

IDEA REAUTHORIZED

WHAT'S NEXT FOR OUR CHILDREN?

“Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.”

108th Congress, Findings – IDEA 2004

So begins the Bill that will make significant changes to how special education works for over 6 million children in this country who receive special education services. President Bush signed PL 108-446, the “Individuals with Disabilities Education Improvement Act” or IDEA 2004, into law in December 3, 2004. Central to this reauthorization is its close alignment with No Child Left Behind (NCLB).

Alignment with No Child Left Behind

NCLB was enacted January 8, 2002 and is the largest federal education program. Also known as Title I of the Elementary and Secondary Education Act, this program serves over 12 million children in approximately 48,000 schools, including 96% of schools with low-income enrollments of 75% or more. NCLB is intended “...to ensure that all children have a fair, equal and significant opportunity to obtain a high quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments.”

The basic premises of NCLB are that:

- All children can learn to a high level
- Achievement gaps are not acceptable
- The educational system is accountable for closing

... that gap by using effective teaching and proven instructional methods to educate all students so they achieve at high levels.

- No child shall be left behind
- Parent involvement is crucial

NCLB mandates a single system of accountability in each state that includes:

- ① Challenging state academic content and achievement standards describing what all students, including students with disabilities should know and be able to do; and how well;
- ② A system of valid, reliable, multiple measures for assessing whether every student has reached “proficient” levels of mastery of those standards;
- ③ Report cards and other public reporting of school data, including student assessment results, broken down by student population groups - race/ethnicity, English Language Learners, low-income, and disability; with;
- ④ Consequences for failing to show enough continued improvement or “Adequate Yearly Progress.”

continued on page 2

continued from page 1

The US Department of Education described the nexus between IDEA and NCLB by discussing the President's broad principles of education reform to ensure that no child is left behind:

- *Accountability for results by aligning IDEA with principles of NCLB, including*
- *Local control and flexibility,*
- *Empowering parents to participate more meaningfully in their children's education,*
- *Employing research-based practices known to work to improve student performance.*

IDEA 2004 Highlights

Here are some highlights of IDEA 2004 that relate to these key themes.

General Education Curriculum— is derived from the educational standards identified for all students by each State as a part of NCLB. The presumption is that almost all students with disabilities will learn what other students their age are expected to learn. Assessments, evaluations, curriculum, IEP, and many other decisions about the individual student are made within the context of these standards.

Evidence-based Instruction — is required in NCLB and carries through with terms such as “peer-reviewed research” and “scientifically, research-based” that are used, but not defined in IDEA 2004.

Adequate Yearly Progress (AYP) — is an accountability measure of NCLB to measure the progress of all students. Schools failing to make AYP for students with disabilities can face

consequences. In Virginia, a school with less than 50 students in special education does not have to disaggregate the data. However information about the performance of students with disabilities must be reported at the district and Statewide level. Adequate yearly progress does not specifically refer to progress for an individual child. However, the measurable annual goals must be related to making progress in the general education curriculum.

All Students Participate in Assessment — requires that all students participate in state, district-wide and local assessments with appropriate accommodations. Students who cannot participate in the regular assessments with accommodations must take alternate assessments. However, alternate assessment must be aligned with challenging grade-level academic standards. The IEP team makes assessment decisions. Assessments are used to guide instruction and evaluate whether the student is making expected progress. They are also used in making eligibility and IEP decisions.

Highly Qualified Teachers — consistent with timelines for NCLB, teachers are certified or licensed as special education teachers and do not have requirements waived on an emergency, temporary or provisional basis. Special ed teachers, who are teaching core academic subjects, must demonstrate competencies in the core academic subjects as regular educators. Core academic subjects are English, reading or language arts, math, science, foreign language, government, economics, arts, history and geography. Related services personnel and paraprofessionals must meet state-recognized certification, licensing, registration or other requirements in their discipline and have not had these requirements waived.

State Performance Plans — must include measurable and rigorous targets and be reported annually. There are provisions for

enforcement if the States “needs assistance” for two consecutive years; “needs intervention” for three consecutive years or “needs substantial intervention” at any time.

