WHAT'S IN AN INDIVIDUALIZED EDUCATION PROGRAM (IEP)

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IDEA

- Eligibility
- Identification and Evaluation
- Individualized Education Program
- Free Appropriate Public Education
- Least Restrictive Environment
- Related Services
- Parental Rights and Procedural Safeguards
- Discipline

INDIVIDUALIZED EDUCATION PROGRAMS (IEPs)

- School districts/agencies must ensure that all students who qualify as students with disabilities under the Individuals with Disabilities Education Act (IDEA) have IEPs and must ensure that all services specified in students' IEPs are provided.

IEP TEAM MEMBERS

- **Parents of the Child**
  - **Meeting may be conducted without a parent in attendance, if the school district is unable to convince the parent that he or she should attend.**
  - **There must be written documentation of attempts to get the parent to attend.**
  - **Parents must be given a copy of the IEP after the meeting.**

IEP TEAM MEMBERS

- **If neither parent can participate in a meeting in which a decision is to be made relating to the student's educational placement, the school district must use other methods to ensure the parents' participation, including individual or conference telephone calls, or video conferencing.**

IEP TEAM MEMBERS

- Not less than one regular education teacher of the student must attend and participate as appropriate in the development, review, and revision of the student's IEP
- At least one special education teacher of the student
- A special education provider (speech-language pathologist, OT, or PT), if appropriate
- An LEA Representative who is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; knowledgeable about the general curriculum; and knowledgeable about the availability of resources of the school district
- An individual who can interpret the instructional implications of evaluation results, who may be another member of the IEP team.

IEP TEAM MEMBERS

- At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate.
  - advocates and attorneys

    party inviting (parent or school district) determines this.

IEP TEAM MEMBERS

If appropriate, the student.

IEP TEAM MEMBERS

Transition Services Participants

School district must invite a representative of any participation agency that is likely to be responsible for providing or paying for transition services.

Student of any age invited IF purpose of meeting will be the consideration of:

- **The student's transition service *needs*;**
- **The needed transition *services* for the student; or**
- **Both.**

IEP TEAM MEMBERS

- Some excusals are allowed if parents are informed prior to the IEP meeting and the parents agree to the excusal in writing.
- The excused member must provide written input.

IEPS

- **Accessible to Teachers**

  Each teacher and provider must be informed of:

  - **His or her specific responsibilities related to implementing the student's IEP; and**
  - **The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.**

PARENTAL NOTICE

- The requirement that a school district/agency must provide notice of IEP meetings at least seven days in advance is no longer required in SBE regulations. This is only a requirement if your school district requires seven days prior notice in its policies and procedures;
- Indicate the purpose, time, and location of the meeting and who will be in attendance; and
- Inform the parents of their right to bring other individuals, who have knowledge or special expertise about the child, to the meeting.

IEP CONTENT (IDEA '04)

The IEP team must consider:

- **academic, developmental, and functional needs of the student.**

The IEP for each student with a disability must include:

- **A statement of the student's present levels of academic achievement and functional performance.**
- **A statement of measurable annual goals including academic and functional goals, if appropriate.**
- **Instructional present levels, goals, and short-term objectives.**

IEP CONTENT (IDEA '04)

- A statement of the special education and related services and supplementary aids and services, **based on peer-reviewed research to the extent practicable, to be provided to the student or on behalf of the student.**

- A statement of the program modifications or supports for school personnel

IEP CONTENT

- **An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in extracurricular activities must be provided.**

RELATED and NURSING SERVICES

- School districts/agencies must provide nursing and related services when the services are necessary for the student to benefit from his or her educational program.

- School districts/agencies may not deny these services based upon the cost or lack of personnel. These services
  - Must begin on the first day of school
  - May have to contract for the services
  - Compensatory services

EXTENDED SCHOOL YEAR

- Extended school year (ESY) services must be made available, as necessary, to provide a preschool child with a disability a FAPE.
- IEP teams must make determinations on an individualized basis.
- Personnel must meet the highly qualified requirements.

