
If you are a parent reading this guide, your child may have been identified as having a disability or may be experiencing difficulties in school. All students possess differences, learn differently and demonstrate varied abilities. This is what makes us unique.

Special education is more about ability than disability. What your child can do is far more important than any perceived or actual limitations he or she may be experiencing. Because you know your child better than anyone else, your involvement in the education process is critical. Your school, Janus College Preparatory & Arts Academies High School, wants and needs your involvement in your child's education.

This guide provides you with tips on how to work in partnership with your school on behalf of your child. We hope this information will give you a better understanding of the special education process.

This guide has been written for parents, teachers, administrators, and others to learn about the educational rights of children who have disabilities and receive special education and related services. It is not meant to replace the Explanation of Procedural Safeguards that schools must give to parents of eligible children at specific times during the school year.

Special education laws and procedures are complicated and can be hard to understand. This guide will clarify some of the procedures of special education; however, it is not a complete explanation of all the special education laws. The guide does contain information about many of the most common things readers may want to know.

If you have any questions about special education rules or regulations, contact the Wisconsin Department of Public Instruction.

Sincerely,

Valerie Benton
President & Executive Director

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I. The Law

By 1975, student advocates had lobbied Congress for a federal law and monies that would guarantee the student's rights to an education and fund the special services that the students would need. Congress enacted a law, the *Education of All Handicapped Children's Act of 1975*, known as **Public Law 94-142**. That law is now called the *Individuals with Disabilities Education Act (IDEA) - Amended in 1997. To guarantee students a free appropriate public education (FAPE)*. IDEA provides federal funds to state and local education agencies, however, these agencies must agree to comply with the federal standards (governed by law) or else they will not receive the money.

IDEA defines "special education" as specially designed instruction to meet the unique needs of a student with a disability. The instruction is free to the student, provided in various settings, and includes related services (ex: physical, occupational, & speech therapies).

Within IDEA, Congress put into place a comprehensive system for educating students with disabilities and established six principles governing their education.

- **Zero Reject**
All Students Must Be Enrolled (no student may be excluded from FAPE)
 - **Nondiscriminatory Evaluation**
A rule requiring schools to evaluate students fairly to determine if they have a disability and, if so, whether the student needs special education and related services.
 - **Appropriate Education**
Schools are required to provide individually tailored education for each student based on the evaluation and augmented by related or supplementary services.
 - **Least Restrictive Environment**
Schools are required to educate disabled students with non-disabled students to the maximum extent possible.
 - **Procedural Due Process**
A rule providing safeguards for students against schools' actions, including the right to sue in court.
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- **Parental and Student Participation**

Schools are required to collaborate with parents and adolescent students in designing and carrying out special education programs.

II. Introduction

Each public school child who receives special education and related services must have an Individualized Education Program (IEP). Each IEP must be designed for one student and must be a truly *individualized* document. The IEP creates an opportunity for teachers, parents, school administrators, related services personnel, and students (when appropriate) to work together to improve educational results for children with disabilities. The IEP is the cornerstone of a quality education for each child with a disability.

To create an effective IEP, parents, teachers, other school staff--and often the student--must come together to look closely at the student's unique needs. These individuals pool knowledge, experience and commitment to design an educational program that will help the student be involved in, and progress in, the general curriculum. The IEP guides the delivery of special education supports and services for the student with a disability. Without a doubt, writing--and implementing--an effective IEP requires teamwork.

This guide explains the IEP process, which we consider to be one of the most critical elements to ensure effective teaching, learning, and better results for all children with disabilities. The guide is designed to help teachers, parents and anyone involved in the education of a child with a disability--develop and carry out an IEP. The information in this guide is based on what is required by our nation's special education law--the Individuals with Disabilities Education Act, or IDEA.

The IDEA requires certain information to be included in each child's IEP. It is useful to know, however, that states and local school systems often include additional information in IEPs in order to document that they have met certain aspects of federal or state law. The flexibility that states and school systems have to design their own IEP forms is one reason why IEP forms may look different from school system to school system or state to state. Yet each IEP is critical in the education of a child with a disability.

III. Mission Statement

The teachers, administrators, and staff of Janus College Preparatory & Arts Academies High School (JCPAA) believe in the equal worth and dignity of all students and are committed to educating all students to their maximum potential.

Our mission is to also provide support to the school community in order to maximize learning for all students within an inclusive environment so that each student will contribute to and benefit from our diverse society.

IV. Purpose

The purpose of the Special Education Policies and Procedures Manual is to assist school personnel to understand and practice consistent with Federal, State, and District requirements. Consistent with its mission, JCPAA is committed to ensure compliance with such policies and procedures. It is expected that JCPAA personnel will serve students with disabilities and their families in a manner consistent with this Manual.

The Manual is designed to be used as a:

- structured process for implementing special education policies.
- reference for answering questions.
- staff development tool.
- source for resources of support and assistance.

V. The Language of Special Education

Special education has a language of its own. School staff sometimes use letters instead of longer terms. Each term is used throughout the text.

IEP - Individualized Education Program is an academic program designed specifically to meet the needs of a student in a special education program.

IDEA – Individuals With Disabilities Education Act

LRE – Least Restrictive Environment

LEA - Local Education Agency or school that provides the instruction or educational services.

DPI – Wisconsin Department of Public Instruction, the state agency that oversees LEAs

FAPE - Free Appropriate Public Education

IDEA- INDIVIDUAL WITH DISABILITIES EDUCATION ACT

The Individuals with Disabilities Act, the Federal law governing special education, requires participating states to have policies and procedures to ensure that:

“A free appropriate public education is available to children with disabilities residing in the State between the ages of three and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

FAPE- FREE APPROPRIATE PUBLIC EDUCATION

FAPE means special education and related services that are provided in conformity with a child's IEP, are provided at public expense and under public supervision and direction, and meet the standards of the State. In simple terms, if a student is receiving what is specified in his/her IEP and the process from referral through development of the IEP was done in a manner consistent with policies and procedures, then the student is receiving FAPE. Ensuring that all LAUSD students with disabilities entitled to FAPE receive such is our legal obligation and our

VI. Identification

Who is a child with a disability?

A child with a disability is a child who needs special education and related services. The child must be at least 3 years old, but not yet 21, and not yet graduated from high school. The term includes a person who becomes 21 during the school term for the remainder of the school term (the last day pupils attend in a school year, other than summer classes). The law has criteria for each category below to help IEP teams decide if a child has a disability.

How do I know if my child has a disability?

If you think your child might have one of the problems listed in the chart, talk to a teacher, support staff, or administrator of JCPAA. Ask to test your child for special education.

A. The following chart lists the disabilities that are in the law.

Autism	<ul style="list-style-type: none">• Your child's doctor will usually diagnose this before he turns three years old.• Your child develops more slowly. He walks, talks, potty trains, or feeds himself later than other children.• Your child might have problems eating or sleeping. He might be sensitive to lights, sounds, tastes, or smells.• He might appear not to hear you. He might stare off into space. He might be fascinated by things that move, like fans or wheels.• He might have trouble playing with other children. He might have trouble understanding or relating to other people
Deaf-Blindness	<ul style="list-style-type: none">• Your child's doctor will diagnose both a hearing and visual impairment.

	<ul style="list-style-type: none"> • Your child does not have to be totally deaf and blind. • For more signs, read hearing impairment and visual impairment in the chart.
Deafness/ Hearing Impairment	<ul style="list-style-type: none"> • Your child has trouble hearing. She does not talk or her speech is still hard to understand after she turns two years old. • She might be sensitive to very loud sounds. She might not hear soft sounds. Her voice might get louder when she talks. • She might turn up the TV or radio to hear it. • She might point, pull, or touch instead of talk. She might get upset or nervous in very loud places.
Emotional Disturbance (Also called “severe behavior handicap.”)	<ul style="list-style-type: none"> • Your child has trouble controlling his emotions. • He might be aggressive. He might act out, fight, or hurt himself. He might get in trouble a lot at home and school. • He might be hyper. He might have a short attention span. He might act without thinking. • He might have trouble making friends. He might be afraid or nervous around other people. • He might act immature. He might cry a lot or throw temper tantrums. • He might appear unhappy or depressed most of the time. He might get headaches or tummy aches when he is really upset.
Mental Retardation (Also called “developmental handicap” or “cognitive impairment.”)	<ul style="list-style-type: none"> • Your child has a low IQ, generally below 70. • Your child’s doctor will often diagnose this at a young age. • Your child cannot learn as fast or as much as other children her age. • She might walk, talk, dress, or feed herself later than other children.
Orthopedic Impairment	<ul style="list-style-type: none"> • Your child has trouble using (or is missing) her fingers, hands, arms, legs, or feet. • Your child might need a wheelchair or other help to move around the

	school.
Other Health Impairment	<ul style="list-style-type: none"> • Your child has medical problems that make it hard to participate in regular classroom activities. • Your child's doctor must diagnose a medical problem. • Examples include asthma, attention deficit disorder (ADD) or attention deficit/ hyperactivity disorder (AD/HD), diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette Syndrome.
Specific Learning Disability	<ul style="list-style-type: none"> • Your child has an average or high IQ, but still does not do well in school. • She might have problems in reading, writing, or math. She might have problems listening, talking, or thinking. • She might do very well or learn quickly in some subjects, but do very poorly in others. • She might have trouble writing down what she is thinking. She might make mistakes when she reads out loud. • She might have trouble following directions. She might have trouble figuring out how to start a task.
Speech Impairment	<ul style="list-style-type: none"> • Your child has trouble speaking or is hard for others to understand. • He might not say all his letters correctly. He might mix up sounds. He might have a hard time getting out the word he is trying to say.
Traumatic Brain Injury	<ul style="list-style-type: none"> • Your child's brain has been hurt in an accident or other injury. • She might have trouble speaking, hearing, seeing, or thinking. • She might have problems remembering. She might not be able to concentrate. She might have a short attention span. • She might get tired easily. She might have bad mood swings.
Visual Impairment	<ul style="list-style-type: none"> • Your child has trouble seeing, even with glasses or contacts. • He might squint while reading, watching TV, playing on the computer, or playing video games. He might get headaches when doing these

	<p>activities.</p> <ul style="list-style-type: none"> • He might have some sight or he might be legally blind.
Multiple Disabilities	<ul style="list-style-type: none"> • Your child has more than one of the problems already listed in the chart. • She might have physical problems. She might have a hard time moving around the school. • She probably has trouble communicating with others. • She probably has behavior problems. • She might forget skills that she does not use a lot. She might have to relearn things she has already been taught.

Having one of these disabilities is not enough. Your child must also be having trouble at school because of the disability.

