

Individuals with Disabilities Education Improvement Act

Key Provisions

All provisions take effect on July 1, 2005 except for the highly qualified provisions---which are effective now.

Medication

- **The state education agency must prohibit school district personnel from requiring a child to obtain a prescription for medication as a condition of attending school or receiving an evaluation or services.**
 - ✓ Staff may consult with parents regarding the student's academic and functional performance or behavior or the need for an evaluation.

Evaluation and IEPs

- **Exceptions have been added to the state mandated time frame for conducting an initial evaluation. The timeline does not apply if:**

- ✓ An initial evaluation was begun but prior to the determination of eligibility, the child transfers to another district; if the district is making sufficient progress to ensure prompt completion and the parent and district agree to a specific timeline.
- ✓ The parent of a child repeatedly fails or refuses to produce the child.
- **If the parent refuses to provide consent to initiate special education and related services**
 - ✓ The district cannot utilize due process to obtain consent.
 - ✓ The district will not be considered in violation of the requirement to provide FAPE.
 - ✓ The district will not be required to convene an IEP team meeting or develop an IEP.
- **The screening of a student by a teacher or specialist to determine appropriate strategies is not considered an evaluation [for which consent is required.]**
- **A reevaluation will occur not more frequently than once a year, unless the parent and the district agree otherwise.**
 - ✓ A reevaluation will be conducted at least once every three years, unless the parents and district agree that an evaluation is unnecessary.
- **Assessments of students who transfer from one school district to another in the same academic year should be coordinated to ensure prompt completion.**

- **When determining whether a child has a specific learning disability, a school district is not required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability** in oral expression, basic reading skill, reading comprehension, mathematical expression, or basic mathematical reasoning.
 - ✓ A school district may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.

- **An evaluation is not required before graduation or leaving the system at age 21.**
 - ✓ A summary of the child's academic achievement and functional performance, including recommendations on how to assist the child in meeting postsecondary goals is required.

- **IEPs will include a description of benchmarks or short-term objectives, for children who take alternate assessments aligned to alternate achievement standards.**

- **Progress reporting is clarified:**
 - ✓ IEPs will include a description of how the child's progress toward meeting annual goals will be measured and when periodic reports – concurrent with the issuance of a report card- will be provided.

- **The requirement to include courses of study at age 14 as part of transition in an IEP has been eliminated.**
 - ✓ Not later than the first IEP to be in effect when the child turns 16 and updated annually:
 - Appropriate measurable post secondary goals based on appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills;
 - The transition services (including courses of study) needed to assist the child in reaching those goals.

- **Attendance of IEP team members at meetings is modified.**
 - ✓ An IEP team member may be excused from attending an IEP meeting in whole or in part, if the parent and district agree that the team member's area is not being discussed or modified.
 - ✓ An IEP team member may be excused from attending an IEP meeting in whole or in part, when the meeting involves modification or discussion of the member's area, if:
 - The parent and district consent to the excusal; and
 - The member submits in writing to the parent and other members of the IEP team input into the development of the IEP prior to the meeting.

- **The procedures for amending an IEP are modified.**
 - ✓ After the annual IEP meeting, the district and parent may agree to modify the IEP without having a meeting. A written document amending the IEP would be developed instead.
 - ✓ The entire IEP does not have to be redrafted.
 - ✓ Upon request, the parent must be provided with a revised copy of the IEP with the amendments incorporated.
 - ✓ To the extent possible reevaluation meetings and other IEP team meetings should be consolidated.

- **The law provides an opportunity for States to allow the parents and districts the option of developing a comprehensive multi-year IEP.**
 - ✓ Not to exceed three years.
 - ✓ Designed to coincide with the natural transition points of the child.
 - ✓ 15 States will be approved.
 - The program must be optional for parents.
 - Informed consent is required.
 - The district must conduct a review at the natural transition points.
 - The district must conduct an annual review of the IEP to determine the child's current level of progress and the annual goals are being achieved.
 - If the goals are not being achieved a more thorough review of the IEP must be carried out within 30 calendar days.

Procedural Safeguards

Mediation-Due Process

- **A two-year limitation for filing a request for a due process hearing has been added.**
 - ✓ Time limit: from the time the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint.
 - ✓ Exceptions to the time limit: if the LEA misrepresented that the problem was resolved or the LEA withheld required information.
 - ✓ No timeline at present.