PROHIBITION OF MANDATORY MEDICATION (IDEA '04)

- **School district/agency personnel may not require a student to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. § 801 et seq.) as a condition of attending school or receiving an evaluation to determine eligibility for special education services.**

Section 300.174

TRANSITION SERVICES (IDEA '04)

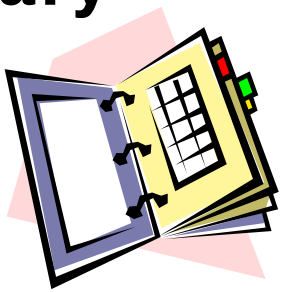
- **Transition services must be listed in IEPs and must include a description of the link between transition goals for post-school activities and the student's academic program.**

TRANSITION
(Change in SBE R43-243)

- **Beginning no later than the first IEP to be in effect when the student turns 13, or younger if determined appropriate by the IEP team, the school district must include a plan to provide the student transition services needed to assist the student in meeting his or her goals for post secondary life, gainful employment, and the development of independent living skills.**

SUMMARY OF PERFORMANCE IDEA '04

- For a student whose eligibility terminates due to graduation from secondary school with a regular state high school diploma, or due to exceeding the age of eligibility for a FAPE, the school district/agency must provide the student with a summary of his or her academic achievement and functional performance, which must include recommendations on how to assist the student in meeting his or her postsecondary goals.



TRANSFER OF RIGHTS AT AGE OF MAJORITY

300.320(c)

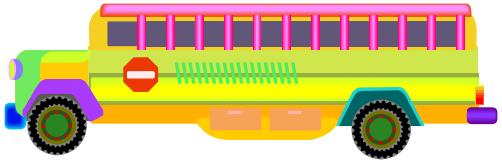
- The student's rights under the IDEA transfer to the student upon reaching the age of majority, unless the parent accesses procedures under state law to determine the student is incompetent.
- The state can establish another mechanism to allow the parent the authority to retain the ability to make educational decisions.

TRANSFER STUDENTS (IDEA '04)

- Special education services must <u>begin immediately</u> for transfer students. Make telephone calls to previous district, if necessary. Need procedures for who makes placement decisions prior to the IEP meeting.
- The new school district must conduct an IEP meeting to review the student's former placement and school records and to revise the IEP, where necessary.
- The IEP meeting must take place within one calendar week after the parents enroll the student in the new school district.

TRANSFER STUDENTS

If there is a disagreement, implement the old IEP to the extent possible until a new IEP is developed and implemented.



MEDICAID

A school district/agency must obtain parental consent, each time that it accesses the parents' Medicaid benefits.

- If there is a change in the amount or type services, school districts/agencies must obtain a new consent to bill.

Section 300.154

PLACEMENT AT HOME

- **HOME-BASED INSTRUCTION**
  - **Placement decision that is made by the student's IEP team**
  - **Short-term placement**
- **HOMEBOUND INSTRUCTION**
  - **For medical reasons only**
  - **A licensed physician has determined that the student cannot come to school even with the provision of transportation**
  - **The school district/agency may refuse to grant a request for medical homebound instruction**

OFFICE FOR CIVIL RIGHTS (OCR)

- The school district/agency must amend the student's IEP to reflect a change in placement.
- The student's IEP team must determine the appropriate amount of instruction and related services for the student to receive a FAPE.
- There cannot be an across the board limit to the amount of instruction and related services without an individualized determination of need.

- **IEP teams must make individualized determinations of how each student will continue receiving the services and modifications described in the student's IEP and how the amount of services recommended by the IEP team will not only enable the student to meet his or her IEP goals, but also participate in the general curriculum.**

- **The IEP team must consider the student's access to non-academic programs**

- **Properly certified teachers are necessary to provide students a FAPE.**

DISCIPLINING STUDENTS WITH DISABILITIES

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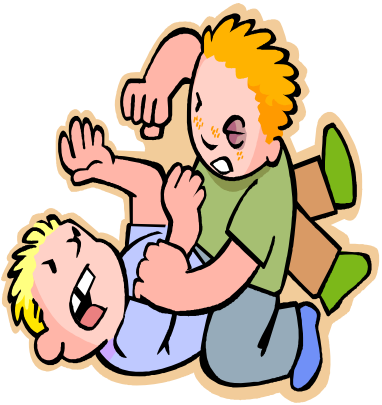
NO! NO!! NO!!!

