must reach a final decision and mail a copy of that decision to both parties.

Does the due process hearing preclude a party from filing a civil action in court?

No. Any party who disputes the final decision of the hearing officer may bring a civil action in any state court of competent jurisdiction or in a U.S. district court. The party bringing the civil action has 90 days from the date of the hearing officer's final decision to file the claim. If state law provides for a different timeline, the state law prevails.

Can a court award attorneys' fees to the prevailing party in a civil action?

Yes. U.S. district courts may award reasonable attorneys' fees to prevailing parties (parents, SEAs or LEAs) as part of any settlement of a due process complaint or civil action. Attorneys' fees granted to SEAs or LEAs may only be granted under certain guidelines. First, the parents' attorney may be forced to pay the agency's attorneys' fees when that attorney files a complaint or civil action that is frivolous, unreasonable, or without foundation, or continues to pursue a civil action after the litigation clearly became frivolous, unreasonable, or without foundation. Second, the parents, or their attorney, may be forced to pay the SEA's or LEA's attorneys' fees if the parents' complaint or subsequent civil action was presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

For what services may a prevailing party not be awarded attorneys' fees?

Not all legal and administrative proceedings and services are eligible for reimbursement. A court may not award attorneys' fees for any services performed subsequent to the time a written offer of settlement is made to the parents if:

- the offer is made in accordance with Rule 68 of the Federal Rules of Civil Procedure;
- in the case of an administrative proceeding, the offer is made more than 10 days prior to the hearing;
- the offer is not accepted within ten days; and
- the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable than the offer of settlement.

However, attorneys' fees may be awarded to parents who were substantially justified in rejecting the settlement offer. Also, IEP Team meetings are not eligible for reimbursement unless the meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the state, for a mediation session. And, attorneys' fees for resolution session meetings are also ineligible for reimbursement.

Can the court reduce the amount of attorneys' fees eligible for reimbursement under certain circumstances?

Yes. The court is required to reduce the amount of fees eligible for reimbursement when the court finds that any of the following apply:

- the parents, or the parents' attorney, unreasonably protracted the final resolution of a complaint during the course of the administrative proceeding or civil action;
- the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- the time spent and legal services provided were excessive considering the nature of the administrative proceeding or civil action; or
- the attorney representing the parents did not provide to the LEA the appropriate information in the due process complaint notice.

However, if the court finds that the SEA or LEA unreasonably protracted the final resolution of the administrative proceeding or civil action or violated any of the procedural safeguards provisions, then the above requirements do not apply.

Discipline

Disciplinary procedures under IDEA have been a source of concern among parents, schools, and disability advocates for years. At issue are concerns about the protection of rights for students, which must be fairly balanced with the ability of school personnel to maintain safety and order in schools for the benefit of all students. The 2004 IDEA reauthorization resulted in significant improvements to discipline provisions in order to add significant clarity and common sense to the discipline provisions within IDEA

In what circumstances do the discipline procedures apply?

In reauthorizing IDEA, the bipartisan conference committee sought to ensure that schools would be safe for students and teachers, and that discipline problems would be addressed with common sense. The new IDEA helps school personnel ensure school safety and hold students responsible for their actions, while protecting the rights of children with disabilities. The discipline procedures only apply where the discipline infraction results in a change in placement for longer than 10 school days, and was a direct result of the child's disability. Unless a disciplinary infraction is the direct result of a child's disability, the child will be disciplined in the same manner and for the same duration as a non-disabled student.

Does a school have to discipline a child with a disability in every instance?

No. When a student has violated a code of conduct, school personnel may consider any unique circumstances on a case-by-case basis to determine whether a change of placement for discipline purposes is appropriate.

Do IDEA discipline procedures apply if the child with a disability will be disciplined for less than 10 school days?

No. Where the discipline infraction would result in a change in placement for less than 10 school days, the discipline procedures do not apply.

If the discipline infraction of the child relates to drugs, weapons or serious bodily injury, will that child's discipline be handled differently?

Yes. If the disciplinary infraction involves the serious safety issues of drugs, weapons, or serious bodily injury, the child will automatically be removed from the classroom for up to 45 school days. The child will be placed in an interim alternative educational setting, but will continue to receive educational services to make progress on his or her IEP. Also during this time, a determination will be made as to whether the disciplinary infraction was the direct result of a child's disability.

What process will determine whether the disciplinary infraction was the direct result of a child's disability?

In order to determine whether the disciplinary infraction was the direct result of a child's disability, the LEA, the parent and the *relevant* members of the IEP Team must determine whether the conduct in question was a "manifestation of the child's disability." This process is called a manifestation determination. The manifestation determination will analyze the child's behavior as demonstrated across settings and across time when determining whether the discipline infraction is a direct result of the child's disability. Previously, the LEA had to prove that the child's action resulting in the discipline infraction *was not* caused by the child's disability. The new IEA places the obligation on the parent to show that the child's action resulting in the discipline infraction *was* the direct result of the child's disability.

What does the term manifestation of a child's disability mean?

This term has been significantly changed in this reauthorization. Previously any tangential or attenuated relationship between the discipline infraction and the child's disability was sufficient to determine that the infraction was a "manifestation" of the child's disability. In the new IDEA, the bipartisan consensus acknowledged that "[i]t is the intention of the Conferees that the conduct in question was caused by, or has a direct and substantial relationship to, the child's disability, and is not an attenuated association, such as low self-esteem, to the child's disability." Accordingly, it is now clear in the new IDEA that the disciplinary infraction must be caused by or be the direct result of a child's disability, and not a mere correlation or attenuation.

