

Individuals with Disabilities Education Act (IDEA)

The Individuals with Disabilities Education Act (IDEA) is the landmark legislation that was enacted by Congress in 1975 as the Education for All Handicapped Children Act. Before this legislation was passed over one million children with disabilities were not allowed to attend public school. As this legislation has been amended over time, the role of parents in shaping the educational program and placement for their child has increased. The importance of parent participation and advocacy in this process cannot be overstated.

PART B

Part B of the Individuals with Disabilities Education Act (IDEA), as amended, is the federal law that requires states to provide a free, appropriate, public education (FAPE) to children with disabilities aged 3 to 21. Some states opt to provide Part B educational services (in addition to Part C early intervention services, see Part C below) to children from birth to 21. The right to special education services ends when the child receives a regular high school diploma. This does not include a certificate of attendance or the IEP diploma.

Eligibility: Children with disabilities eligible for special education are those that have been evaluated as having one or more of the disabilities listed in IDEA and determined to be in need of special education. This list includes:

- *Mental retardation;*
- *Hearing impairments (including deafness);*
- *Speech or language impairments;*
- *Visual impairments (including blindness);*
- *Serious emotional disturbance;*
- *Orthopedic impairments;*
- *Autism;*
- *Traumatic brain injury;*
- *Other health impairments (which now includes Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder); and,*
- *Specific learning disabilities*

States and local education agencies (LEAs) may choose to provide services to children age 3-9 who are experiencing "developmental delay" (as defined by the state) and in need of services. In addition, the regulations for the 1997 Amendments provide for a determination of autism even when a child manifests the characteristics of autism after age three.

IEP: Every child placed in special education must have an Individualized Education Program (IEP). The IEP is developed by a team that includes the child's parents, and the IEP process begins with a comprehensive evaluation of the child's needs. If the parent

disagrees with the evaluation that is done by the school they may request an independent evaluation at the school's expense. The IEP process is critical and what is put into the IEP will determine the nature, extent, and frequency of the services the child will receive. It includes the child's present level of performance, and measurable annual goals and short term objectives related to helping the child make progress or be involved in the regular curriculum, participate in extracurricular and nonacademic activities, and be educated and participate with other children.

The IEP outlines the special education services that the child will receive, any "related services" necessary for the child to receive a FAPE, and any supplementary aids or services that enable the child to be in the "least restrictive environment" (LRE) possible. Examples of related services include:

- *Speech language and therapy services;*
- *Occupational therapy services;*
- *Physical therapy services;*
- *Psychological therapy;*
- *Counseling services;*
- *Social work services;*
- *Recreation therapy;*
- *Transportation services;*
- *Health-related services not requiring a physician (such as routine catheterization, suctioning, etc.);*
- *Orientation and mobility services; and*
- *Assistive technology services.*

Supplementary aids and services may include classroom aids, assistive technology devices, adaptations and modifications to physical environments and other supports. The 1997 Amendments strengthen the importance of LRE by defining supplementary aids and services to include any supports that are provided in the "regular education classes or other education-related settings to enable children with disabilities to be educated with non-disabled children to the maximum extent appropriate."

The 1997 Amendments also provide for the inclusion of a regular education teacher on the IEP team if the child will or may be in a regular education classroom. In addition, the IEP team must consider special factors when developing the plan. These include:

- *Behavior issues and developing positive support strategies;*
- *Language needs of LEP students;*
- *Braille instruction for blind or visually impaired students unless the team determines it is not appropriate after an assessment of the child's future needs;*
- *Communication needs of students who are deaf or hard of hearing including opportunities for direct communication with peers and professionals in the child's language and communication mode and direct instruction in that mode; and,*

- *The need for assistive technology devices and services.*

In addition, when a child turns fourteen, the IEP should focus on what the child's postsecondary environment will be and what transition services may be needed related to that future – e.g., advanced placement or vocational education courses. By the time the child is 16, the IEP must have a statement not only of the transition services that are needed, but also a statement of any interagency responsibilities and the appropriate links to other entities that may be involved in the postsecondary setting.

Ideally, the IEP is ideally developed by consensus. However, sometimes a parent will disagree with the IEP that has been developed for their child. The parent has a right to appeal the IEP decisions and the school must provide an explanation of these rights, often referred to as "due process rights." Sometimes this explanation is provided on the back of the IEP form that the parent is asked to sign.

Procedural rights: The school is responsible for providing parents with an explanation, in the parents' native language, of what are referred to as "procedural safeguards." The school must also give the parents information about where to obtain help in understanding these safeguards. Parents have a right to:

- *Examine the educational records of their child;*
- *An independent evaluation of the child's needs;*
- *Prior written notice (in the parents' native language) whenever the educational agency proposes to or refuses to 1) change the child's placement, 2) conduct an evaluation or 3) identify the child as in need of services;*
- *An opportunity for mediation when a dispute arises;*
- *An opportunity to present a complaint when a dispute arises;*
- *A due process hearing on the complaint (due process means an impartial hearing officer, the right to have an attorney present, and the hearing is conducted in a manner that allows for the parents to present evidence, compel witnesses to appear, examine witnesses, obtain records, receive timely written findings, etc.);*
- *An appeal to the state education agency regarding the hearing if state law requires it;*
- *Civil action on the appeal;*
- *Attorney's fees (with certain limitations).*

In addition, whenever a complaint has been made and a due process proceeding is initiated, the child remains in the same placement until the process is completed. Special procedures must be in place for children who have an interim placement due to disciplinary proceedings.