. B. Categories of Disabilities

- [Cognitive disabilities \(CD\)](#)
- [Hearing impairments \(HI\)](#)
- [Speech or language impairments \(SL\)](#)
- [Visual impairments \(VI\)](#)
- [Emotional behavioral disability \(EBD\)](#)
- [Orthopedic impairments \(OI\)](#)
- [Autism](#)
- [Traumatic brain injury \(TBI\)](#)
- [Other health impairments \(OHI\)](#)
- [Specific learning disabilities \(SLD\)](#)
- [Significant developmental delay \(SDD\)](#)

What is identification?

Identification simply means that someone thinks your child might need special education. This person is usually you or your child's teacher. You and the school must agree that your child might need special education before they can be tested.

If someone from the school identifies your child, the school must get your permission before doing an evaluation. Once you give permission, the school has 90 days to complete the entire special education process.

If you identify your child, you must ask the school to test your child. If the school will not do an evaluation, they must tell you why. They must tell you in writing. This is called prior written notice.

VII. Referral

What is Special Education?

Special education is specially designed instruction, at no cost to parents, to meet the unique needs of the child. In order for a child who has one or more of the above disabilities to be eligible for special education, they must have a unique educational need that requires specially designed instruction.

A unique educational need is one that stems from the disability of the child and is significantly different from the educational needs of the student's typical peers. Specially designed instruction is adapting the content, methodology, or delivery of instruction to address the unique educational needs of the child so that he/she can access the general curriculum and meet State and District educational standards.

A person who is required to be licensed..., who is employed by a local educational agency and who reasonably believes a child has a disability, shall refer the child to the local educational agency...Any person...who reasonably believes that a child is a child with a disability may refer the child to a local educational agency...

Listed professional people, including DPI licensed school staff, who think a child has a disability, are required to make a referral to the school. Anybody else, including parents, who thinks a child might have a disability, may refer the child to the school for a special education evaluation.

Parents can make a referral if they think their child might have a disability. Other people, like doctors, teachers, or nurses must make a referral if they think the child has a disability. Other people can make a referral if they think the child has a disability. Schools cannot refuse to accept a referral.

VIII. Notice

JCPAA must give you written notice (provide you certain information in writing), whenever it proposes to begin or to change:

- the identification,
- evaluation,
- educational placement of your child, or
- the provision of a free appropriate public education (FAPE) to your child; or
- **refuses to begin or to change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child.**

Native Language

Native language, when used with an individual who has limited English proficiency, means the following:

- The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
- In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
- For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

The notice must be:

- If your native language or other mode of communication is not a written language, your school district or supervisory union must ensure that:
- The notice is translated for you orally by other means in your native language or other mode of communication;
- You understand the content of the notice; and
- There is written evidence that 1 and 2 have been met.

Electronic Mail

If your school district or supervisory union offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

- Prior written notice;
- Procedural safeguards notice; and
- Notices related to a due process complaint.

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under the IDEA regulations

A copy of this notice must be given to parents or adult students only one time a school year, except that a copy must be given to the parents or adult student upon:

1. Initial referral for an evaluation;
2. Receipt of the first administrative complaint under Rule 2365.1.5 or a due process complaint under Rule 2365.1.6 in that school year;
3. Request by a parent or adult student; and
4. In accordance with the discipline procedures in Rule 4313.1(h).

IX. Evaluation

How do I request a special education evaluation?

To get an evaluation, write a letter to the school principal. Make sure to mention in your letter:

- Date
- Say that you want your child tested for special education.
- Be specific about the problems that your child is having at school.

A person wishing to make a referral must make it in writing. The referral should say why the person thinks the child has a disability. It must also include the child's name.

JCPAA has a referral form that parents can use, but the referral can be a letter from the person making the referral. Parents can write a letter to the school to ask the school to evaluate the child. Referrals have to say why the person making the referral thinks the child has a disability. Referral should be dated and signed. Also, parents should keep a copy of the letter. If a parent needs assistance, we can help parents make the written referral.

Before submitting a referral to a local educational agency..., a person required to make a referral... shall inform the child's parent that he or she is going to submit the referral. 115.777(2)(b)

Before teachers or professionals make a referral, they must let the child's parents know that they are going to make the referral. School staff will contact parents to tell them they are going to make a referral to evaluate. Teachers should document what they have tried to help a child before they refer the child for evaluation.

- a. establish written procedures for accepting and processing referrals;
 - b. document and date the receipt of each referral;
 - c. provide information and in-service opportunities to all its licensed staff to familiarize them with the agency's referral procedures; and
 - d. at least annually, inform parents and persons required to make referrals...about the agency's referral and evaluation procedures. 115.777(3)
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After your child is referred for an evaluation for special education, you will be asked to give your written consent to have your son or daughter evaluated. The results of an evaluation help determine if special education services or programs are needed. An evaluation includes various assessment tools and strategies. These tests determine what your child's learning difficulties may be and how those difficulties affect his or her participation and progress in the general education curriculum.

Consent for Evaluation

"The local educational agency shall, before conducting an initial evaluation of a child, obtain informed consent from the child's parent. Parental consent for the evaluation does not constitute consent for placement for receipt of special education and related services."

The school cannot give new tests in an evaluation until they have the parent's written permission (consent). Permission is for evaluation only, not for being in special education.

The school must tell the parent in writing about the evaluation. Parents can ask the school to explain the evaluation before giving permission. If new testing is needed, the school must also tell the parents who will do the testing (if known) and what kind of testing they will do. The school must get the consent of the parent before giving the tests.

This evaluation is at no cost to you. As a parent, it will be helpful to share with the IEP Team the important information you have about your child's skills, abilities and needs, including copies of any evaluations you have on your child. The Team must consider information from parents when making decisions.

As a parent, you have input as to the tests and assessments to be conducted on your child. Before an evaluation is conducted, you will be asked for your suggestions about evaluating your child and be given information about the kinds of tests that will be used. If you have questions about the purpose or type of evaluation proposed, you should discuss them with the IEP Team.

Parents should send the consent form back to school as soon as possible. The 60 day timeline does not start until the school gets the parent's consent. Parents should be sure they understand what they are giving permission for. Consent means:

- You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
 - You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
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- You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.
 - Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew your consent.

Your school cannot conduct an initial evaluation of your child to determine whether your child is eligible under IDEA without first:

- Providing you with prior written notice of the proposed action and
- Getting your consent as described.

Your school must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability. Your consent for initial evaluation does not mean that you have also given your consent for your school district or supervisory union to start providing special education and related services to your child. If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district or supervisory union may, but is not required to:

- Continue to pursue these evaluations by seeking mediation, using due process, or reviewing existing data.
- Decide not to pursue the evaluation and shall document its justification for doing so in the child's record.
- Your school district or supervisory union will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

What is included in an individual evaluation?

Evaluations must be comprehensive and provide information about your child's unique abilities and needs. Evaluations include information from parents and a group of evaluators, including at least one special education teacher or other person with knowledge of your child's (suspected) disability. An evaluation will provide information that relates to your child in his or her classroom. It will tell what your child needs to be involved in to participate and progress in general education curriculum.

Tests and assessments, given as part of an evaluation, must be given in your child's language by people who are trained, knowledgeable and/or certified to give the tests. The tests must be fair and not discriminate racially or culturally.

An initial evaluation to determine your child's needs must include:

- **a physical examination**
- **a psychological evaluation (if determined appropriate for school-age students, but mandatory for pre-school children)**
- **a social history**
- **observation of your child in his or her current education setting**
- **other tests or assessments that are appropriate for your child (such as a speech and language assessment or a functional behavioral assessment)**
- **vocational assessments (required at age 12)**

The results of the evaluation must be provided to you. This may involve a meeting with the Team in which the technical language and scoring of individual tests and assessments are explained to you, usually by the professionals who administered the tests or assessments. In addition, you must be given a copy of the evaluation report.

You may also bring in evaluation information which the Team must consider. If you feel that an evaluation conducted by the Team not appropriate or if you disagree with the results, you can obtain, and request that the school district pay for, an Independent Educational Evaluation (IEE).

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was conducted by your school district or supervisory union.

If you request an IEE, your school district or supervisory union must provide you with information about where you may get an IEE and about your school district or supervisory union's criteria that apply to IEEs.

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by your school district or supervisory union responsible for the education of your child.

Public expense means that your school district or supervisory union either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you.

Parent right to evaluation at public expense

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child obtained by your school district or supervisory union, with the following conditions:

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- If you request an independent educational evaluation of your child at public expense, your school district or supervisory union must, without unnecessary delay, either:
 - Request a hearing to show that its evaluation of your child is appropriate; or
 - Provide an independent educational evaluation at public expense.
 - If your school district or supervisory union requests a hearing and the final decision is that your school district or supervisory union's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
 - If you request an independent educational evaluation of your child, your school district or supervisory union may ask why you object to the evaluation of your child obtained by your school district or supervisory union.
 - However, your school district or supervisory union may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend your school district or supervisory union's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time your school district or supervisory union conducts an evaluation of your child with which you disagree.

Parent-initiated evaluations

If you obtain an independent educational evaluation of your child at public expense or you share with your school district or supervisory union an evaluation of your child that you obtained at private expense:

- Your school district or supervisory union must consider the results of the evaluation of your child, if it meets your school district or supervisory union's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; and
- You or your school district or supervisory union may present the evaluation as evidence at a due process hearing regarding your child.

Requests for evaluations by hearing officers

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

School District / Supervisory Union criteria

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that your school district or supervisory union uses when it initiates an evaluation.

Except for the criteria described above, a school district or supervisory union may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

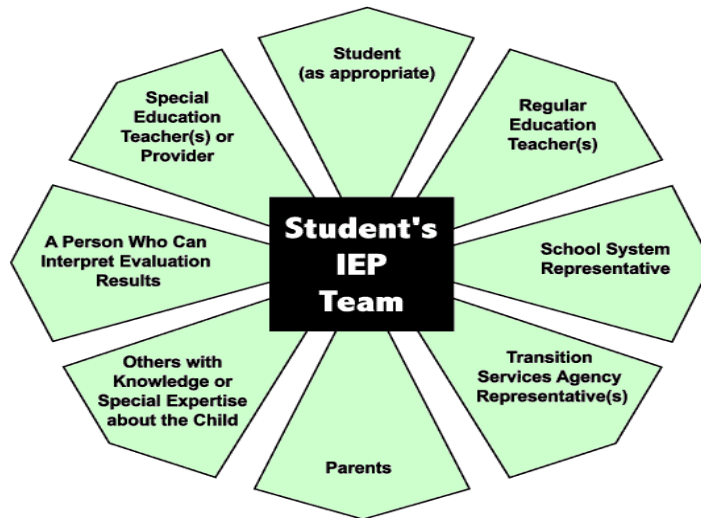
After the evaluation is completed, you will be invited to a meeting, as a member of the Committee, to talk about the results. You should attend this meeting because you have important information to share about your child. If you can not attend, you have the right to ask the district to change the time or place of the meeting. At the meeting, the Committee will review the evaluation results. Based on that information, and information that you provide, the Committee decides if your child is eligible or ineligible to receive special education programs and/or services.

