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The INDIVIDUALS with DISABILITIES EDUCATION ACT
(IDEA)

IDEA

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

DEFINITION OF STUDENT WITH A DISABILITY

- **Student has a disability in one of the 13 categories as determined by an evaluation that complies with the criteria in State Board of Education Regulation 43-243.1.**
  - **The state's eligibility criteria for all categories of disability are currently under review.**

STATE BOARD OF EDUCATION (SBE) REGULATION

43-243.1(H) Autism

CHILD FIND

- **Under the child find requirements of the IDEA, all students ages birth through 21 who are suspected of needing special education and related services must be located, identified, and evaluated at no cost to the parent or student.**
  - **Private school students**
  - **Home schools**
  - **Homeless and migrant students**
  - **Charter school students**
  - **Adult education students**
  - **Students placed in residential facilities by state agencies**

TRANSITION PLANNING CONFERENCE

- It is recommended that the meeting take place at least six months prior to the child’s third birthday.
- The meeting must take place no later than ninety days prior to the child’s third birthday.

EVALUATIONS (IDEA '04)

- 60-day timeline
  - Calendar days
  - From the time that the parent signs the school district's parental permission form until the team determines the whether the student qualifies for services. If the student does not qualify, the school district must issue prior written notice.

EVALUATIONS
(IDEA '04)

- **During the process of reviewing existing evaluation data for both initial evaluations and reevaluations, the IEP team and other qualified professionals, as appropriate, must identify the educational needs of the student, as well as his or her present levels of academic achievement and related developmental needs.**
- **Addition of developmentally delayed**
  - **The state will develop guidelines.**

EVALUATIONS (IDEA '04)

- **Changes in the process for determining a student's eligibility for special education services under the category of learning disability (LD).**
- **Must have data to demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in the general education setting, delivered by qualified personnel, and documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction.**

PARENTAL CONSENT (IDEA '04)

- Informed parental consent must be obtained before
  - An initial evaluation or reevaluation can be obtained
  - The initial provision of special education and related services
  - Anytime there is a change in the amount or type service that a school district is billing Medicaid for in relation to a child with a disability
  - Anytime there is a proposed change in placement for a disciplinary reason when the behavior is determined related to the student's disability.

PARENTAL CONSENT

- **IDEA '04 Change**
  - **School districts/agencies <u>can no longer</u> pursue mediation or a due process hearing to override a parent's refusal to consent to the initial provision of special education services.**
  - **Parental consent will no longer be necessary for a change in placement that is either a change in the category of disability or in the program model.**
  - **School districts/agencies must maintain documentation of reasonable efforts to obtain parental consent.**

Letter to Clarke (OSEP March 8, 2007)

It remains the Department's position that the term "educational performance" is not limited to academic performance . . . Section 614(b)(2)(A) of IDEA and the final regulations at 34 CFR §300.304(b) state that in conducting an evaluation, the public agency must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information. Therefore, the IDEA and the regulations clearly establish that the determination about whether a child is a child with a disability is not limited to information about the child's academic performance. Furthermore, 34 CFR §300.101(c) states that each State must ensure that a FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

EVALUATION REQUESTS

- **In accordance with the IDEA, a parent may request an evaluation at any time to determine a child's possible eligibility as a student with a disability. Although a parent's request does not automatically trigger the right to an evaluation, school districts/agencies must not delay in responding to a parent's request. If a school district/agency believes there is no reasonable basis for suspecting that a student has a disability and needs special education and related services, the school district/agency may refuse to conduct an evaluation.**

If the school district/agency refuses to conduct the evaluation, it must notify the parent in writing of its refusal. The written notification must meet the federal and state requirements for prior written notice.

In accordance with the IDEA and SBE Regulation 43-243, school districts/agencies must issue prior written notice (PWN) to parents anytime they propose or refuse to initiate or change the identification, evaluation, or educational placement of a student or the provision of a free appropriate public education (FAPE) to a student. The prior written notice must include:

- **a description of the action proposed or refused by the school district/agency;**
- **an explanation of why the school district/agency proposes or refuses to take the action;**
- **a description of any other options that the school district/agency considered and the reasons why those options were rejected;**
- **a description of each evaluation procedure, test, record, or report the school district/agency used as a basis for the proposed or refused action;**
- **a description of any other factors that are relevant to the school district'sagency's proposal or refusal;**
- **a statement that the parents of a student with disabilities have protections under procedural safeguards; and**
- **sources for parents to contact to obtain assistance in understanding these provisions.**

WAITING LISTS

- Under federal and state laws, waiting lists are not allowed for services to preschool children with disabilities.
- Services must begin by the child's third birthday.
- Point systems cannot be used to exclude children with disabilities.
- Four-year-old Child Development Classes that can only enroll 20 children.

PROCEDURAL SAFEGUARDS IDEA '04

- School districts/agencies must provide a parent a copy of the procedural safeguards notice only one time a school year, unless one of the following occurs
  - an initial referral or parental request for an evaluation;
  - receipt of a due process hearing request;
  - receipt of a state complaint filed by the parent;
  - any disciplinary removal that constitutes a change in the student's placement; or
  - parental request for another copy.

PROCEDURAL SAFEGUARDS (IDEA '04)

34 CFR 300.504(c)

The procedural safeguards notice must include a full explanation of all of the procedural safeguards that relate to the opportunity to present and resolve complaints through due process and state complaint procedures, including:

- **The time period in which to file a complaint;**
- **The opportunity for the school district/agency to resolve the complaint; and**
- **The difference between the due process and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised in each process, filing and decisional timelines, and relevant procedures; and the availability of mediation and civil actions, including the time period in which to file these actions.**

PROCEDURAL SAFEGUARDS IDEA '04

- A parent is only entitled to one IEE at public expense each time the school district/agency conducts an evaluation at public expense.

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.