

AN ADMINISTRATOR'S GUIDE TO SPECIAL EDUCATION:

**An Overview of the History and Requirements of Part B
of the Individuals with Disabilities Education Act**

Jack

Jack is a 12-year-old 6th grader at Love My Middle School in Tucson, AZ. Jack likes riding his bike, playing video games, and he is a great soccer player. His favorite subject in school is math and his least favorite subject is English. He lives with his mom, dad, and little brother, Tommy. He has been eligible to receive special education and related services since the third grade.



Annie

Annie is a 14-year-old 9th grader at Cactus Wren High School in San Tan Valley, AZ. Annie writes poetry and short stories, and dreams of traveling to exotic places. Her favorite subject in school is art and her least favorite subject is math. Annie has moved around quite a bit, but currently lives with her mom and grandmother. She has been eligible to receive special education and related services since the fifth grade.



SPECIAL EDUCATION: AN HISTORICAL PERSPECTIVE

- *Pennsylvania Ass'n for Retarded Children (PARC) v. Pennsylvania (1972)*
- *Mills v. Board of Education of the District of Columbia (1972)*
- Education for all Handicapped Children Act (1975)



INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

- Enacted in 1975 and reauthorized in 1997 and 2004
- Protects the rights of children with disabilities
- Ensures they receive a *free appropriate public education* in the *least restrictive environment*



INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

Schools must develop individualized education programs (IEP) for eligible children that must:

- Be developed at a meeting by the child's IEP team
- Specifically identify the child's educational needs and outline a plan for meeting those needs
- Outline the child's present levels of academic achievement and functional performance, measurable annual goals, and special education and related services the child needs to make progress toward achieving those goals



CHILD WITH A DISABILITY

In order to be eligible for special education services, a child must:

- Have a disability
- Because of that disability, need special education and related services in order to make progress in the general curriculum.



CHILD WITH A DISABILITY

In Arizona, the categories of disability for children age 3 through 21 are:

- Autism
- Developmental Delay
- Emotional Disability
- Hearing Impairment
- Intellectual Disability
- Multiple Disabilities
- Multiple Disabilities with Severe Sensory Impairment
- Orthopedic Impairment
- Other Health Impairment
- Preschool Severe Delay
- Specific Learning Disability
- Speech and Language Impairment
- Traumatic Brain Injury
- Visual Impairment



THE FAPE MANDATE

Under the IDEA, all children with disabilities are entitled to a free appropriate public education – a FAPE – that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.



THE FAPE MANDATE

FAPE is defined to mean special education and related services that:

- Are provided at public expense, under public supervision and direction, and without charge
- Meet the standards of the State Education Agency
- Include preschool, elementary school, or secondary school education in the State
- Are provided in conformity with an IEP



THE ROLE OF THE PARENT

Schools must allow parents to participate in meetings that concern:

- **Identification**
- **Evaluation**
- **Educational placement**
- **FAPE**



DEFINITION OF “PARENT”

The IDEA defines a parent as:

- A biological or adoptive parent
- A foster parent
- A legal guardian
- An individual acting in the place of a biological or adoptive parent
- A surrogate parent
 - ❖ When more than one person meets the definition of a parent, the biological or adoptive parent (when attempting to act as the parent) must be presumed to be the parent unless he or she does not have legal authority to make educational decisions for the child.



ROLE OF THE PARENT SCENARIO

Annie is a 12 year old 7th grader. Annie lives with her mother and grandmother. Her father is serving a 5-year sentence in prison. You get a phone call from an investigator from Child Protective Services – she is asking questions about Annie because CPS suspects there may be abuse or neglect occurring in the home. You call the phone number listed in Annie's file and are notified by her grandmother that Annie's mother has not been around for over a month and she doesn't know where she is or when she'll be back.

It's time for the annual review of Annie's IEP and you need to send a meeting notice to her parent. Who can fulfill the role of parent?