In order to be eligible, a child must have a disability that affects his or her ability to learn. A student with a disability means a child with a disability, as defined in Education Law; who does not turn 21 before September first; who is entitled to attend public school; who because of mental, physical or emotional reasons, has been identified as having a disability; and who requires special services or programs.

Students, ages 5-21, who are identified as having a disability, may have autism, deafness, deaf-blindness, emotional disturbance, hearing impairment, learning disability, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, speech or language impairment, traumatic brain injury or visual impairment (including blindness).

X. IEP Team

To write an effective IEP for a child with a disability, parents, teachers, other school staff—and often the child—must come together at a meeting to look closely at the child's unique needs. These individuals combine their knowledge, experience, and commitment to design an educational program that must help the child to be involved in, and progress in, the general education curriculum—that is, the same curriculum as for children without disabilities. The IEP guides the delivery of special education and related services and supplementary aids and supports for the child with a disability. Without a doubt, writing—and implementing—an effective IEP requires teamwork.



IDEA (at §300.321) describes the IEP team as including the following members:

- the parents of the child;
- not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- a representative of the public agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of resources of the public agency;
- an individual who can interpret the instructional implications of evaluation results;
- other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate (invited at the discretion of the parent or the agency); and
- the child with a disability (when appropriate).
- parents have been recognized as vital members of the IEP Team. Everyone agrees that parents have an enduring and passionate interest in the well-being and education of their child

Parents

JCPAA will invite the parents to the IEP meeting early enough to ensure that one or both parents have the opportunity to attend and participate. The notice must include the purpose of the meeting, its time, and location, and who will attend.

Typically, parents know their child very well—not just the child’s strengths and weaknesses, but all the little qualities that make their child unique. Parents’ knowledge can keep the team focused on the “big picture” of the child; they can help the team to create an IEP that will work appropriately for the child. Parents can describe what goals are most important to them and to their child, share their concerns and suggestions for

enhancing their child's education, and give insights into their son or daughter's interests, likes and dislikes, and learning styles. By being an active IEP team member, parents can also infuse the IEP planning process with thought about long-term needs for the child's successful adult life.

Being actively involved in developing their child's IEP is a parent's *right* and a parent's *choice*. This means that JCPAA will:

- Notify parents of the meeting early enough to ensure that one or both of the parents have an opportunity to attend [§300.322(a)(1)];
- Schedule the meeting at a mutually agreed on time and place [§300.322(a)(2)]; and
- Take whatever action is necessary to ensure that the parent understands the proceedings of the meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English [§300.322(e)].

Special Education Teacher

Not less than one of the student's special education teachers must also be included in the IEP team, or, when appropriate, a special education provider of the child. The student's special education teacher has a lot to contribute at the IEP team meeting, including important information and experience about how to educate children with disabilities. Because of his or her training in special education, this teacher can talk about such issues as:

- how to modify the general education curriculum to help the child learn;
- the supplementary aids and services that the child may need to be successful in the regular classroom and elsewhere;
- how to modify testing or to provide the test with individual appropriate accommodations so that the child can show what he or she has learned; and
- other aspects of individualizing instruction to meet the child's unique needs.

Beyond helping to write the IEP, the special educator has responsibility for working with the student to implement the IEP.

The teacher may:

- work with the student in a resource room or special class devoted to students receiving special education services;
 - team teach with the student's regular education teacher; and/or
 - work with other school staff, particularly the regular education teacher, to provide expertise about addressing the student's unique needs.
-

Having the special educator at the table is a very important part of writing an appropriate IEP for a child with a disability.

Regular Education Teacher

IDEA requires that at least one regular education teacher must be represented on the team “if the child is, or may be, participating in the regular education environment.” According to IDEA, the regular education teacher:

- must, to the extent appropriate, determine “appropriate positive behavioral interventions and supports, and other strategies for the child” [§300.324(a)(3)(i)]; and
- determine which “supplementary aids and services, program modifications, and support for school personnel” are needed to help the child progress toward attaining the annual goals; be involved in and make progress in the general education curriculum; participate in extracurricular activities and other nonacademic activities; and be educated and participate with other children with disabilities and those who are not disabled [§300.324(a)(3)(ii) and §300.320(a)(4)].

These supports and services might include adapting the curriculum, providing reading materials written at a lower reading level, using graphics along with written materials, or providing the child with a child assistant. The regular education teacher may also tell the rest of the team what he or she needs to help the child understand the general curriculum and achieve the goals listed in the IEP.

The regular education teacher often knows the curriculum for a child’s grade level and what children in regular education classes are typically expected to do. If the child is going to be educated in the regular education environment for any part of the school day, then the child’s regular education teacher may talk at the IEP meeting about what the child will be taught and expected to learn. This information can contribute directly to making decisions about what types of supplementary aids and services the child may need to be successful in that setting.

At least one special education teacher who has recent training or experience related to the child’s known or suspected area of special education needs, or, where appropriate, at least one special education provider of the child. 115.78(1m)(c)

There must be a special education teacher on the IEP team who is licensed in the child’s area of disability or who has training or experience related to the child’s needs arising from his or her disability. Whether a special education teacher has “recent training or experience” is based upon the child’s needs and the teacher’s training and experience.

The school makes sure the IEP team has a special education teacher who is licensed or has training or experience in the child's disability-related needs. The special education teacher should be one who is, or will be, responsible for implementing the IEP.

Schools make sure teachers keep their skills up-to-date by sending them to teacher training events.

Parents may ask to have other teachers, who are not their own child's teachers, involved with the IEP team. The school has the right to decide which teachers will be at the meeting.

Schools have many opportunities to get more training for their staff to help them understand the child's disability and needs.

LEA Representative

A representative of the local educational agency who is qualified to provide, or supervise the provision of, special education, is knowledgeable about the general education curriculum and is knowledgeable about and authorized by the local educational agency to commit the available resources of the local educational agency. 115.78(1m)(d)

A principal, special education director, teacher, or anyone who can be sure the services in the IEP are provided to the child. This person must know about the regular education curriculum and the school district's resources. The LEA representative must have the authority to commit resources.

The school chooses the LEA representative. The LEA representative has the knowledge of, and authority to, commit district resources the child needs. The LEA representative may serve more than one role on the IEP team.

Explanation of Tests

An individual who can interpret the instructional implications of evaluation results, who may [otherwise] be a team participant. 115.78(1m)(e) Somebody on the IEP team must be able to explain what the tests mean in plain language or in the language the parents normally use. The school has someone on the team who can explain the test results. This person may also be one of the other participants. Parents can ask to have test results explained if they do not understand them.

The School Psychologist

The psychologist is the person who will give your child IQ tests and other psychological surveys as part of the evaluation portion of IEP planning.

If your child has mental health challenges, you may be more likely to have the psychologist as your case manager, but that varies with school districts and workloads. The psychologist may make observations during the meeting about your child's psychological state or concerns. If your child is having problems during the school year that require counseling, this psychologist may be able to help, or there may be another school psychologist who handles counseling of students.

The Child

Whenever appropriate, the child.115.78(1m)(g) The child may attend the meeting and participate. The school must invite the child when transition issues are being discussed. This must begin with the IEP when the child will be 14. Parents should strongly consider having the child go to the IEP team meeting. Parents can have the child at the IEP meeting whenever they want. The child should participate as much as possible.

For one thing, if you regularly give teachers [information](#) about your child's disability, give a copy to the case manager, too. The school psychologist, learning specialist, and social worker may not be experts on every disability and every new bit of research, either, and in providing background you'll make their job easier now, and your job easier later when you don't have to explain this all again and again.

Responsibilities Beyond the IEP Meeting

IDEA requires that at least one regular educator serve on the IEP team, but many children with disabilities have more than one such teacher. It is very important that each of these teachers be well-informed about the child's IEP---what his or her goals are, what classroom or testing accommodations are to be provided, and what supplementary aids and services are necessary so the child can access and progress in the general education curriculum.

Because it's not always possible for all of the teacher's to attend the IEP meeting, JCPAA will ensure that each regular education teacher (as well as other service providers working with the child) has access to student's IEP and is informed of his or her specific responsibilities related to implementing the IEP. It's also a very good idea if teachers regularly review the IEPs of their students, refreshing their memory of the details and monitoring how well the IEP is addressing the child's needs, progress, and learning.

If the IEP needs to be revised to address either lack of progress or great progress, teachers responsible for the child's education are invaluable in alerting the rest of the team that it's time to gather and discuss what adjustments need to be made.

IDEA specifies that every IEP team must include a "representative of the public agency" responsible for educating the child in question.(By "public agency," we're usually talking about the school system--the local educational agency, for example.) This person must be:

-
- qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - knowledgeable about general ed curriculum; and
 - knowledgeable about the availability of resources of the public agency.

The phrase in the first bullet “qualified to provide specially designed instruction” is closely tied to the definition of *special education*, which begins, "The term *special education* means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability..." [§300.39(a)(1)]

Thus, the representative from the public agency must be qualified to provide special education or supervise its provision.

The public agency representative must know what resources the school has available. This person must also have the power to *commit* the resources needed so that services can be provided as described in the child’s IEP *and* be able to ensure that whatever services are described in the IEP will actually be provided.

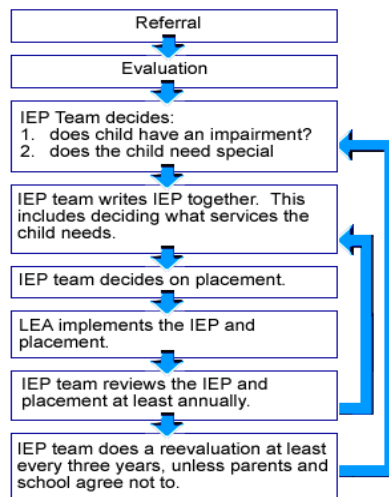
Final Note:

IDEA also states that the public agency may designate another public agency member of the IEP Team to also serve as the agency representative, as long as that person has the qualifications required for the public agency representative. Thus, it’s possible that the public agency representative may also be serving on the team in another role.

XI. Special Education Process Map

State law has timelines for the process. A district must ask a parent for consent for evaluation or a notice sent that no tests are needed within 15 business days of receiving a written referral. The evaluation must be done within 60 calendar days of when the school gets parent consent to evaluate or the date the parent was notified that testing is not needed. An IEP and placement must be developed within 30 days of deciding a child is eligible for special education. The evaluation can take more than 60 days, if the parent does not make the child available for testing, or if the child moves to another school district before the evaluation is done. In some cases, and only if parents agree, the evaluation of children being evaluated for specific learning disabilities may be extended more than 60 days.

This chart shows how a child gets into a special education program.



Although this chart shows a series of decisions, all the decisions are connected. All the decisions are centered on the needs of the child. For example, when the IEP team talks about evaluation, they also think about what services the child will need and where the child will get the services.