- **No indefinite suspensions or removals!!!**
- **Indefinite suspensions and removals are illegal!!!**
- **You cannot require a parent to put a child on medications, such as Ritalin, before letting the child come back to school!!!**

EXCLUSION

- **Disciplinary Reasons**
  - **Administrators cannot impose suspensions or undocumented days of removal for unlimited periods of time.**

DISCIPLINE



SCHOOL DISTRICTS MAY STILL IMPOSE:

1) Short-term removals of 10 calendar days or less, and
2) Long-term removals of more than 10 calendar days for behavior that is not a manifestation of the student's disability

34 CFR §300.530(b)(1)

CHANGE IN PLACEMENT

- A disciplinary removal for more than 10 consecutive school days is a change in the student's placement.

34 CFR §300.536

DISCIPLINE

- **Warning:**

  The IDEA disciplinary procedures do not permit the repeated disciplinary removal of a student for 10 consecutive school days or less as a means of avoiding a change in placement.

CHANGE IN PLACEMENT

34 C.F.R §300.536

- Removals are a change in placement when the removals constitute a pattern
  - A series of removals for more than 10 cumulative school days;
  - The student's behavior is substantially similar to the behavior in previous incidents that resulted in the series of removals; and
  - Because of the length of each removal, the total amount of time of each removal, and the proximity of the removals to each other.

CHANGES TO DISCIPLINARY PROCEDURES

- New authority was granted that allows school personnel to consider unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a student with a disability. (More than cumulative days of removal)

34 CFR §300.530(a)

NOTICE REQUIREMENT

On **the date that the decision is made to impose a disciplinary removal that constitutes a change in placement for a student with a disability, the school district/agency must notify the parents of that decision, and provide the parents the procedural safeguards notice described in**

34 CFR §300.504.

34 CFR §300.530(h))

DISCIPLINE

- School districts/agencies are not required to provide educational services to students with disabilities when their disciplinary removals are for 10 school days or less, unless the school district/agency provides services to students without disabilities when they are removed from school.

(34 CFR §300.530(d)(3))

REMOVALS FOR MORE THAN 10 SCHOOL DAYS THAT ARE NOT A CHANGE IN PLACEMENT

When a student is removed for more than 10 cumulative school days in the same school year and the school district/agency removes the student again, but for less than 10 consecutive days, school personnel must determine if the additional removal will result in a change in placement.

If the removal is not a change in placement:

- **School personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed .**
- **If the additional period of removal is a change in placement, the IEP team determines the extent of services.**

(34 CFR §300.530(d)(4) and (5))

CHANGES TO DISCIPLINARY PROCEDURES

(SPECIAL CIRCUMSTANCES)

School personnel are permitted to order a change in a student's placement to an interim alternative educational setting (IAES) for not more than 45 calendar ~~school~~ days for weapons or drug offenses, regardless of whether the behavior is a manifestation of the disability.

34 CFR §300.530(g)

CHANGES TO DISCIPLINARY PROCEDURES

New

- School personnel are permitted to order a removal to an IAES for not more than 45 school days if a student inflicts serious bodily injury upon another person while at a school function.

SERIOUS BODILY INJURY

Defined in USC 1365(g) to mean

1) a bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or
2) protracted loss or impairment of the function of a bodily member, organ or faculty.

DISCIPLINE

(P. 46715 of the comments to the federal IDEA ’04 regulations)

- **In-school suspensions are not counted toward the student’s days of out-of-school suspension, as long as the student is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified in his or her IEP, and continue to participate with students without disabilities to the extent that he or she would in the current (regular) placement.**

DISCIPLINE

(P. 46715 of the comments to the federal IDEA ’04 regulations)

- **Whether a bus suspension counts as a day of suspension depends on whether transportation is a part of the student’s IEP. If transportation is in the IEP, a bus suspension is treated as a suspension unless the school district/agency provides transportation in some other manner.**

DISCIPLINE

(P. 46715 of the comments to the federal IDEA ’04 regulations)

- School districts/agencies should consider whether behavioral problems on the bus are similar to behavioral problems in the classroom and whether the student’s behaviors on the bus should be addressed in the student’s IEP or behavioral intervention plan (BIP).