SURROGATE PARENT

Schools are required to ensure the appointment of a surrogate parents for a child with a disability if any of the following are true:

- No parent can be identified
- After having made reasonable attempts, the school cannot determine the parents' whereabouts
- The child is a ward of the State and a parent cannot be identified or a school cannot determine the location of a parent after having made reasonable attempts (this does not include foster children)
- The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act



SURROGATE PARENT

In order to be eligible to serve as a surrogate parent, a person must:

- Possess adequate knowledge and skills to represent the child
- May not be an employee of a state agency involved in the education or care of the child
- May not have an interest that would conflict with the child's best interest
- Must have a valid fingerprint clearance card issued by the Arizona Department of Public Safety



CHILD FIND

The IDEA obligates schools to locate, identify, and evaluate all children with disabilities. This applies to all children residing in the state, regardless of the severity of the disability, including:

- “Highly mobile” children
 - Migrant
 - Homeless
 - Wards of the state
- Children attending private school
- Children suspected of having a disability who are advancing from grade to grade



CHILD FIND

In Arizona, schools must screen all children for disabilities within 45 calendar days:

- After a child enters a preschool program or Kindergarten
- After a child enrolls without appropriate records of screening, evaluation and progress in school
- Upon notification of concern by the parent
 - ❖ Parental consent is not required for screening



CHILD FIND

Screening procedures must include consideration of the following:

- Hearing and vision status
 - Cognitive
 - Academic
 - Communication
 - Motor
 - Social
 - Behavioral
 - Adaptive development
-
- ❖ Screening does not include a detailed individualized comprehensive evaluation



CHILD FIND

If concerns arise during the screening process, the school must notify the parent within 10 school days and address the concerns through some type of pre-referral intervention strategy.

Possible interventions include:

- Vision or hearing acuity screening
- Social or emotional interventions
- Academic interventions
- Referral to a child study team
- Referral for a full and individual evaluation



CHILD FIND SCENARIO

Jack is an 9-year-old 3rd grader who just transferred into World's Best Elementary School in Tucson, AZ. Jack's classroom teacher completed a 45-day screening form approximately 30 days after Jack enrolled. She noted some concerns in both reading and writing.

You review Jack's 45-day screener and have a conversation with the teacher. Following this conversation you refer Jack to the WBES child study team.

Jack is referred by the school for a comprehensive evaluation for special education and is found to be eligible for special education and related services as a child with a specific learning disability (SLD) in the areas of basic reading and written expression.



EVALUATION

Schools are required to conduct a full and individual evaluation in order to determine whether a child is or continues to be a child with a disability.

- Must first obtain informed written parental consent
- Must be completed within 60 calendar days



EVALUATION

Evaluation process

- Review of existing data
- Team decision
- Additional data, if any
- Eligibility considerations
- Eligibility determination



EVALUATION SCENARIO

Jack is an 11-year-old 5th grader who attends World's Best Elementary School in Tucson, AZ, and is eligible for special education and related services as a child with a specific learning disability (SLD) in the areas of basic reading and written expression. Recently Jack's classroom teacher and PE teacher have reported some concerns with Jack's behavior. He has been getting easily frustrated in class and has refused to do some of his work. Most significantly, his PE teacher caught him posturing toward another student after that student accidentally tripped him during a basketball game. The PE teacher was able to intervene before any physical altercation occurred, but as he removed Jack from the situation Jack continued to yell at the other student despite the other student's apologies.

Following the incident in PE you, the principal, call a meeting with the PE teacher, the classroom teacher, and Jack's special education teacher just to brainstorm. At this meeting the special education teacher says that Jack may have other needs that are not being addressed, or may even have another disability that has not been determined. Based on this conversation you believe that Jack should be re-evaluated in order to assess him in all areas of suspected disability, even though his re-evaluation is not due until the following school year.



EVALUATION:

INDEPENDENT EDUCATIONAL EVALUATION

Independent Educational Evaluations are evaluations conducted at the school's expense by a qualified evaluator not employed by the school.