For some children, all the IEP team's decisions can be made in one meeting. For other children, the IEP team will need to meet together more than once. Anyone on the IEP team can ask for more time if it is needed. Anyone on the IEP team can also ask for an IEP team meeting to be held if there are changes to be talked about.

XII. Steps in the Special Education Process

Step 1: Initial Referral for Special Education Services

Students suspected of having a disability are referred to a multidisciplinary team called the Committee on Special Education or the Committee on Preschool Special Education.

Step 2: Individual Evaluation Process

The Committee arranges for an evaluation of the student's abilities and needs.

Step 3: Determining Eligibility for Special Education Services

Based on evaluation results, the Committee decides if the student is eligible to receive special education services and programs.

Step 4: Individualized Education Program (IEP)

If the child is eligible to receive special education services, the Committee develops and implements an appropriate IEP, based on evaluation results, to meet the needs of the student. Based on the IEP, the Committee must determine the student's placement, ensuring that services are provided in the least restrictive environment (LRE). Placement

must be as close as possible to the student's home, and unless the student's IEP requires some other arrangement, the student must be educated in the school he or she would have attended if not disabled.

Step 5: Annual Review/Reevaluation

The IEP is reviewed and, if needed, modified or revised by the Committee at least once a year (annual review). The student has a reevaluation at least once every three years, to review the student's need for special education programs and services and to revise the IEP, as appropriate. A reevaluation may also occur when conditions warrant or when requested by a parent or teacher.

The process occurs sequentially with each step building on the previous one. In this way, comprehensive information about the student is obtained and considered. Timelines are in place so that delays are avoided. Parents are an integral part of this process, and your involvement is encouraged

Additionally, if the parents disagree with a school district evaluation and request an IEE at public expense, the school district must obtain the IEE and pay for it unless the school district requests a due process hearing and the hearing officer rules that the IEE is not needed. 34 C.F.R. 300.503.

An evaluation serves many purposes:

1. Identification. It will identify children who have delays or disabilities and need special education and related services.
2. Eligibility. It will determine whether a child is a "child with a disability" under the Individuals with Disabilities Education Act (IDEA) definition. A "child with a disability" means a child who qualifies for special education and related services.
3. Planning an Individualized Education Program (IEP). It provides information that will help parents and school professionals develop an appropriate IEP for a child.
4. Instructional strategies. It will help determine effective strategies to help a child learn.
5. Measuring progress. It establishes a baseline (present level of performance) for measuring a child's educational progress. When the evaluation is completed, parents must be given a copy of the evaluation report and documentation that shows how the child's eligibility was determined. Even if evaluation results show that a child does not need special education and related services, the information may still be used to decide what accommodations may be needed in a regular education program.

XIII. Exaluation Measures

What measures are used to evaluate a child?

No single test, by itself, may be used to determine whether a child has a disability, or to determine educational needs. Formal and informal tests, observations, parent information and other measures help schools and parents determine the need for special education and related services.

Tests measure a child's ability or performance by scoring the child's responses to a set of questions or tasks. It provides a snapshot of a child's performance on a particular day. Formal test data is useful in predicting how well a child might be expected to do in school. It also provides information about unique learning needs.

The school will conduct an individual evaluation that uses information from many sources including formal and informal data. Tests are important, but evaluation also includes other information such as:

- medical information
- comparing the child's progress to typical child development
- observing how the child functions in school, at home, or in the community
- interviews with parents and school staff

Parents have a wealth of information about the growth and needs of their child. When combined with tests and other evaluation materials, this information is used to make decisions about an appropriate education.

There are many types of tests that schools use to measure progress. These are a few important terms parents may need to know.

Group tests

Group achievement tests may not be used to determine eligibility for special education. They provide information about how a child performs compared to others of the same age or grade, but do not identify an individual student's strengths and needs.

Individual tests

Tests given individually to a child are useful in determining unique learning strengths and needs.

Curriculum-based assessments (CBAs) or curriculum-based measurements (CBMs)

These tests are developed by school staff to examine the progress a child has made in learning specific materials that the teacher has presented to the class. They can be useful tools for teachers and parents in determining whether learning is taking place. However, they must never be used alone to determine if a child is eligible for special education.

Standardized tests

Standardized tests are developed by experts for use with large groups of students. The tests are given according to specific standards. These tests assess what a child has already learned (achievement), or predict what a child may be able to do in the future (ability).

Norm-referenced tests

Norm-referenced tests are standardized tests that compare a child's performance to that of peers. They show where a child stands compared to other children of the same age or grade.

Criterion-referenced tests

These tests measure what a child is able to do or the specific skills a child has mastered. Criterion-referenced tests do not assess a child's standing in a group. Rather, they look at a child's performance measured against standard criteria. They may compare present performance with past performance as a way of measuring progress.

What criteria are used in selecting tests?

Schools look at many factors when selecting tests to use in an evaluation. Here are a few:

- Tests must be reliable. A test is reliable if it offers similar results when taken at different times or given by different evaluators. Parents may ask for the reliability of tests given their child if this information isn't discussed along with the test results.
- Tests must be valid. A test is valid if it measures what it was designed to measure.
- Tests must accurately reflect the child's aptitude or achievement. Standardized tests must have been validated for the specific testing purpose. They must also be given by trained and knowledgeable people.
- Tests and other evaluation materials must not discriminate against a child on a racial or cultural basis. They must be administered in a child's native language or other mode of communication unless it is clearly not feasible to do so.

Factors such as a child's attentiveness, motivation, anxiety, and understanding of the test directions can affect the score.

IDEA includes the following additional procedures when evaluating and determining the existence of a specific learning disability:

1. A team may determine that a child has a specific learning disability if:
 - The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed below, if provided with learning experiences appropriate for the child's age and ability levels; and
 - The child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: Oral expression; listening comprehension; written expression; basic reading skill; reading comprehension; mathematics calculation; mathematics reasoning.
2. The team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:
 - A visual, hearing, or motor impairment;
 - Mental retardation;
 - Emotional disturbance; or
 - Environmental, cultural or economic disadvantage.
3. Observation:
 - At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.
 - In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.
4. Written report — For a child suspected of having a specific learning disability, the documentation of the team's determination of eligibility must include a statement of:
 - Whether the child has a specific learning disability.
 - The basis for making the determination.
 - The relevant behavior noted during the observation of the child.
 - The relationship of that behavior to the child's academic functioning.
 - The educationally relevant medical findings, if any.
 - Whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services.
 - The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.

Functional assessment

While tests are an important part of an evaluation, sometimes what children can do or need to learn is not reflected in their scores. A functional assessment looks at how a child actually functions at home, at school, and in the neighborhood. Functional assessment for some students includes looking at reading, writing, and math skills. For others, assessing whether the student is able to ride the city bus, dress without help, or handle money will be more appropriate.

Functional behavioral assessment

When a child has behavior problems that do not respond to standard interventions, a functional behavioral assessment (FBA) can provide additional information to help the team plan more effective interventions. A typical FBA includes the following:

- A clear description of the problem behavior
- Observations of the child at different times and in different settings. Observations should record (1) what was happening in the environment before the behavior occurred, (2) what the actual behavior was, and (3) what the student achieved as a result of the behavior
- Behavioral interventions to address the behavior and teach behavior skills

Once a functional behavior assessment has been completed, the results may be used to write a behavior intervention plan or to develop behavior goals for the IEP.

Writing a FBA

When you are writing an [FBA \(Functional Behavior Analysis\)](#) you will need to collect data. There are three kinds of information you will be choosing: Indirect Observational Data, Direct Observational Data, and if possible, Experimental Observational Data. A true Functional Analysis will include an Analogue Condition Functional Analysis. [Dr. Chris Borgmeier](#) of Portland State University has made a number of helpful forms available online to use for this data collection.

Indirect Observational Data:

The first thing to do is to interview parents, classroom teachers and others who have had ongoing responsibility for supervising the child in question. Be sure that you give each stakeholder the functional description of the behavior, to be sure it is the behavior you are seeing.

Direct Observation Data

You will need to determine what kinds of data do you need. Does the behavior appear frequently, or is it the intensity that is frightening? Does it seem to occur without warning? Can the behavior be redirected, or does it intensify when you intervene?

If the behavior is frequent, you will want to use a frequency or scatter plot tool. A frequency tool can be [a partial interval tool](#), that records how frequently a behavior appears during a finite period. The results will be X occurrences per hour. A [scatter plot](#) can help identify patterns in the occurrence of behaviors. By pairing certain activities with the occurrence of behaviors, you can identify both antecedents and possibly the consequence that is reinforcing the behavior.

If the behavior lasts a long time, you may want a [duration measure](#). The scatter plot may give you information about when it happens, a duration measure will let you know how long a behavior tends to last.

Analogue Condition Functional Analysis

Teachers may find that you can identify the [antecedent](#) and [consequence](#) of a behavior with direct observation. Sometimes to confirm it, an Analogue Condition Functional Analysis would be helpful.

Analyze

Once you have collected enough information, you will be ready to move on to your analysis, which will focus on the ABC of the behavior ([Antecedent](#), [Behavior](#), [Consequence](#).)

The first thing to ask is "When?" This will help you identify the [antecedent](#), or the thing that precedes the behavior. Does it happen when peers are present? Does it happen every time the teacher or classroom aide gives another child attention? Does it happen on rainy days? Does it happen when a favorite food is served, or a favorite toy is present? This information, the antecedent, will go in the first box on your chart.

Antecedent	Behavior	Consequence
The teacher places James' work folder on his desk in front of him.	James sweeps his folder and pencil onto the floor.	The classroom aide puts James in the time out corner. He Escapes doing his work.
At lunch, James sees that Martin has yogurt.	James bangs himself in the head with his fist at the lunch table.	Martin gives James his yogurt. He Acquires the desired object.

Next, is the behavior itself. Use the [operational definition](#) you used when you collected your data. Be sure it is clear so that another teacher, either the next year's special education teacher, or the general education teacher, can easily recognize the behavior.

The [consequence](#) is the critical part of the analysis, since once you figure out what is reinforcing the behavior, you know how to define and reinforce the [replacement behavior](#).

Revisit the antecedent and decide if the behavior gets a preferred object, whether the behavior gets attention, or whether the behavior provides escape: from a task they don't like, from a situation they want to get out of.

Test your consequence. What happens to the behavior if you remove the demand or remove the child from the space? If it disappears, the consequence is escape. What happens to the behavior if you give the child the preferred object? If it disappears, the consequence is preferred item or activity. What happens to the behavior if you give the child your undivided attention? Or if the child is alone in a room? In the first instance, it is the teacher's attention. In the second instance, it may be the attention of peers.

When you analysis is over, commit your FBA to the report form required by your district, or your state. Then it's time to start the [Behavior Intervention Plan!](#)

A BIP, or Behavior Intervention Plan lays out how the IEP team will improve difficult behavior that is inhibiting a child's academic success. If a child can't focus, doesn't complete work, disrupts the classroom and is constantly in trouble, not only does the teacher have a problem, the child has a problem. A Behavior Intervention Plan is a document that describes just how the IEP team will help the child improve his or her behavior.