NEW STANDARDS FOR CONDUCTING MANIFESTATION DETERMINATION REVIEWS

- **Who participates in the MDR?**
  - **The parent and relevant IEP team members, as determined by the parent and the school district/agency.**

NEW STANDARDS FOR CONDUCTING MANIFESTATION DETERMINATION REVIEWS

<u>Within</u> 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of conduct, the school district/agency, the parent, and relevant members of the student's IEP team (as determined by the parent and the school district/agency) must review all relevant information in the student's file, including the student's IEP, teacher observations, and any relevant information provided by the parents to determine if the conduct in question is a manifestation of the student's disability.

34 C.F.R. §300.530(e)

CHANGES TO MANIFESTATION DETERMINATION REVIEW PROCEDURES

- **The questions were reduced from four to two**
  - **1) Was the conduct in question caused by or did it have a direct and substantial relationship to the student's disability?**
  - **2) Was the conduct in question a direct result of the school district's/agency's failure to implement the student's IEP?**

34 C.F.R. §300.530(e)(i) and (ii)

WHAT IF THE BEHAVIOR IS RELATED TO THE STUDENT'S DISABILTY?

- If the participants determine that the behavior is a direct result of the school district's/agency's failure to implement the student's IEP, the school district/agency must take immediate steps to remedy the deficiencies.

34 C.F.R. §300.530(e)(3)

WHAT IF THE BEHAVIOR IS RELATED TO THE STUDENT'S DISABILTY?

Either:

1) **Conduct a functional behavioral assessment (FBA), if one was not previously done, AND implement a behavioral intervention plan (BIP); or**
2) **If a BIP was already in place before the conduct occurred, you must review the BIP and modify it as necessary to address the behavior that resulted in the need to conduct a MDR.**

34 C.F.R. §300.530(f)(1)

WHAT IF THE BEHAVIOR IS RELATED TO THE STUDENT'S DISABILTY?

- **Stay Put Applies:**

  Return the student to the placement from which he or she was removed, unless the parent and the school district/agency agree to change the student's placement as a part of the modification to the BIP.

34 C.F.R. §300.530(f)(2)

EDUCATIONAL SERVICES DURING A DISCIPLINARY CHANGE OF PLACEMENT

(Placement in an IAES, expulsion, and multiple suspensions)

- **When a student's placement is changed for disciplinary reasons, the school district/agency must provide services to the extent necessary to enable the student to continue to appropriately ~~progress~~ participate in the general education curriculum, although in another setting, and appropriately progress toward the goals in his or her IEP.**

34 C.F.R. §300.530(d)(1)

ADDRESSING THE BEHAVIOR

- **Provide, as appropriate, a FBA, behavioral intervention services, and modifications that are designed to address the behaviors that led to the student's violation of the code of conduct so that the behaviors do not recur.**

34 C.F.R. §300.530(d)(2)

EDUCATIONAL SERVICES DURING A DISCIPLINARY CHANGE OF PLACEMENT

- **Students with disabilities who are suspended or expelled from their current placements in public schools must continue to be taught by highly qualified teachers.** **(p. 46579 of the comments to the federal regulations)**
- **These students are still entitled to receive related, transition, and counseling services, etc.**

WHAT IF THE PARENT DISAGREES WITH THE MDR RESULTS?

- **The parent may request an expedited due process hearing to challenge the results of the MDR.**
  - **The hearing must be conducted within twenty school days and the decision must be rendered within 10 school days after the hearing. (previously 25 calendar days for the entire process)**
  - **A resolution meeting must occur within 7 calendar days of receiving notice of a due process hearing to challenge the MDR results**

34 C.F.R. §300.532(a) through (c)

EDUCATIONAL PLACEMENT DURING THE MDR CHALLENGE

Change in the Stay Put requirements

The student remains in the IAES chosen by the student's IEP team during the pendency of any proceeding to challenge the proposed change in placement, unless the parties agree to another placement or the period of time for the student's placement in the IAES ends.

