

IDEA Boot Camp: Basic Information to Help in the Fight to Serve Students with Disabilities

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IDEA

- President signed the bill into law on December 3, 2004
- Provisions took effect on July 1, 2005, except for personnel requirements

IDEA Regulations

- U.S. Department of Education solicited comments prior to developing proposed regulations.
- Proposed regulations issued June 21, 2005.
- Final federal regulations issued August 14, 2006.

**WHAT IS THE PURPOSE OF
AN IDEA EVALUATION?**

1. Determine whether a student has an IDEA disability and, because of the disability, the student needs special education and related services.

2. Provide information to help the IEP Team identify the specialized instruction and related services the student needs to receive FAPE.

A district “must conduct a full and individual initial evaluation” before providing special education and related services to a student.

Reg. 300.301(a).

**MUST THE DISTRICT CONDUCT
AN INITIAL EVALUATION JUST
BECAUSE THE PARENT
REQUESTS ONE?**

NO.

If the district does NOT suspect the student has a disability and needs special education, it may deny the request. But whenever a parent request for any evaluation is denied...

Prior written notice to the parent is required.

- Description of action refused.
- Explanation of why refused.
- Documentation and data used as basis of refusal.
- Other options considered and why rejected.
- Other factors relevant to refusal.
- Copy of procedural safeguards.
- Sources to contact for assistance.

Reg. 300.503.

Parent's IDEA options:

- State complaint.
- Mediation.
- Due process hearing.

**WHAT TIMELINES APPLY TO
AN INITIAL EVALUATION?**

Initial evaluation – completed within 60 days of receiving parental consent. Does not apply if parent fails/refuses to produce child for evaluation.

Reg. 300.301.

May extend time if student moves to new school district before evaluation is completed.

Reg. 300.301.

CHILD FIND AND THE DUTY TO EVALUATE

IDEA requires that all children with disabilities... "who are in need of special education services be identified, located and evaluated."

Reg. 300.3111

Child Find duty is triggered when district has reason to suspect a disability coupled with reason to suspect special education services may be needed to address the disability.

Compliance with Child Find – two-part inquiry

1. When did district have reason to suspect presence of disability and need for special education

2. Did district evaluate student within a reasonable time after having notice of circumstances likely to indicate a disability and a need for services?

PARENT CONSENT

Parent informed consent required for

- Initial evaluation.
- Reevaluation.

Reg. 300.300(a), (c).

District should seek consent promptly. Not acceptable to wait several months after district has reason to suspect a disability and a need for special education.

71 Fed. Reg. 46,540 (2006).

Parent refuses to consent
(initial/reevaluation)

- District may file due process hearing to override lack of consent (except private/home school student).
- May, but IS NOT REQUIRED to do so.

Reg. 300.300.

If district declines to pursue evaluation in light of parent refusal to consent, district does not violate obligation regarding child find (Reg. 300.111) and to evaluate and determine eligibility.

(Reg. 300.301 – 300.311.)

Consent to initial evaluation is NOT consent for initial provision of services.

Reg. 300.300(a)(1)(ii).

**CAN A PARENT REFUSE
CONSENT FOR A
REEVALUATION, REVOKE
CONSENT FOR IDEA
SERVICES AND THEN CLAIM
THE STUDENT IS ENTITLED
TO 504 SERVICES?**

Letter to McKethan, 25 IDELR 295 (OCR
1996)

"... by rejecting the services developed under the IDEA, the parent would essentially be rejecting what would be offered under Section 504. The parent could not compel the district to develop an IEP under Section 504 as that effectively happened when the school followed the IDEA requirements."

**Who chooses evaluation,
instruments & strategies?
District chooses.**

Reg. 300.305(c)

REEVALUATIONS

Reevaluation addresses changing needs:

- Every 3 years, unless district and school agree it is unnecessary; and
- Parent/teacher requests reevaluation;
- District determines reevaluation is needed.
- Not more than 1 per year, unless parent and district agree.

Reg. 300.303

Three Phases of a reevaluation

1. An initial review of existing assessment data;
2. Administration of any needed assessments;
3. Interpretation of results and determination of eligibility and education needs.

Same requirements for procedures, test instruments and administration apply but:

- Individualized to address current needs.
- Review of existing evaluation data may indicate no additional data is needed to determine whether student continues to have a disability and to determine educational needs;
- If so, notify parent of right to request an assessment.