A *Behavior Intervention Plan (BIP)* takes the observations made in a [Functional Behavioral Assessment](#) and turns them into a concrete plan of action for managing a student's behavior. A BIP may include ways to change the environment to keep behavior from starting in the first place, provide positive reinforcement to promote good behavior, employ planned ignoring to avoid reinforcing bad behavior, and provide supports needed so that the student will not be driven to act out due to frustration or fatigue.

When a behavior plan is agreed to, the school and staff are legally obligated to follow it, and consequences of not following it should not be inflicted on the student. However, as with so many provisions of [IDEA](#), this may take a lot of vigilance, advocacy, and battling by parents to make sure that everyone who is to take these interventions into account does so in a complete and informed way.

That form, and your BIP, should include:

- Target Behaviors
- Specific, measurable goals
- Intervention description and method
- Start and frequency of intervention
- Method of Evaluation
- Persons responsible for each part of the intervention and evaluation
- Data from Evaluation,

Target Behaviors. The targeted behaviors need to be described operationally, so that a neutral third party would recognize the behavior. The description may include intensity (how loud do they scream?) frequency (how often to they scream, say per hour,) and duration (how long do they scream?) A tantrum especially needs an operational definition.

Specific Measurable Goals This should include not only the decrease in undesirable targeted behavior but an increase in a targeted replacement behavior.

Intervention Description and Method: Describe the replacement behavior, and how the replacement behavior will be reinforced. If this is a long term or multi-stepped intervention, you will want to set up reinforcement schedules and the different steps of intervention.

Start and Frequency of Intervention. Give a date certain, no more than 30 days after your meeting, but much sooner if possible. If the intervention is not only for the home room or one particular settings you may want to state the intervention will be daily, from 9:00 to 2:30 or whenever you are collecting information.

Method of Evaluation: For most BIP's, if you have set a goal for target behaviors that include duration, frequency or intensity, you will want to create measuring tools, usually a check off, that can be used during observation of the behavior. The period of the observation may be stated in the description of the specific measurable goal.

Persons Responsible. If it will be the responsibility of the general ed classroom teacher to reinforce the appropriate behavior, be sure that he or she is on board and understands and agrees with the BIP goals. Be sure, if the intervention is to go over into specials, such as gym or music, that those teachers are informed, even trained, how to collect the information.

Data From Your Intervention: Be sure to make up data sheets when you write your FBA: it will make it much easier when you start the intervention, if you have created data sheets when you wrote the BIP.

A BIP is a required part of an [IEP \(Individual Education Plan\)](#) if the behavior box is checked off where in the [Special Considerations](#) section where it asks whether communication, vision, hearing, behavior and/or mobility effect academic achievement. If a child's behavior disrupts the classroom and significantly interrupts his or her education, then a BIP is very much in order.

Usually a [special education teacher](#), a behavior analyst or a school psychologist will perform an [FBA](#) and using that information, write a document that describes target behaviors, replacement behaviors or behavioral goals, the procedure for changing or extinguishing the target behaviors, measures for success, and the people who will be responsible for instituting and following through on the BIP.

Evaluation Complete

After a child's evaluation is complete, parents will meet with a group of qualified professionals to discuss the results. This group will determine whether a child has a disability under IDEA. The school district must provide parents with a copy of the evaluation report. It must also give parents written information on how the group determined that the child was or was not eligible for services.

If the child is found eligible for special education and related services, the next step is to develop an IEP to meet that child's needs. The goals and objectives the IEP team develops relate directly to the strengths and needs that were identified through evaluation. It's important for parents to understand the results of the evaluation before beginning to develop an IEP. They may ask to have the evaluation results explained to them by a qualified professional.

It is important to review the evaluation summary report before developing the IEP. Many parents choose to review the results at home or other comfortable environment before meeting to develop an IEP.

XVI. Assessment Tools and Strategies

The individualized education program team shall...: Use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the child's parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities. 115.782(2)(a)1

The IEP team will get information about the child from many sources. The information can come from parents, tests, observations, the child's doctors or therapists. The information will be used to decide if the child qualifies for special education. The information will also help the team write the IEP so that the child can participate in the general curriculum.

Parents may write down information about their child for the IEP team. Parents should tell the other members of IEP team about the things the child can do well. They should also tell what the child likes to do and what is difficult. Parents can also ask a doctor or therapist to tell the IEP team about the child. Doctors or therapists may tell the IEP team in person, in writing or on a speakerphone.

Nondiscriminatory Evaluation

The individualized education program team shall...ensure: that assessments and other evaluation materials used to assess a child ...are selected and administered so as not to be racially or culturally discriminatory and are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so. 115.782(2)(a)3.a

The tests used must not discriminate against a child because of the child's race or culture. The tests must be given in the language normally used by the child, or in whatever way the child uses to communicate, if at all possible. Testing must be fair to children of all cultures and languages. Parents should tell the school how their child communicates best. Parents should make sure the school uses their child's communication methods for the testing.

The essence of this concept is that a fair means must be used to evaluate the condition of a student, and that fair testing measures must be used when hiring employees. This will ensure that they are placed or hired correctly, without discrimination because of a

disability.

Valid Testing

The individualized education program team shall...ensure: that assessments and other evaluation materials given to the child are used for the purposes for which they are valid and reliable, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of the assessments or evaluation materials. 115.782(2)(a)3.b

The IEP team selects the appropriate tests to measure the child's needs; the people giving the tests are properly trained, and follow the test's directions. The IEP team selects the appropriate tests to measure the child's needs; the people giving the tests are properly trained, and follow the test's directions. Parents can ask why the school used one test instead of another one. Parents may ask the school to use a particular test, but the school makes the final decision on which test it will use.

Complete Assessment

The individualized education program team shall...ensure: that the child is assessed in all areas of suspected disability. 115.782(2)(a)3.c The child is tested or evaluated in all areas of a suspected disability by the IEP team. The evaluation must be broad enough to find all the child's special education needs. Tests and other assessment procedures are picked to evaluate all of the child's needs. The IEP team does not look at just one part of the child's needs. Parents can ask that their child be tested in an area they are concerned about.

Review Existing Data

1. Review existing evaluation data on the child, including evaluations and information provided by the child's parents; previous interventions and the effects of those interventions; current classroom-based, local or state assessments classroom based observations; and observations by teachers and related services providers.

The team must examine all the current information available on the child from various sources, including information from the child's parents. The IEP team will look at anything that was tried prior to this evaluation and what changes may have occurred. The IEP team looks at any current assessments from the classroom. There may be observations made by teachers, other professionals, and qualified persons who have training in the suspected area of disability.

Members of the IEP team will review all of the child's records, including medical, attendance, behavioral, state and district testing information, etc. and will also look at any

information provided by the parents. The IEP team will look at anything that has been tried to help the child's education and look to see if those special things that were tried helped the child's education in any way. The IEP team will be looking at how the child learns and participates in regular education classes and other activities in the school. Parents tell the IEP team about their child.

Parents will be contacted by the school to go over existing records, what teachers have seen in the classroom, and what they have tried to help the child learn. Parents may ask to read the child's record. This part of the evaluation happens within 15 business days after the school receives a referral or within 15 business days from a notice of reevaluation.

Child is ineligible for special education services

If you, with the Committee, decide that your child does not require special education services or programs, the Committee will provide you with information indicating why the child is ineligible. If your child is of school-age, the Committee:

- will also send information to the principal of your child's school. The principal will be able to work with professionals in the school or with your child's current teacher, the reading teacher, the guidance counselor, or another specialist to help your son or daughter; and
- may make a referral under [Section 504 of the Rehabilitation Act of 1973](#) (a Federal civil rights law) to another multidisciplinary team within the school.

You will receive a written notice that explains the Committee's decision, and the information on which that decision was based. If you disagree with the decision of the Committee, you may request [mediation](#) and/or an [impartial hearing](#) to resolve the disagreement.

What happens if your child is eligible for special education services?

Upon completion of the administration of assessments and other evaluation measures, the individualized education program team shall determine whether the child is a child with a disability and the educational needs of the child. The team may not determine that a child is a child with a disability if the determinant factor for the determination is lack of appropriate instruction in reading, including in the essential components of reading instruction,...or lack of instruction in math, or because the child has limited English proficiency. 115.782(3)(a)

The school staff members, or other qualified professionals on the IEP team, do the testing with the child. Then the entire team, including the parents, decides if the child qualifies for special education. The IEP team will use state law to decide if the child qualifies for special education. The IEP team cannot decide the child has a disability if the child's problems are only because of poor or limited instruction in basic subjects or the child has limited English.

If the Committee decides your child is eligible for special education services, the Committee must identify the one disability category that most appropriately describes your child. The determination of a disability category is used solely for eligibility purposes and does not prescribe the program or services your child will receive. The Committee will develop and implement an [individualized education program \(IEP\)](#) to meet your child's needs. An **Individualized Educational Program (IEP)** is an educational plan for your child. If your child receives special education services, the Individuals with Disabilities Education Act (IDEA) requires that your child have an IEP!

In order for a child to be declared eligible for special education and related services it must be determined that the child is a "child with a disability" and is in need of special education and related services.

The parent will receive a written notice that explains the Committee's decision, and the information on which that decision was based. If you disagree with the decision of the Committee, you may request [mediation](#) and/or an [impartial hearing](#) to resolve the disagreement.

Child is found eligible for services. If the child is found to be a "child with a disability," as defined by IDEA, he or she is eligible for special education and related services. Within 30 calendar days after a child is determined eligible, the IEP team must meet to write an IEP for the child.

XV. Individualized Education Program

IEP meeting is scheduled.

The school system schedules and conducts the IEP meeting. School staff must:

- ☐ contact the participants, including the parents;
- ☐ notify parents early enough to make sure they have an opportunity to attend;
- ☐ schedule the meeting at a time and place agreeable to parents and the school;
- ☐ tell the parents the purpose, time, and location of the meeting;
- ☐ tell the parents who will be attending; and
- ☐ tell the parents that they may invite people to the meeting who have knowledge or special expertise about the child.

What special education services may my child receive?

For school-age students, special education services and programs may include specially designed instruction and supplementary services provided in the regular class, consultant teacher services, related services, resource room programs, special **classes, home and** hospital instruction or placement in an in-State or out-of-State approved private school, and/or 12 month special service and/or program.

Law And Regulations

The Code of Federal Regulations (CFR) in Volume 34, Section 300.346 entitled: "Content of individualized education program" states that:

(a) General

The IEP for each child must include--

1. A statement of the child's present levels of educational performance;
2. A statement of annual goals, including short-term instructional objectives;
3. A statement of the specific special education and related services to be provided to the child and the extent that the child will be able to participate in regular educational programs;
4. The projected dates for initiation of services and the anticipated duration of the services; and
5. Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved.