34 C.F.R. §300.533

STUDENTS NOT YET IDENTIFIED

- **A student who has not previously been determined eligible for special education and who has violated the disciplinary code can assert the protections of the IDEA, if the district knew or should have known that the student was a student with a disability before the behavior occurred.**
  - **Change**
    - **If the parents refused to allow the school district/agency to evaluate the student, the student does not get these protections.**

34 C.F.R. §300.534(a)

BASIS OF KNOWLEDGE

- The school district/agency must be deemed to have knowledge that the student is a student with a disability, if before the behavior that precipitated the disciplinary action occurred, the parent took any one of the steps listed in (34 CFR §300.534).

STUDENTS NOT YET IDENTIFIED

(P. 46727 of the comments to the federal regulations.)

- **If a parent or teacher of a student receiving EIS expresses a concern, in writing, to appropriate school district/agency personnel that the student may need special education and related services, the school district/agency is deemed to have knowledge that the student is a child with a disability under the IDEA.**

OMBUDSMAN

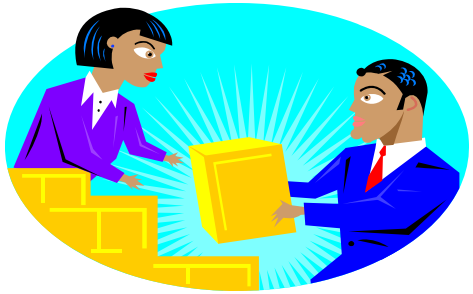
- **Toll Free Helpline: 1-866-628-0910.**

  This line is to serve parents, advocates and agency representatives who have questions about the education of students with disabilities.

  Hours of operation are 7:30 a.m. to 6:00 p.m.

  Calls will be returned within three business days.

SPECIAL EDUCATION DISPUTE RESOLUTION



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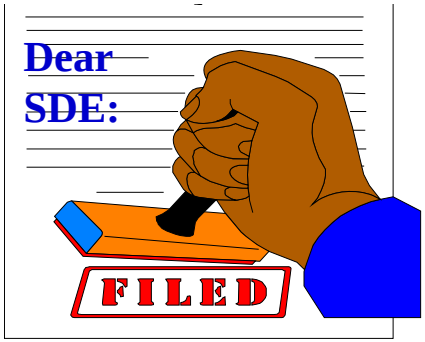
COMPLAINTS



- A complaint may be filed by an organization or person from another state.
- Must be filed within one year of when the violation occurred.
- Must provide the school district/agency a copy of the complaint.

COMPLAINTS

Complaints must include a statement that the school district/agency violated a requirement of the IDEA, federal or state regulations, state or district policies and procedures, and the facts on which the statement is based.

The complaint must include:

- The signature and contact information for the complainant; and
- If alleging violations with respect to a specific child:
  - The name and address of the residence of the child;
  - The name of the school the child is attending;
  - In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
- A description of the nature of the problem of the child, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

COMPLAINTS

- The most common issue is failure to comply with students' IEPs.
- Other common issues
  - Discipline
  - Appropriately certified personnel
  - Medical homebound procedures and services
  - Home-based placements and services
  - Prior written notice
  - IEP procedures

MEDIATION

- A less formal manner that may be used in an effort to attempt to resolve disputes between parents and school districts/agencies.
- Voluntary on the part of both parties.
- When an agreement is reached during mediation, the parties must execute a written legally binding agreement that is enforceable in any state or federal court.

DUE PROCESS HEARINGS (IDEA '04)

- **The party filing the due process hearing request must include the student's name, the student's address and contact information, the name of the student's school, information about the nature of the student's problem, supporting facts, and a proposed resolution.**

- **The request must be filed with the other party and a copy must be sent to the SCDE.**

- **The party filing the request must file the due process hearing request within 2 years after the party knew or should have known about the alleged violation, unless the school district/agency misrepresented or withheld information from the parent**

DUE PROCESS HEARINGS

- **School districts cannot deny a parent's request for a due process hearing, even if it believes that parent's issues are not subject to a hearing. Only the impartial due process hearing officer can rule that the case has no merit and dismiss the claim.**