Expedited Access to Education for Children who are Homeless, in Foster Care, or who Transfer Jurisdictions — IDEA requires that schools work more quickly to begin or continue services for students who have traditionally faced delays in receiving special education services.

Early Intervening Services — LEAs can use up to 15% of IDEA funds to serve students who are not identified as needing special education or related services, but needing additional academic and behavioral supports to succeed in the general education environment.

Model Forms — The US Department of Education will publish model forms for IEPs, Individualized Family Service Plans (IFSPs for infants and toddlers), procedural safeguards and prior written notices when it publishes the final regulations.

New Data Requirements — States 3-21 child count data must be reported by race, ethnicity, limited English proficiency status, gender, and disability category by numbers and percentages in each disaggregated category. New categories for data collection include interim alternative educational settings and acts precipitating those removals, due process hearings filed and numbers conducted, disciplinary hearings and placement changes resulting from those hearings; incidences, types and durations of disciplinary actions, including suspensions of one or more days for students with and without disabilities; and mediations held and settlement agreements reached.

Information related to graduation, placement, and drop out rates will also continue to be collected.

Procedural Safeguards Notice

— containing special education rights and dispute resolution processes are required to be given only once a year except at initial referral, when a parent requests an evaluation, initial filing of a due process hearing or a the parent’s request.

Due Process Requests — the process is much more formalized and complicated with procedures and standards for what constitutes a “sufficient notice.” There is a two-year limit from when a parent or agency knew or should have known about the alleged violation. Hearing Officers cannot be an employee of the State Education Agency or LEA or have a personal or professional conflict of interest. They must be knowledgeable about IDEA and knowledgeable in conducting hearings. The determination is based on whether the child received a free and appropriate public education (FAPE) with less weight on procedural violations.

Resolution Sessions — required within 15 days of a sufficient due process hearing request, is to discuss the facts and resolution of the due process issues. The LEA meets with the parents, relevant IEP team members, and an agency representative with decision-making authority. The schools cannot include an attorney if the parent doesn’t bring an attorney. A signed legally binding agreement can be executed within 3 business days if both parties agree. The school does not have to pay the parent’s attorney fees if a settlement is reached in the resolution session.

Mediation — is available to resolve any matter (even before requesting a due process hearing.

continued on page 4

continued from page 3

The Mediation agreement must be in writing and signed by the parent and agency representative. The Agreement is legally binding and enforceable by any state court. The Mediation process is confidential and may NOT be used as evidence in subsequent legal action.

Manifestation Determination — within 10 school days of the decision to change placement due to discipline, the LEA, parent and relevant IEP team members shall review all relevant information to determine if the conduct was caused by or was in direct and substantial relationship to the child's disability or a direct result of the LEA's failure to implement the IEP.

Interim Alternative Educational Setting — placement change is allowed for up to 45 school days for weapons and drug offenses or serious bodily injury.

When do IDEA 2004 changes become effective?

Most provisions of the Act become effective on July 1, 2005. The US Department of Education anticipates that the draft regulations will be out in May. This draft will go through a public comment period of 75 days before being finalized. Following the federal regulations process will be the State regulations. It is not clear whether some of the changes in the law will be implemented at the local level. Just because some of previous requirements in IDEA have been eliminated at the federal level, it doesn't mean that the states will eliminate the requirement at the state/local level. An example of this is the elimination of short-term objectives or benchmarks from the IEP. States can choose to continue to require them for individual students in their states.



PEATC

Parent Educational Advocacy Training Center

is Virginia's Parent Training and Information Center committed to building better futures for children with disabilities by working collaboratively with families, schools and professionals to improve opportunities for excellence in education and success in school and community life.

We offer easy-to-understand, research-based disability information, education, advocacy training and support.

For further information call:

703-923-0010 or 1-800-869-6782 or en Español 703-569-6200

E-mail us at partners@peatc.org

Visit us at www.peatc.org

What's the NEW IDEA for Evaluation, Eligibility and IEPs

Congress made several significant changes to the Evaluation and Individualized Education Program (IEP) processes. These changes are consistent with their intent to reduce paperwork and align IDEA with No Child Left Behind (NCLB).