Reg. 300.305

§1415. Procedural Safeguards

- (a) Establishment of procedures
Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.

34 CFR § 300.500 Procedural Safeguards

- Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§ 300.500 through 300.536

Model Form: Procedural Safeguards Notice

- The U.S. Department of Education provides a model form for the procedural safeguards notice.
- *See http://idea.ed.gov/download/modelformProcedural_Safeguards_June_2009.pdf*

List of Procedural Safeguards in Required Notice Under 34 CFR § 300.504

Key procedural safeguards include:

- Independent educational evaluations
- Prior written notice
- Parental consent
- Access to educational records
- Opportunity to present complaints to initiate due process hearings
- Child's placement during pendency of due process proceedings
- Procedures for students who are subject to placement in an interim alternative educational setting

List of Procedural Safeguards (cont'd)

- Requirements for unilateral placement by parents of children in private schools at public expense
- Mediation
- Resolution meetings
- Due process hearings, including requirements for disclosure of evaluation results and recommendations
- State-level appeals (if applicable in the state)
- Civil actions
- Attorney's fees

When Do You Provide?

- Copy of this notice must be given to parents only one time a school year, except that a copy must be given to the parents:
 - Upon initial referral or parent request for evaluation;
 - Upon receipt of the first State complaint and upon receipt of the first due process complaint in a school year;
 - When a decision is made to take a disciplinary action that constitutes a change of placement; and
 - Upon parent request.

Independent Educational Evaluation (IEE)

- An independent educational evaluation, also referred to as a private evaluation, provides parents with the opportunity to obtain their own evaluation of their child to counteract the evaluation obtained by a district.
- IDEA 2004 made a significant change by limiting parents to public payment for only one IEE for each evaluation with which the parent disagrees. See *generally* § 300.502.

IEE

- Right to an IEE
 - If a parent requests an IEE, the public agency must, without unnecessary delay, either:
 - File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - Ensure that an IEE is provided at public expense
 - The public agency may ask for the parent's reason why he objects to the public evaluation. However, the public agency may not require the parent to answer.

IEE

- Timelines for response to an IEE request
 - No specific time limit within which a district must respond.
 - May not unreasonably delay.
 - Cannot simply ignore a request for an IEE.
- Restrictions on location of the IEE and evaluator qualifications
 - Must be the same as the criteria that the public agency uses.
 - Limitations generally are upheld, as long as they are reasonable.

Written Notice Under § 300.503, § 300.504

- Must provide parents with “prior written notice” whenever district proposes or refuses “to initiate or change”:
 - The identification, evaluation, or educational placement of the child.
 - The provision of a free appropriate public education.

Written Notice Under § 300.503, § 300.504

- Under § 300.503(b)(1)-(7), the notice must include:
 - A description of the action proposed or refused by the district.
 - An explanation of why the district proposes or refuses to take the action.
 - A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
 - A statement that the parents have protection under Part B's procedural safeguards.

Opportunity to Examine Records - §300.501

Opportunity to examine records

- The parents of a child with a disability must be afforded an opportunity to inspect and review all education records with respect to:
 - (1) The identification, evaluation and educational placement of the child; and
 - (2) The provision of FAPE to the child.

Parental Participation – § 300.501

- Parent participation in meetings
 - The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to (i) the identification, evaluation and educational placement of the child; and (ii) the provision of FAPE to the child.

Placement During Pendency of Due Process Proceedings – § 300.518

- Except as provided in § 300.533 (discipline appeals), during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the state or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

Placement During Pendency of Due Process Proceedings – § 300.518

- Generally, courts have interpreted stay-put placement to mean the current education and related services and placement provided in accordance with the most recently approved IEP.
- The term “current educational placement” includes the setting in which the IEP is implemented, but is generally not considered to be location specific.

Unilateral Placement in Private Schools at Public Expense

- Under § 300.148(a) “an LEA [is not required] to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility.”

Attorney's Fees Under IDEA

- Basis for award
 - In any action or proceeding brought under [20 USC 1415], the court, in its discretion, may award reasonable attorney's fees as part of the costs to parents of a child with a disability who is the prevailing party.
- Reasonable awards
 - Parents are entitled to recover "reasonable awards" of attorney's fees.