By law, the IEP must include certain information about the child and the educational program designed to meet his or her unique needs. In a nutshell, this information is:

- ☐ **Current performance.** The IEP must state how the child is currently doing in school (known as present levels of educational performance). This information usually comes from the evaluation results such as classroom tests and assignments, individual tests given to decide eligibility for services or during reevaluation, and observations made by parents, teachers, related service providers, and other school staff. The statement about "current performance" includes how the child's disability affects his or her involvement and progress in the general curriculum.
 - ☐ **Annual goals.** These are goals that the child can reasonably accomplish in a year. The goals are broken down into short-term objectives or benchmarks. Goals may be academic, address social or behavioral needs, relate to physical needs, or address other educational needs. The goals must be measurable-meaning that it must be possible to measure whether the student has achieved the goals.
 - ☐ **Special education and related services.** The IEP must list the special education and related services to be provided to the child or on behalf of the child. This includes supplementary aids and services that the child needs. It also includes modifications (changes) to the program or supports for school personnel-such as training or professional development-that will be provided to assist the child.
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- ☐ **Participation with nondisabled children.** The IEP must explain the extent (if any) to which the child will not participate with nondisabled children in the regular class and other school activities.
 - ☐ **Participation in state and district-wide tests.** Most states and districts give achievement tests to children in certain grades or age groups. The IEP must state what modifications in the administration of these tests the child will need. If a test is not appropriate for the child, the IEP must state why the test is not appropriate and how the child will be tested instead.
 - ☐ **Dates and places.** The IEP must state when services will begin, how often they will be provided, where they will be provided, and how long they will last.
 - ☐ **Transition service needs.** Beginning when the child is age 14 (or younger, if appropriate), the IEP must address (within the applicable parts of the IEP) the courses he or she needs to take to reach his or her post-school goals. A statement of transition services needs must also be included in each of the child's subsequent IEPs.
 - ☐ **Needed transition services.** Beginning when the child is age 16 (or younger, if appropriate), the IEP must state what transition services are needed to help the child prepare for leaving school.
 - ☐ **Age of majority.** Beginning at least one year before the child reaches the age of majority, the IEP must include a statement that the student has been told of any rights that will transfer to him or her at the age of majority. (This statement would be needed only in states that transfer rights at the age of majority.)
 - ☐ **Measuring progress.** The IEP must state how the child's progress will be measured and how parents will be informed of that progress.

Writing the IEP

To help decide what special education and related services the student needs, generally the IEP team will begin by looking at the child's evaluation results, such as classroom tests, individual tests given to establish the student's eligibility, and observations by teachers, parents, paraprofessionals, related service providers, administrators, and others. This information will help the team describe the student's "present levels of educational performance" -in other words, how the student is currently doing in school. Knowing how the student is currently performing in school will help the team develop annual goals to address those areas where the student has an identified educational need.

The IEP team must also discuss specific information about the child. This includes:

- ☐ the child's strengths;
 - ☐ the parents' ideas for enhancing their child's education;
 - ☐ the results of recent evaluations or reevaluations; and
 - ☐ how the child has done on state and district-wide tests.
-

It is important that the discussion of what the child needs be framed around how to help the child:

- ☐ advance toward the annual goals;
- ☐ be involved in and progress in the general curriculum;
- ☐ participate in extracurricular and nonacademic activities; and
- ☐ be educated with and participate with other children with disabilities and nondisabled children.

Based on the above discussion, the IEP team will then write the child's IEP. This includes the services and supports the school will provide for the child. If the IEP team decides that a child needs a particular device or service (including an intervention, accommodation, or other program modification), the IEP team must write this information in the IEP. As an example, consider a child whose behavior interferes with learning. The IEP team would need to consider positive and effective ways to address that behavior. The team would discuss the positive behavioral interventions, strategies, and supports that the child needs in order to learn how to control or manage his or her behavior. If the team decides that the child needs a particular service (including an intervention, accommodation, or other program modification), they must include a statement to that effect in the child's IEP.

Depending on the needs of the child, the IEP team needs to consider what the law calls special factors. These include:

- ☐ If the child's *behavior* interferes with his or her learning or the learning of others, the IEP team will consider strategies and supports to address the child's behavior.
- ☐ If the child has *limited proficiency in English*, the IEP team will consider the child's language needs as these needs relate to his or her IEP.
- ☐ If the child is *blind or visually impaired*, the IEP team must provide for instruction in Braille or the use of Braille, unless it determines after an appropriate evaluation that the child does not need this instruction.
- ☐ If the child has *communication needs*, the IEP team must consider those needs.
- ☐ If the child is *deaf or hard of hearing*, the IEP team will consider his or her language and communication needs. This includes the child's opportunities to communicate directly with classmates and school staff in his or her usual method of communication (for example, sign language).
- ☐ The IEP team must always consider the child's need for *assistive technology* devices or services.

Will Parents Need an Interpreter in Order to Participate Fully?

If the parents have a limited proficiency in English or are deaf, they may need an interpreter in order to understand and be understood. In this case, the school must make reasonable efforts to arrange for an interpreter during meetings pertaining to the child's educational placement. For meetings regarding the development or review of the IEP, the

school must take whatever steps are necessary to ensure that parents understand the meetings--including arranging for an interpreter. This provision should help to ensure that parents are not limited in their ability to participate in their child's education because of language or communication barriers.

Therefore, if parents need an interpreter for a meeting to discuss their child's evaluation, eligibility for special education or IEP, they should let the school know ahead of time. Telling the school in advance allows the school to make arrangements for an interpreter so that parents can participate fully in the meeting.

After the IEP is Written

When the IEP has been written, parents must receive a copy at no cost to themselves. The IDEA also stresses that everyone who will be involved in implementing the IEP must have access to the document. This includes the child's:

- ☐ regular education teacher(s);
- ☐ special education teacher(s);
- ☐ related service provider(s) (for example, speech therapist); or
- ☐ any other service provider (such as a paraprofessional) who will be responsible for a part of the child's education.

Each of these individuals needs to know what his or her specific responsibilities are for carrying out the child's IEP. This includes the specific accommodations, modifications, and supports that the child must receive, according to the IEP.

Parents' Permission

Before the school can provide a child with special education and related services for the first time, the child's parents must give their written permission.

Implementing the IEP

Once the IEP is written, it is time to carry it out--in other words, to provide the student with the special education and related services as listed in the IEP. This includes all supplementary aids and services and program modifications that the IEP team has identified as necessary for the student to advance appropriately toward his or her IEP goals, to be involved in and progress in the general curriculum, and participate in other school activities. While it is beyond the scope of this guide to discuss in detail the many issues involved in implementing a student's IEP, certain suggestions can be offered.

- ☐ Every individual involved in providing services to the student should know and understand his or her responsibilities for carrying out the IEP. This will help ensure that the student receives the services that have been planned, including the

specific modifications and accommodations the IEP team has identified as necessary.

- ☐ Teamwork plays an important part in carrying out the IEP. Many professionals are likely to be involved in providing services and supports to the student. Sharing expertise and insights can help make everyone's job a lot easier and can certainly improve results for students with disabilities. Schools can encourage teamwork by giving teachers, support staff and/or paraprofessionals time to plan or work together on such matters as adapting the general curriculum to address the student's unique needs. Teachers, support staff, and others providing services for children with disabilities may request training and staff development.
- ☐ Communication between home and school is also important. Parents can share information about what is happening at home and build upon what the child is learning at school. If the child is having difficulty at school, parents may be able to offer insight or help the school explore possible reasons as well as possible solutions.
- ☐ It is helpful to have someone in charge of coordinating and monitoring the services the student receives. In addition to special education, the student may be receiving any number of related services. Many people may be involved in delivering those services. Having a person in charge of overseeing that services are being delivered as planned can help ensure that the IEP is being carried out appropriately.
- ☐ The regular progress reports that the law requires will help parents and schools monitor the child's progress toward his or her annual goals. It is important to know if the child is not making the progress expected-or if he or she has progressed much faster than expected. Together, parents and school personnel can then address the child's needs as those needs become evident.

Reviewing and Revising the IEP

The IEP team must review the child's IEP at least once a year. One purpose of this review is to see whether the child is achieving his or her annual goals. The team must revise the child's individualized education program, if necessary, to address:

- ☐ the child's progress or lack of expected progress toward the annual goals and in the general curriculum;
- ☐ information gathered through any reevaluation of the child;
- ☐ information about the child that the parents share;
- ☐ information about the child that the school shares (for example, insights from the teacher based on his or her observation of the child or the child's classwork);
- ☐ the child's anticipated needs; or
- ☐ other matters.

Although the IDEA requires this IEP review at least once a year, in fact the team may review and revise the IEP more often. Either the parents or the school can ask to hold an IEP meeting to revise the child's IEP. For example, the child may not be making progress toward his or her IEP goals, and his or her teacher or parents may become concerned. On

the other hand, the child may have met most or all of the goals in the IEP, and new ones need to be written. In either case, the IEP team would meet to revise the IEP.

Look at Those Factors Again!

When the IEP team is meeting to conduct a review of the child's IEP and, as necessary, to revise it, members must again consider all of the factors discussed on page 11. This includes:

- ☐ the child's strengths,
- ☐ the parents' ideas for enhancing their child's education,
- ☐ the results of recent evaluations or reevaluations, and
- ☐ how the child has done on state and district-wide tests.

The IEP team must also consider the "special factors," as listed earlier.

Requirement that program be in effect.

At the beginning of each school year, each local educational agency shall have in effect, for each child with a disability, an individualized education program. 115.787(1 Each child eligible for special education must have a current IEP at the beginning of each school year. The school will make sure that the IEP for each child who qualifies for special education services is up-to-date and ready for the beginning of the school year. Parents should review their child's IEP at the beginning of the school year. They should make sure that all parts of the IEP fit the new school year. If the child has changed in some way that needs a change in the IEP, the parent can ask for a meeting to review the IEP.

IEP is reviewed.

The child's IEP is reviewed by the IEP team at least once a year, or more often if the parents or school ask for a review. If necessary, the IEP is revised. Parents, as team members, must be invited to attend these meetings. Parents can make suggestions for changes, can agree or disagree with the IEP goals, and agree or disagree with the placement.

If parents do not agree with the IEP and placement, they may discuss their concerns with other members of the IEP team and try to work out an agreement. There are several options, including additional testing, an independent evaluation, or asking for mediation (if available) or a due process hearing. They may also file a complaint with the state education agency.

Reevaluation

Students receiving special education services must be reevaluated when:

- conditions warrant a reevaluation, or
-

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- if the child's parents or teacher requests a reevaluation, but not more often than once per year

Evaluation must be conducted at least every three years unless parents and school staff agree that it is not needed. The results are used to monitor a child's progress in meeting the goals in his or her IEP and to determine whether the child continues to need special education and related services.