Who are the relevant members of the IEP Team when conducting a manifestation determination?

Depending on the type of discipline infraction, when the infraction occurred and who was present, some members of the IEP Team may not be relevant to the discussion of the discipline event. For example, although transportation is an important issue, if the discipline infraction occurred during the school day, the transportation member would not be relevant to the discussion of the discipline event. Conversely, if the discipline infraction occurred on the school bus, the transportation member may be the relevant member of the IEP Team. Nonetheless, in each instance the relevant members should be determined in collaboration by the parents and LEA.

What services and placement would then be available to the child if the actions are determined to be a manifestation of the child's disability?

In situations where the local educational agency, the parent and the relevant members of the IEP Team determine that the discipline infraction was the direct result of the child's disability, a child with a disability would not be subject to discipline in the same manner as a non-disabled child. However, such determination is not to say that the child should not be subject to any discipline.

In these situations, the IEP Team shall determine whether a functional behavioral assessment has been conducted and a behavioral intervention plan has been implemented for such child. If the IEP Team finds either that such assessment has not been conducted or a behavioral intervention plan has not been implemented for such child, then both should be completed. Where a behavioral intervention plan has been developed, the IEP Team must review the behavioral intervention plan and modify it, as necessary, to address the behavior. Additionally, unless the parent and the LEA agree to a change of placement, the child must be returned to the placement from which the child was removed.

What services and placement are available to the child if the actions are determined not to be a manifestation of the child's disability?

Unless a disciplinary infraction is the direct result of a child's disability, the child will be disciplined in the same manner and for the same duration as a non-disabled student. The child may be placed in an interim alternative educational setting. However, if the suspension is for longer than 10 school days, the child will continue to receive educational services to make progress on his or her IEP.

Can a parent appeal the decision regarding manifestation?

Yes, if the parent of a child with a disability disagrees with the manifestation determination or placement, the parent may request a hearing. At such hearing (as for the manifestation determination), the obligation is on the parent to show that the child's action resulting in the discipline infraction was the direct result of the child's disability.

Where will the child receive services while the appeal is pending?

Previously during appeals, a child with a disability remained in the original placement. This was called the "stay put" requirement. The new IDEA eliminates the "stay put" requirement. Now

during the time that an appeal is pending, the child will remain in the interim alternative educational setting until the appeal is resolved or until the expiration of the suspension, whichever occurs first. However, the placement can be changed during this time if the parent and LEA agree.

Do any of these procedures apply to children who have not been identified as having a disability?

A child who has not been determined to be eligible for special education services and who has a discipline infraction that violates a code of student conduct, may assert the discipline protections if the LEA had "knowledge" that the child was a child with a disability before the discipline infraction occurred. However, if the LEA does not have knowledge that a child is a child with a disability, the child may be disciplined in the same manner and to the same extent as non-disabled students.

An LEA is deemed to have "knowledge" if, before the discipline infraction occurred, one of the following happened.

- The parent of the child expressed concern in *writing* to supervisory or administrative personnel of the LEA, or a teacher of the child, that the child is in need of special education services;
- The parent of the child has requested an evaluation of the child pursuant to IDEA; or
- The teacher of the child, or other LEA personnel, has expressed specific concerns directly to the director of special education or to other supervisory personnel.

If the parent of the child has not allowed an evaluation of the child or has refused services, or the child has been evaluated and it was determined that the child was not a child with a disability then an LEA will not be deemed to have "knowledge" that the child is a child with a disability.

Monitoring and Enforcement

The U.S. Department of Education is tasked with ensuring that states are effectively implementing the law and providing a free appropriate public education to students with disabilities. In order to ensure that this happens, IDEA 2004 includes major changes to the monitoring system by laying out a clear set of priorities for the Secretary to adhere to when developing a monitoring and enforcement system. The Secretary will then use data gathered by monitoring visits and state reports to determine whether states are fulfilling their obligations under the law, and take appropriate compliance actions based on that information.

Who will develop the indicators used for the new monitoring and enforcement provisions?

The U.S. Department of Education will develop a framework of the data sets the department will use to develop the monitoring system included in IDEA. This system must focus on key components of the law designed to improve educational results and functional outcomes for children with disabilities. The Secretary will publish these indicators in the Federal Register for public comment and review.

Primarily, the Secretary will focus on indicators that examine the provision of a free appropriate public education in the least restrictive environment, state exercise of general supervisory authority,

and the disproportionate representation of racial and ethnic groups in special education and related services. The Secretary may establish additional areas of focus at her discretion.

Can the Secretary force a state to change its targets or establish specific targets?

No. States develop their own plans for monitoring and enforcement, which include targets for performance. The Secretary has the authority to approve or disapprove of the state plan. During the approval process the Secretary may work with states to ensure that the plan is sufficiently rigorous. If the Secretary disapproves the plan, the state has the ability to appeal the Secretary's decision and have the Secretary review the decision to reject the plan. The Secretary does not have the authority under IDEA to impose a specific target or targets for the indicators.

Does the Secretary have to impose sanctions?

Yes, the Secretary has an obligation to enforce the law. IDEA provides an array of enforcement options to the Secretary if a determination is made that a state is not meeting the requirements and purposes of the Act. The Secretary has considerable latitude to work with states to ensure that they meet the requirements and purposes of the Act, but once the need for an enforcement action is necessary, the Secretary must take action.

Are states required to monitor LEA progress in implementing the Act?

Yes. IDEA requires that states monitor and enforce the provisions of the Act as implemented by LEAs. States are required to take appropriate enforcement actions when necessary to ensure that all students with disabilities have access to a free appropriate public education in the least restrictive environment.