Funding: All special education, related services and supplementary aids and services must be provided at no cost to the family. However, while the school is responsible for ensuring that the services are provided, the school can access other resources. In many instances the schools will access a child's Medicaid to pay for related services. The

parents may agree to allow the school to access their insurance, however the parents are not required to do so if it will result in a cost to the family. A cost may include out-of-pocket expenses such as co-payments or deductibles, using resources in a capped policy, risk of loss of eligibility for home and community-based waiver programs, an increase in premiums or discontinuation of a policy.

The school personnel may not be aware of the potential "costs" of accessing public or private insurance and families need to be aware of the specifics of their insurance policy(ies). The child's right to a FAPE is not dependent upon whether the parents consent to the use of their insurance. Families need to be particularly careful if they have private insurance and their child is a recipient of Medicaid, e.g., a recipient of home and community-based waiver services. School personnel may not be aware that the family has private insurance in addition to Medicaid and that Medicaid will attempt to recover the costs of a related service from the family's private insurance company. This may lead to a "cost" to the family.

There may be circumstances where the family would prefer to use their insurance. For example, if the child needs an augmentative communication device and the school purchases it, the school owns it (even when the child takes it home at night). However, the family owns the equipment if the family's insurance purchases the equipment. In that case, the school may, if the parents agree, pay the "costs" outlined above in order to access the family's insurance.

PART C

Part C of the Individuals with Disabilities Education Act (IDEA) is the section of the statute that provides for early intervention services for children with disabilities birth to age 3. Part C used to be Part H of the Act. Unlike Part B, this section anticipated that there would be multi-agency responsibility for providing services to infants, toddlers and their families. Each state designates a "lead" agency for Part C and the state plan for Part C includes the responsibilities of each participating agency. The state agencies usually include those responsible for education, health, human services, and the Title V program.

Eligibility: Infants and toddlers with a disability include those who are experiencing developmental delays in one or more of the following areas: cognitive, physical, communication, social or emotional, and adaptive development. In addition, infants and toddlers with a disability include those diagnosed with a physical or mental condition that has a high probability of resulting in developmental delay. Finally, a state may decide to provide services to infants and toddlers who are at-risk of experiencing substantial developmental delay if early intervention services are not provided. Developmental delay is determined by the state, and each state is required to have a system in place to identify and evaluate these children.

IFSP: Every child who is eligible for and receives Part C services must have an Individual Family Service Plan (IFSP). The IFSP is developed with the family and the IFSP team members. Each IFSP should be a broad portrait of what is desirable for the child and family. It should specify all the services that are needed by the family and the child and who will provide the service. The IFSP must have a statement about:

- *The child's present level of development;*
- *The family's resources, priorities and concerns related to enhancing the child's development,*
- *The major outcomes anticipated for the child and the family and how those outcomes will be measured and revised,*
- *The service coordinator for the IFSP, transition services when the child is ready for preschool.*

Most importantly, the IFSP MUST include a list of the early intervention (EI) services that will be provided. The IFSP should state how often the EI services will be provided and where. EI services are to be provided in the home if possible or other natural environments for the child. The statute defines early intervention services as developmental services that are:

- *Provided under public supervision;*
- *Provided at no cost to the family except where the state has a payment system by families that includes a schedule of sliding fees;*
- *Related to physical, cognitive, communication, social, emotional or adaptive development of the infant or toddler;*
- *Provided by qualified personnel; and*
- *To the maximum extent possible provided at home or in the community settings that have children with out disabilities.*

It is very important that the family understand that, unlike an IEP, not everything on the IFSP will be provided to the child and family at no cost or by trained professionals. Only early intervention (EI) services will be provided at no cost or on a sliding scale fee.

- *Early intervention services include:*
- *Speech-language pathology and audiology services;*
- *Family training, counseling, and home visits;*
- *Special instruction;*
- *Occupational therapy;*
- *Physical therapy;*
- *Psychological services;*
- *Service coordination services;*
- *Medical services only for diagnostic or evaluation purposes;*
- *Early identification, screening, and assessment services;*
- *Health services necessary to enable the infant or toddler to benefit from other EI services;*

- *Social work services;*
- *Vision services;*
- *Assistive technology devices and assistive technology services; and*
- *Transportation and related costs that are necessary to enable the child and the child's family to receive another EI service.*

Procedural Rights: The family has procedural and due process rights that are not as extensive as those in Part B. Because of the time limitations of the Part C program, civil actions have been and are limited. The state is responsible for developing procedural safeguards and including them in the state system for Part C. The minimum procedures that each state must have in place are:

- *A process for timely administrative resolution of complaints by parents;*
- *The right to bring a civil action in any court based on the administrative outcome of the complaint without regard to the amount in controversy;*
- *The right to have all personally identifiable information confidential. This is particularly important as it is anticipated that agencies will share information about the child. The parent has a right to written notice of and consent to exchange of information among agencies, consistent with state law;*
- *The right to accept or decline early intervention services;*
- *The opportunity for parents to examine records relating to any assessments and screenings, and the development of the IFSP;*
- *Procedures to protect the infants and toddlers without known or found parents by providing for a surrogate for the parents;*
- *Prior written notice to the parents whenever there is a change to or a refusal to initiate an identification, evaluation or placement of a child;*
- *Written notices and information about procedural safeguards must be provided if at all possible in the parents native language;*
- *The right to use the mediation procedures developed under Part B;*
- *The right to the continuation of services during the pendency of a complaint.*

Funding: Early intervention services that are needed by the child must be provided regardless of the family's ability to pay for them. The state must identify in its state plan if it has a system for families to pay for services and this system must include a sliding scale fee schedule. It is the role of the service coordinator to assist the family in finding the needed services and resources and securing financing for them. This may include enrollment of the family and/or child into Medicaid programs, state health insurance programs, family support subsidy programs and other medical assistance programs. In States that provide Part B services to infants and toddlers, the services may be funded by Part B dollars.