A reevaluation will include a review of existing data, information from parents, classroom assessments, and observations. The IEP team will decide if additional data are needed to determine if the child continues to need special education and related services. If the IEP team decides that no additional data are needed, parents will be informed in writing. At this point, the team is not required to conduct additional assessments unless parents or the child's teacher request them.

If parents disagree with the results of an evaluation, they have the right to obtain an independent educational evaluation (IEE). An IEE is conducted by qualified people who are not employed by the school. The school district must provide parents with a list names of possible examiners. The district must either provide the IEE at no cost to the parents or initiate a due process hearing to show that its evaluation was appropriate. If the result of the hearing is that the district's evaluation is appropriate, parents still have the right to obtain an IEE, but not at school district expense.

If parents obtain an independent educational evaluation on their own and it meets the school's criteria, those results must be considered by the IEP team. The results of an IEE must be considered by the IEP team in planning.

Each public school child who receives special education and related services must have an Individualized Education Program (IEP). Each IEP must be designed for one student and must be a truly *individualized* document. The IEP creates an opportunity for teachers, parents, school administrators, related services personnel, and students (when appropriate) to work together to improve educational results for children with disabilities. The IEP is the cornerstone of a quality education for each child with a disability.

To create an effective IEP, parents, teachers, other school staff--and often the student--must come together to look closely at the student's unique needs. These individuals pool knowledge, experience and commitment to design an educational program that will help the student be involved in, and progress in, the general curriculum. The IEP guides the delivery of special education supports and services for the student with a disability. Without a doubt, writing--and implementing--an effective IEP requires teamwork.

The individualized education program team shall reevaluate a child...at least once every 3 years unless the child's parent and the local educational agency agree that a reevaluation is not necessary. 115.782(4)(a)2. If the school and the parents agree that there is no need to do a reevaluation, the school does not have to do one. The school

sends a written notice to the parent saying when and how the school and parents agreed that a reevaluation is not needed.

XVI. Placements

Federal and State law require that school districts ensure that a continuum of alternative placements is available to meet the needs of children with disabilities. The continuum, in descending order from least to most restrictive, includes instruction in:

- General Education Classes
- Special Classes
- Special Schools/Centers
- Nonpublic Schools
- Home
- Hospitals
- Residential Schools

Policy for Determining Appropriate Placement

Placement decisions are governed by the least restrictive environment (LRE) legal requirement. “To the maximum degree appropriate children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” This means that decisions to place a child in a more restrictive environment should only be made after considering and determining that less restrictive environments with special education, related services and other supports cannot meet the student’s needs. Students should not be placed in environments that are more restrictive than necessary to meet their educational needs. Placements for students with disabilities should be in the school they would attend if nondisabled or as close to their home as possible.

XVII. Additional Services

Related Services

Related services means transportation and such developmental, corrective, and other supportive services as may be required to assist a child with a disability to benefit from special education. To receive one or more related services a child must have a disability,

need special education, and the related service must be determined to be necessary to benefit from the special education.

Related services include, but are not limited to:

- Audiology Services
- Counseling Services
- Language and Speech Therapy (Can be special education or a related service.)
- Medical Services (For diagnostic purposes only.)
- Occupational Therapy
- Orientation and Mobility Services
- Physical Therapy
- Psychological Services
- Rehabilitation Counseling Services
- Social Work Services
- Transportation

Transition Services

Transition refers to activities meant to prepare students with disabilities for adult life. This can include developing post secondary education and career goals, getting work experience while still in school, setting up linkages with adult service providers such as the vocational rehabilitation agency--whatever is appropriate for the student, given his or her interests, preferences, skills, and needs. Statements about the student's transition needs must be included in the IEP after the student reaches a certain age:

- ☐ **Transition planning**, for students beginning at age 14 (and sometimes younger)-- involves helping the student plan his or her courses of study (such as advanced placement or vocational education) so that the classes the student takes will lead to his or her post-school goals.
- ☐ **Transition services**, for students beginning at age 16 (and sometimes younger)-- involves providing the student with a coordinated set of services to help the student move from school to adult life. Services focus upon the student's needs or interest in such areas as: higher education or training, employment, adult services, independent living, or taking part in the community.

Beginning at least one year before the child attains the age of 18, and annually thereafter, a statement that the child has been informed of the child rights that will transfer to the child on reaching the age of 18... 115.787(2)(g) 3

When a child with a disability, other than a child who has been determined to be incompetent..., reaches the age of 18, all of the following apply:

- (1) The local educational agency shall provide any notice required by this sub chapter to both the individual and individual's parents.
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(2) All other rights accorded to the individual's parents under this sub chapter transfer to the individual.

(3) The local educational agency shall notify the individual and the individual's parents of the transfer of rights. 115.807

When the child is 17 years old, the school will tell the child that next year he or she will legally be an adult.

When a child with a disability reaches the age of 18, all rights under special education law go to the adult pupil. Parents and the adult pupil both get notices. The LEA notifies both the adult pupil and the parents of the transfer of rights. Schools tell pupils and families that at age 18 the pupil is legally an adult.

Schools inform adult pupils about their rights under special education law. Schools inform parents about the change. Schools send notices to both adult pupils and their parents.

Some children may need guardianship because of their disability. Guardianship is a legal process. Parents need to consult an attorney for help with the process. Only a court can appoint a guardian. Guardians are appointed for persons who are unable to make decisions about their health, finances, and well-being.

Parents should inform the school if they are in the process of filing for guardianship or need more information about it.

Local educational agency duties. A local educational agency shall demonstrate to the satisfaction of the division that it does all of the following:

(b) Makes available a free appropriate public education to children with disabilities as required by this sub chapter and applicable state and federal law. 115.77(1m)(b)

(a)General. (1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE...

(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis,...that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not—

(i) Limit extended school year services to particular categories of disability; or

(ii) Unilaterally limit the type, amount, or duration of those services.

(b) Definition. ...the term extended school year services means special education and related services that--

1. Are provided to a child with a disability--

i. Beyond the normal school year of the public agency;

ii. In accordance with the child's IEP; and

-
- iii. At no cost to the parents of the child and
2. Meet the standards of the SEA

34 CFR 300.106

The school must give extended school year (ESY) services to children who need it in order to receive a free appropriate public education. ESY is special education and related services beyond the regular school year. The LEA may give ESY services during summer or other school breaks. The LEA must give services that are listed in the IEP. The LEA cannot charge the parent for ESY services.

If the child may need extended school year (ESY) services, the IEP team needs to discuss it. The IEP team decides if a child needs ESY services. ESY is not just for children with certain disabilities. A child may need ESY services one year and not the next. The IEP team looks at all appropriate factors. The IEP team considers whether the child's gains made during the regular school year are threatened if the LEA does not give ESY services. Each child is different.

The IEP team should look at:

- the extent of the disability;
- the extent of the skills lost or that may be lost;
- the time needed to relearn skills;
- whether parents can help;
- how quickly the child learns;
- skill just being introduced;
- the child's behavior and physical needs;
- emerging skills; and
- other appropriate factors.

This list is not all the things for the IEP team to consider. A child does not have to meet all of these items. Not one item controls the decision.

ESY services are:

- not always the same as regular school year services;
- sometimes just related services such as occupational therapy or physical therapy, and
- given in a variety of places such as home, school, or community.

The IEP team writes the ESY services into the IEP.

Parents can ask for extended school year (ESY) services by asking for an IEP meeting. The IEP team decides if ESY services are needed. The IEP team does not have to discuss ESY unless a participant on the team asks about it. Parents may want to talk about ESY services with the IEP team. Parents can discuss their child's possible loss of skills.

Parents may look at the length of time it takes a child to regain skills after long vacation times from school. Parents may have other information about their child that may help the IEP team.

(a) *General*

(2) Each public agency must ensure that—

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR 300.114

Children with disabilities must be educated with nondisabled children as much as is appropriate. Children with disabilities are removed from regular classes to special classes or separate schools only if the child's disability is so severe that education in regular classes with aids and services is not satisfactory. The school must be sure that children with disabilities are educated with children who are not disabled as much as is appropriate.

Most children with disabilities should be educated with nondisabled children their own age. This includes children in institutions or other care centers. Children with disabilities can be removed from the regular classroom when the child's needs are so great they cannot be met in the regular classroom even with extra help.

XVIII. Section 504

Section 504 is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive Federal financial assistance from the U.S. Department of Education (ED). Section 504 provides: "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

The Section 504 regulations require a school district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the school district's jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of nondisabled students are met.

Terminology

The following terms may be confusing and/or are frequently used incorrectly in the elementary and secondary school context.

Equal access: equal opportunity of a qualified person with a disability to participate in or benefit from educational aid, benefits, or services

Free appropriate public education (FAPE): a term used in the elementary and secondary school context; for purposes of Section 504, refers to the provision of regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and is based upon adherence to procedures that satisfy the Section 504 requirements pertaining to educational setting, evaluation and placement, and procedural safeguards

Placement: a term used in the elementary and secondary school context; refers to regular and/or special educational program in which a student receives educational and/or related services

Reasonable accommodation: a term used in the employment context to refer to modifications or adjustments employers make to a job application process, the work environment, the manner or circumstances under which the position held or desired is customarily performed, or that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment; this term is sometimes used incorrectly to refer to related aids and services in the elementary and secondary school

context or to refer to academic adjustments, reasonable modifications, and auxiliary aids and services in the postsecondary school context

Reasonable modifications: under a regulatory provision implementing Title II of the ADA, public entities are required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity

Related services: a term used in the elementary and secondary school context to refer to developmental, corrective, and other supportive services, including psychological, counseling and medical diagnostic services and transportation

What services are available for students with disabilities under Section 504?

Section 504 requires recipients to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met. An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

Does the nature of services to which a student is entitled under Section 504 differ by educational level?

Yes. Public elementary and secondary recipients are required to provide a free appropriate public education to qualified students with disabilities. Such an education consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.

At the postsecondary level, the recipient is required to provide students with appropriate academic adjustments and auxiliary aids and services that are necessary to afford an individual with a disability an equal opportunity to participate in a school's program. Recipients are not required to make adjustments or provide aids or services that would result in a fundamental alteration of a recipient's program or impose an undue burden.

Once a student is identified as eligible for services under Section 504, is that student always entitled to such services?

Yes, as long as the student remains eligible. The protections of Section 504 extend only to individuals who meet the regulatory definition of a person with a disability. If a recipient school district re-evaluates a student in accordance with the Section 504 regulatory provision at 34 C.F.R. 104.35 and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

Are current illegal users of drugs excluded from protection under Section 504?

Generally, yes. Section 504 excludes from the definition of a student with a disability, and from Section 504 protection, any student who is currently engaging in the illegal use of drugs when a covered entity acts on the basis of such use. (There are exceptions for persons in rehabilitation programs who are no longer engaging in the illegal use of drugs).