- **All required information must be provided on a request/notice for a due process hearing or a hearing cannot be held.**
 - ✓ Within 15 days of receipt, the other party may notify the hearing officer that the notice is not sufficient.
 - ✓ The hearing officer has 5 days to notify the parties in writing whether the notice is or is not sufficient.

- **If prior written notice was not provided to the parent regarding the subject matter of the due process hearing, the district must do so within 10 days of receipt of the due process request.**

- **Due process petitions can only be amended if the other party consents in writing and is given the opportunity to resolve the matter in a resolution meeting or if the hearing officer grants permission to do so.**

- **The law adds a provision for a resolution meeting**
 - ✓ Within 15 days of receipt of the parents' complaint, the LEA shall convene a meeting:
 - Relevant members of the IEP team
 - LEA representative with decision-making authority
 - Board attorney may not attend unless the parents' attorney is present
 - Parents discuss their complaint
 - LEA has the opportunity to resolve the complaint.

 - ✓ This session may be waived if the parent and district agree in writing, or agree to use the mediation process.
 - ✓ If the complaint is not resolved within 30 days of receipt, the due process hearing may proceed.
 - ✓ If resolution is reached, a legally binding agreement must be signed by both parties.
 - The agreement may be voided within 3 business days.
 - The agreement is enforceable in state or federal court.

- **Decisions in a due process hearing must be based on whether the student received a FAPE.**
 - ✓ A hearing officer may find that a child did not receive a FAPE due to procedural errors if the procedural inadequacies:
 - Impeded the child's right to FAPE.
 - Significantly impeded the parent's right to participate in decision-making.
 - Caused deprivation of educational benefit.
 - The hearing officer may order the district to comply with procedural requirements.

- **A time limit for filing appeals of a due process decision has been added. The appeal must be filed in a state court or federal district court within 90 days of the decision of the hearing officer.**

- **A new provision for the recovery of attorney fees has been added. Fees may be sought against the parent's attorney by districts if the district prevails in a due process hearing:**
 - ✓ If the petition is determined to be frivolous, unreasonable or without foundation, or,
 - ✓ If the petition was filed for an improper purpose, such as to harass, delay or increase costs.

Parental Rights

- **A copy of the procedural safeguards statement is given one time a year and also**
 - ✓ Upon initial referral or parental request for an evaluation
 - ✓ Upon first filing of a request for a due process hearing
 - ✓ Upon request by the parent.

Discipline

- **A child who is removed from his current placement for disciplinary reasons must continue to receive services and as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.**
- **Within 10 days of any decision to change the child's placement due to a violation of the code of conduct, the IEP team must conduct a manifestation determination.**
- **The conduct is considered a manifestation of the child's disability if:**
 - ✓ The conduct was in question was caused by, or had a direct and substantial relationship to the child's disability; or
 - ✓ The conduct was the direct result of the district's failure to implement the IEP.

- **If the behavior was a manifestation the IEP team must:**
 - ✓ Conduct a FBA and implement a BIP provided the district had not conducted such an assessment prior to the manifestation determination.
 - ✓ Where a BIP has been developed, review the plan and modify as necessary to address the behavior.
 - ✓ Except where a child is removed to an IAES for **45 school days**, return the child to the placement from which the child was removed unless the parent and the district agree to a change of placement as part of the BIP.

- **School personnel may remove a child to an IAES for weapons, drugs or for inflicting serious bodily injury on another person – at school or a school function**
 - ✓ The district must notify the parents of the decision and all procedural safeguards no later than the date when the decision to take action is made.
 - ✓ The IEP team determines the IAES

- **Requesting a hearing**
 - ✓ The parent may request a hearing if there is disagreement with any decision regarding the placement of manifestation determination
 - ✓ A district that believes maintaining the current placement is substantially likely to result in injury to the child or others.

➤ **Placement during appeals**

✓ The child remains in the IAES pending the decision of the hearing officer or until the time period of the removal expires, whichever comes first unless the parents and district agree otherwise.

✓ An expedited hearing must occur within **20 school days** of the date the hearing is requested and a decision must be issued within 10 school days after the hearing.

➤ **Basis of knowledge**

✓ A district is not deemed to have knowledge that the child was a child with a disability if the parent refused an evaluation or services.