Evaluation and Eligibility

Initial Evaluation — The timeframe to conduct an evaluation and determine eligibility is within 60 days from when the parent signed consent (or other timeframe established by the State.) Early intervening services designed to help children succeed and prevent their need for special education are encouraged in the new IDEA, with up to 15% of IDEA funds available to fund these services (in addition to other NCLB or local/state funds). Screenings to determine appropriate instructional strategies is not considered to be an evaluation for eligibility. Schools cannot evaluate students without parental consent (unless they take the parent to due process.) A parent, State agency or local education agency (LEA) may request an initial evaluation.

Reevaluations — are required if LEA determines that educational or related services needs, including improved academic achievement and functional performance, warrants one or the child's parent or teacher requests one. They may not be more frequent than once a year unless the parent and LEA agree. They also may not be less often than once every three (3) years, unless parent and educational agency agree that it is unnecessary.

Evaluation Data Requirements

— include a variety of assessment tools and strategies to gather relevant functional, developmental and academic information and does not rely on any single measure or assessment. They must use technically sound instruments that assess cognitive, behavioral, physical and developmental factors. Assessments and other evaluation materials used cannot be discriminatory on a racial or cultural basis. They must be administered in the language and form most likely to yield accurate information about what the child knows and can do academically, developmentally and functionally.

Learning Disability — The LEA is not required to consider a severe discrepancy between achievement and intellectual ability to determine eligibility, as was previously the case in Virginia. Instead the school can use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation process.

Evaluation is required before termination

— when graduating with a regular diploma or exceeding age eligibility for special education. When a student exits due to age eligibility, the LEA must provide a summary of academic achievement and functional performance including recommendations on needed assistance in meeting postsecondary goals.

continued on page 6

continued from page 5

Eligibility — The IEP Team (including the parent) shall review existing evaluation data including information provided by the parents; classroom-based, local, or State assessments and classroom-based observations; and observations by teachers and related services providers. The team will determine if the child has a disability and is eligible for special education. They will also review the child's educational needs, present levels of academic achievement and related developmental needs, and whether any additions or modifications to the special education and related services are needed to meet measurable annual goals and participate in the general education curriculum. The Team will also consider whether additional tests are necessary to make a determination. A copy of the evaluation report shall be given to the parent.

Learning Disability — The LEA is not required to consider a severe discrepancy between achievement and intellectual ability to determine eligibility as was previously the case in Virginia. Instead the school can use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation process.

Individualized Education Program (IEP) Required Components

1. Present levels of academic achievement and functional performance — including how the disability affects involvement and progress in the general education curriculum (or appropriate activities for preschool children). This section would include the child's strengths, parental concerns, evaluation results, and the academic,

developmental and functional needs of the child.

- 2. Measurable Annual Goals** — including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet other educational needs related to the disability. IDEA 2004 only requires short term objectives or benchmarks for students who take alternate assessments aligned to alternate achievement standards.
- 3. Description of Progress** — Includes how this will be measured and when parents will receive periodic reports on progress toward reaching annual goals (such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards).
- 4. Statement of Special Education; Related Services; Supplementary Aids and Services; Program Modifications; and/or Supports for School Personnel** — that are based on peer-reviewed research. These services should help the child advance appropriately toward attaining the annual goals; be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities.
- 5. Least Restrictive Environment** — a statement of the extent, if any, the child will not participate with nondisabled children in the regular class and other activities.
- 6. Accommodations on State and District-wide Assessments** — any necessary individual appropriate accommodations required to measure academic achievement and functional performance on

these tests. If the IEP Team determines the child should take an alternate assessment, why the child cannot participate and the appropriate alternate assessment to be used.

7. Specifics about Services and Modifications — including projected dates for beginning and the anticipated frequency, location and duration of the services and modifications.

8. Transition Plan beginning no later than Age 16 — including appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. The plan should specify transition services (including courses of study) needed to assist the child in reaching transition goals. No later than 1 year before the child reaches the age of majority (age 18 in Virginia), a statement that the child has been informed that parental rights in IDEA will transfer upon reaching the age of majority. NOTE: The previous law required a transition plan describing the course of study by age 14. It is still considered recommended practice to consider the course of study at the same time it is being considered for all students —usually in middle school.