Are current users of alcohol excluded from protection under Section 504?

No. Section 504's definition of a student with a disability does not exclude users of alcohol. However, Section 504 allows schools to take disciplinary action against students with disabilities using drugs or alcohol to the same extent as students without disabilities.

Evaluation

At the elementary and secondary school level, determining whether a child is a qualified disabled student under Section 504 begins with the evaluation process. Section 504 requires the use of evaluation procedures that ensure that children are not misclassified, unnecessarily labeled as having a disability, or incorrectly placed, based on inappropriate selection, administration, or interpretation of evaluation materials.

What is an appropriate evaluation under Section 504?

Recipient school districts must establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need special education and/or related services because of disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(b) requires school districts to individually evaluate a student before classifying the student as having a disability or providing the student with special education. Tests used for this purpose must be selected and administered so as best to ensure that the test results accurately reflect the student's aptitude or achievement or other factor being measured rather than reflect the student's disability, except where those are the factors being measured. Section 504 also requires that tests and other evaluation materials include those tailored to evaluate the specific areas of educational need and not merely those designed to provide a single intelligence quotient. The tests and other evaluation materials must be validated for the specific purpose for which they are used and appropriately administered by trained personnel.

How much is enough information to document that a student has a disability?

At the elementary and secondary education level, the amount of information required is determined by the multi-disciplinary committee gathered to evaluate the student. The committee should include persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The committee members must determine if they have enough information to make a knowledgeable decision as to whether or not the student has a disability. The Section 504 regulatory provision at 34 C.F.R. 104.35(c) requires that school districts draw from a variety of sources in the evaluation process so that the possibility of error is minimized. The information obtained from all such sources must be documented and all significant factors related to the student's learning process must be considered. These sources and factors may include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and

adaptive behavior. In evaluating a student suspected of having a disability, it is unacceptable to rely on presumptions and stereotypes regarding persons with disabilities or classes of such persons. Compliance with the IDEA regarding the group of persons present when an evaluation or placement decision is made is satisfactory under Section 504.

What process should a school district use to identify students eligible for services under Section 504? Is it the same process as that employed in identifying students eligible for services under the IDEA?

School districts may use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA. If school districts choose to adopt a separate process for evaluating the needs of students under Section 504, they must follow the requirements for evaluation specified in the Section 504 regulatory provision at 34 C.F.R. 104.35.

May school districts consider "mitigating measures" used by a student in determining whether the student has a disability under Section 504?

No. As of January 1, 2009, school districts, in determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, must *not* consider the ameliorating effects of any mitigating measures that student is using. This is a change from prior law. Before January 1, 2009, school districts had to consider a student's use of mitigating measures in determining whether that student had a physical or mental impairment that substantially limited that student in a major life activity. In the Amendments Act (see FAQ 1), however, Congress specified that the ameliorative effects of mitigating measures must not be considered in determining if a person is an individual with a disability.

Congress did not define the term "mitigating measures" but rather provided a non-exhaustive list of "mitigating measures." The mitigating measures are as follows: medication; medical supplies, equipment or appliances; low-vision devices (which do not include ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids and cochlear implants or other implantable hearing devices; mobility devices; oxygen therapy equipment and supplies; use of assistive technology; reasonable accommodations or auxiliary aids or services; and learned behavioral or adaptive neurological modifications.

Congress created one exception to the mitigating measures analysis. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining if an impairment substantially limits a major life activity. "Ordinary eyeglasses or contact lenses" are lenses that are intended to fully correct visual acuity or eliminate refractive error, whereas "low-vision devices" (listed above) are devices that magnify, enhance, or otherwise augment a visual image.

Are there any impairments which automatically mean that a student has a disability under Section 504?

No. An impairment in and of itself is not a disability. The impairment must substantially limit one or more major life activities in order to be considered a disability under Section 504.

Can a medical diagnosis suffice as an evaluation for the purpose of providing FAPE?

No. A physician's medical diagnosis may be considered among other sources in evaluating a student with an impairment or believed to have an impairment which substantially limits a major life activity. Other sources to be considered, along with the medical diagnosis, include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior. As noted in FAQ 22, the Section 504 regulations require school districts to draw upon a variety of sources in interpreting evaluation data and making placement decisions.

Does a medical diagnosis of an illness automatically mean a student can receive services under Section 504?

No. A medical diagnosis of an illness does not automatically mean a student can receive services under Section 504. The illness must cause a substantial limitation on the student's ability to learn or another major life activity. For example, a student who has a physical or mental impairment would not be considered a student in need of services under Section 504 if the impairment does not in any way limit the student's ability to learn or other major life activity, or only results in some minor limitation in that regard.

How should a recipient school district handle an outside independent evaluation? Do all data brought to a multi-disciplinary committee need to be considered and given equal weight?

The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized. All significant factors related to the subject student's learning process must be considered. These sources and factors include aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior, among others. Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student's individual circumstances.

What should a recipient school district do if a parent refuses to consent to an initial evaluation under the Individuals with Disabilities Education Act (IDEA), but demands a Section 504 plan for a student without further evaluation?

A school district must evaluate a student prior to providing services under Section 504. Section 504 requires informed parental permission for initial evaluations. If a parent refuses consent for an initial evaluation and a recipient school district suspects a student has a disability, the IDEA and Section 504 provide that school districts may use due process hearing procedures to seek to override the parents' denial of consent.

Who in the evaluation process makes the ultimate decision regarding a student's eligibility for services under Section 504?

The Section 504 regulatory provision at 34 C.F.R.104.35 (c) (3) requires that school districts ensure that the determination that a student is eligible for special education and/or related aids and services be made by a group of persons, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options. If a parent disagrees with the determination, he or she may request a due process hearing.

Once a student is identified as eligible for services under Section 504, is there an annual or triennial review requirement? If so, what is the appropriate process to be used? Or is it appropriate to keep the same Section 504 plan in place indefinitely after a student has been identified?

Periodic re-evaluation is required. This may be conducted in accordance with the IDEA regulations, which require re-evaluation at three-year intervals (unless the parent and public agency agree that re-evaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a re-evaluation, but not more than once a year (unless the parent and public agency agree otherwise).

Is a Section 504 re-evaluation similar to an IDEA re-evaluation? How often should it be done?

Yes. Section 504 specifies that re-evaluations in accordance with the IDEA is one means of compliance with Section 504. The Section 504 regulations require that re-evaluations be conducted periodically. Section 504 also requires a school district to conduct a re-evaluation prior to a significant change of placement. OCR considers an exclusion from the educational program of more than 10 school days a significant change of placement. OCR would also consider transferring a student from one type of program to another or terminating or significantly reducing a related service a significant change in placement.

What is reasonable justification for referring a student for evaluation for services under Section 504?

School districts may always use regular education intervention strategies to assist students with difficulties in school. Section 504 requires recipient school districts to refer a student for an evaluation for possible special education or related aids and services or modification to regular education if the student, because of disability, needs or is believed to need such services.

A student is receiving services that the school district maintains are necessary under Section 504 in order to provide the student with an appropriate education. The student's parent no longer wants the student to receive those services. If the parent wishes to withdraw the student from a Section 504 plan, what can the school district do to ensure continuation of services?

The school district may initiate a Section 504 due process hearing to resolve the dispute if the district believes the student needs the services in order to receive an appropriate education.

A student has a disability referenced in the IDEA, but does not require special education services. Is such a student eligible for services under Section 504?

The student may be eligible for services under Section 504. The school district must determine whether the student has an impairment which substantially limits his or her ability to learn or another major life activity and, if so, make an individualized determination of the child's educational needs for regular or special education or related aids or services. For example, such a student may receive adjustments in the regular classroom.

How should a recipient school district view a temporary impairment?

A temporary impairment does not constitute a disability for purposes of Section 504 unless its severity is such that it results in a substantial limitation of one or more major life activities for an extended period of time. The issue of whether a temporary impairment is substantial enough to be a disability must be resolved on a case-by-case basis, taking into consideration both the duration (or expected duration) of the impairment and the extent to which it actually limits a major life activity of the affected individual.

In the Amendments Act (see FAQ 1), Congress clarified that an individual is not “regarded as” an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

Is an impairment that is episodic or in remission a disability under Section 504?

Yes, under certain circumstances. In the Amendments Act (see FAQ 1), Congress clarified that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. A student with such an impairment is entitled to a free appropriate public education under Section 504.

Placement

Once a student is identified as being eligible for regular or special education and related aids or services, a decision must be made regarding the type of services the student needs.

If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an individualized education program (IEP) under the IDEA and a Section 504 plan under Section 504?

No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

Must a school district develop a Section 504 plan for a student who either "has a record of disability" or is "regarded as disabled"?

No. In public elementary and secondary schools, unless a student actually has an impairment that substantially limits a major life activity, the mere fact that a student has a "record of" or is "regarded as" disabled is insufficient, in itself, to trigger those Section 504 protections that require the provision of a free appropriate public education (FAPE). This is consistent with the Amendments Act (see FAQ 1), in which Congress clarified that an individual who meets the definition of disability solely by virtue of being "regarded as" disabled is not entitled to reasonable accommodations or the reasonable modification of policies, practices or procedures. The phrases "has a record of disability" and "is regarded as disabled" are meant to reach the situation in which a student either does not currently have or never had a disability, but is treated by others as such.

As noted in FAQ 34, in the Amendments Act (see FAQ 1), Congress clarified that an individual is not "regarded as" an individual with a disability if the impairment is transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

What is the receiving school district's responsibility under Section 504 toward a student with a Section 504 plan who transfers from another district?

If a student with a disability transfers to a district from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation. If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan. If the district determines that the plan is inappropriate, the district is to evaluate the student consistent with the Section 504 procedures at 34 C.F.R. 104.35 and determine which educational program is appropriate for the student. There is no Section 504 bar to the receiving school district honoring the previous IEP during the interim period. Information about IDEA requirements when a student transfers is available from the Office of Special Education and Rehabilitative Services at

What are the responsibilities of regular education teachers with respect to implementation of Section 504 plans? What are the consequences if the district fails to implement the plans?

Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

What is the difference between a regular education intervention plan and a Section 504 plan?

A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in

school. School districts vary in how they address performance problems of regular education students. Some districts employ teams at individual schools, commonly referred to as "building teams." These teams are designed to provide regular education classroom teachers with instructional support and strategies for helping students in need of assistance.

These teams are typically composed of regular and special education teachers who provide ideas to classroom teachers on methods for helping students experiencing academic or behavioral problems. The team usually records its ideas in a written regular education intervention plan. The team meets with an affected student's classroom teacher(s) and recommends strategies to address the student's problems within the regular education environment. The team then follows the responsible teacher(s) to determine whether the student's performance or behavior has improved. In addition to building teams, districts may utilize other regular education intervention methods, including before-school and after-school programs, tutoring programs, and mentoring programs.