THE IEP PROCESS UNDER THE IDEA

Preparation

- Staff and communicate
- Review new evaluations (“reevaluations”) with parents before meeting
 - Parents should be provided a copy of the evaluation report
- Give parents previews of major changes

Preparation

DO:

- Gather real evidence of progress (Keep in mind duty to provide FAPE)
- Carefully review implementation of modifications
- Review behavior – talk to Assistant Principal
- Develop proposals for IEP team to consider

Preparation

DO NOT:

- Fill out all of the IEP paperwork in advance (use “Draft”)
- Participate in Predetermination
- Send out clever e-mails

Notice

DO:

- Send written notice of meeting
- Indicate purpose, time, location
- Indicate who will be there
- Inform parents of their right to bring an individual with knowledge or special expertise
- Be sure parents receive timely notice

Participants

DO:

- Include all essential members:
 - Parent
 - Regular education teacher
 - Special education teacher
 - School district representative
 - Person who can interpret instructional implications of evaluation

Participants

DO:

- Take steps to ensure parents are present and are given opportunity to participate
 - Timely notice
 - Mutually agreeable time and place
 - Other methods to ensure participation
 - Interpreters
 - Document steps to get parents to attend
 - Confirm waiver of attendance in writing

IDEA 2004 IEP Teams

- Parents and the school district may jointly excuse an IEP team member from attending the meeting if service/curricular area will not be discussed.
- Parents and the school district may excuse an IEP team member even if service/curricular area will be discussed; the excused member must provide written input to the team.

IDEA 2004 IEP Teams

- Agreement must be in writing and include parent consent.
- Video conference or conference call meetings permitted if agreed upon.

1st Few Minutes:

- DO identify consensus members
- DO establish an agenda
- DO establish ground rules
- DO listen to parents' issues

During the Meeting

DO:

- Review Progress
 - Standardized grades
 - IEP Goals and Objectives results
 - State assessment scores
 - Benchmark testing results (CLASS, etc.)
 - Work portfolio
 - Input from all teachers
 - Information from parents
 - Attach or clearly identify any supporting documents
 - Record in detail in lay language

During the Meeting

DO:

- Review Behavior
 - Conduct grades
 - Student discipline record
 - Behavior plan (if any)
 - Teacher observations and documentation

During the Meeting

DO NOT:

- Ask persons to sign who were not there
- Let consensus members/decision makers leave before it is over
- Set artificial time limits
- Stop because there is a disagreement – finish the agenda
- Force staff to agree

During the Meeting

DON'T SAY:

- “We don’t have that program . . .”
- “That is too expensive . . .”
- “That program is not for children with this label . . .”

Modifications

DO:

- Have a rationale and purpose
- Note frequency or triggering event
- Consider grade level changes
- If you write them, DO THEM

Related Services

DO:

- Set date to begin
- Duration
- Frequency
- Location
- Note who will provide the service

Minutes

- DO have a separate note taker
- DO make sure they are clear, complete and extensive
- DO document even if the meeting is tape recorded
- DO take the time to re-read and correct
- DO have everyone sign who has attended
- DO NOT ALTER AFTER THE FACT

Content of the IEP

Be sure to review:

- Progress toward goals
- Results of reevaluation
- Information provided by the parents
- Child's anticipated needs

IDEA 2004 Content of the IEP

Make sure the IEP includes:

- Short-term objectives and benchmarks are eliminated, except for students who are assessed using alternate achievement standards (students with significant cognitive disabilities).
- Annual measurable IEP goals must include academic and functional goals.
- Special education and related services must be based on peer-reviewed research to the extent practicable.

IDEA 2004 Content of the IEP

Make sure the IEP includes:

- Frequency, location and duration of services.
- Description of how progress toward IEP goals will be measured and when periodic progress reports will be provided to the parents.
- Schools are prohibited from requiring a child to obtain a prescription for medication as a condition of attendance, an evaluation or receipt of services.

IDEA 2004 IEP Amendments

- IEP may be amended between the annual IEP meetings without calling a new IEP team meeting, if agreed to by the parents and school district.
- IEP amendment shall be in writing.
- Upon request, the parent shall be given a revised IEP with the amendments incorporated.

At the End of the IEP Meeting

- DO verify agreement or disagreement
- DO NOT give in if the request is educationally inappropriate

Thank you!

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