Special factors for IEP Team to consider — include the use of positive behavioral interventions and supports, and other strategies to address the behavior of a child that impedes the child's learning or that of others; whether the child needs assistive technology devices and services; the use of Braille for a child who is blind or visually impaired; and language and communication needs of a child who is deaf or hard of hearing including opportunities for direct communications in the child's language and communication mode and opportunities for direct instruction in that mode.

IEP Team — members include the parents; not less than one regular education teacher (if the child is, or may be, participating the regular education environment); not less than one special education teacher or special education provider; the local educational agency (LEA) representative knowledgeable about the availability of resources, qualified to provide, or supervise the provision of special education services and who is knowledgeable about the general education curriculum; a professional who can interpret the instructional implications of evaluation results (may be an individual serving in another capacity); other individuals at the discretion of the parent or agency, who have knowledge or special expertise regarding the child, including related services personnel; and, the child, when appropriate.

IEP Team Meeting Attendance Not Necessary — at all or part of a meeting if the parent and LEA agree attendance is not necessary. The parents and LEA can excuse an IEP Team member for all or part of meeting when it involves modification to or discussion of the member's area of the curriculum or related services if member submits, in writing, input prior to the meeting. The parent agreement and consent must be in writing.

Alternative Means of Meeting Participation — such as videoconferences and conference calls are allowed if the parent and LEA agree. (They can also use these means for placement meetings, mediation, resolution sessions and administrative matters related to due process hearing.

IEP Modifications — Parent and LEA may agree to develop a written document to amend or modify a current IEP without convening IEP meeting. Changes can be made by amending the IEP rather than redrafting the entire document. Upon request, parent shall receive a revised copy of the IEP with the amendments incorporated.

New Definitions & Key Change Aspects

Parent — Natural, adoptive or foster parent of a child; guardian (but not the State if child is a ward of the State); individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; individual assigned to be a surrogate parent

Ward of the State — a child who is a foster child, a ward of the State, or in the custody of a public child welfare agency. This term does not include a foster child who has a foster parent (because foster parents are considered as parents in the new definition.)

Homeless Student (consistent with McKinney-Vento) — lacking a fixed, regular, and adequate nighttime residence and includes: children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; are awaiting foster care placement; are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations or similar children, and migratory children who are living in circumstances listed above.

Highly Qualified Special Education Teachers — All special education teachers must have a full state certification to teach special education (or equivalent licensure). This means they cannot have waivers on emergency, temporary or provisional basis. Special education teachers who teach a core subject must demonstrate competence in each core academic subject in the same manner as an elementary, middle or secondary school teacher. Consultative teachers and other special education teachers who do not teach core subjects do not have to meet the new requirements.

Core Academic Subjects — English, reading or language arts, mathematics, science, foreign languages, civics & government, economics, arts, history and geography (Section 9101 of ESEA)

New Related Services Added — interpreting services; school nurse services designed to enable access to FAPE; Core academic subjects include math, language arts or science. (Now excludes surgically implanted medical devices such as cochlear implants.)

Transition services — coordinated set of activities that are:

- *Designed to be within a results-oriented process, focused on improving the academic and functional achievement; facilitate movement from school to post-school activities (including post-secondary education, vocational education, integrated employment, continuing and adult education, adult services, independent living, or community participation*

- *Based on individual needs, strengths, preferences and interests*

- *Inclusive of instruction, related services, community experiences, the development of employment and other acquisition of daily living skills and functional vocational evaluation*

Universal Design — concept or philosophy for designing and delivering products and services usable by people with the widest possible range of functional capabilities including products and services that are directly usable (without Assistive Technology (AT) or made usable with AT.

Serious bodily injury — bodily injury which involves: a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Learning disability — local education agencies (LEAs) are not required to consider severe discrepancy between achievement and intellectual disability in determining eligibility as having a learning disability. LEAs may use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures.