- Parents may request each time they disagree with the school's evaluation
- School must either provide agency criteria or initiate a due process hearing
- IEP team must consider the results



CONSENT

Consent for initial provision of services is required before a school can provide special education.

- Absent consent the school *cannot* provide special education to the child.
- Schools *cannot* challenge the parent's decision to refuse to consent to services.



REVOCAION OF CONSENT

Parents may revoke consent for their child to receive special education and related services at any time.

- Must be in writing
- School must provide prior written notice
- School may not continue to provide services
- School is not in violation of its obligation to provide a FAPE
- School is not required to convene an IEP team meeting or develop an IEP
- School cannot challenge the parent's decision to revoke consent.
 - ❖ Revocation of consent is for *all* special education and related services, not *specific* services.



CONSENT SCENARIO

Annie is a 13 year old 8th grader eligible to receive special education and related services under the eligibility category of other health impairment due to ADHD. She has been eligible and has been receiving services since 5th grade. Early in the school year, Annie was living with her mother and grandmother. Her mother disappears intermittently and no one knows where she is for long periods of time. When she's home, Annie's mother makes her presence well known to the school and is clear that she is acting as the parent.

Annie was recently made a ward of the State by CPS due to neglect and is now living in a foster home.

Last week, Annie's father was released from prison and has decided he would like to be a part of Annie's life. He also received special education services as a child and vowed that no child of his would ever have to live with that stigma. Upon learning that Annie has an IEP, he makes an appointment with the school principal and hands her a letter essentially revoking consent. This is the first time anyone at the school has had any contact with Annie's father.



INDIVIDUALIZED EDUCATION PROGRAM (IEP)

An IEP:

- A written statement for a child with a disability
- Is developed by the child's IEP team
- Must be reasonably calculated to provide a FAPE
- Must be reviewed and revised, as appropriate, at least annually
- Must be implemented as written
- Must be in effect at the beginning of the school year
- Must be provided to the parent at no charge



IEP TEAM

The IEP team must include:

- Not less than one of the child's parents
 - The adult student, if legal rights have transferred
- Not less than one of the child's regular education teachers
- Not less than one of the child's special education teachers
- Individual to explain evaluation results
- A representative of the public school



IEP TEAM

Representative of the public school:

- Is qualified to provide, or supervise the provision of, special education
- Is knowledgeable about the general curriculum
- Is knowledgeable about the availability of the school's resources, **and has the authority to commit those resources**



IEP TEAM

The IEP team may include:

- Related service personnel
- Additional general and/or special education teachers
- Paraprofessionals or other classified personnel
- Any person the parent or school believes has knowledge or special expertise regarding the child
- Whenever possible, the student
- Outside agency representatives (with prior permission from the parent or adult student)



IEP TEAM

IEP team excusal if the member's area is not being modified or discussed:

- Any member may be excused from the entire, or part of, an IEP team meeting
- The parent and the school must *agree* to the excusal in writing

IEP team excusal if the member's area is being discussed:

- Any member may be excused from the entire, or part of, an IEP team meeting
- Parent and school must *consent*
- Excused member must submit written input prior to the meeting



IEP TEAM MEETINGS

Parent participation:

- Meeting notice
- Alternate means of participation
- Holding a meeting without the parent

Consensus

- Goal is to work toward agreement
- Not a “vote”
- Absent consensus, decision is made by **public agency representative**



IEP DEVELOPMENT

In developing an IEP, teams must consider:

- The child's strengths
- The parents' concerns
- The results of the child's most recent evaluation
- The child's academic, developmental, and functional needs



IEP CONTENTS

Each student's IEP must include:

- Present levels of academic achievement and functional performance (PLAAFP)
- Measurable annual goals
 - Objectives for students measured by alternate assessment
 - Progress monitoring tools
 - Progress reports
- Special education and related services
- Supplementary aids and services
 - Program modifications
 - Supports for school personnel
- Extent of non-participation with nondisabled peers
- Accommodations for State and district-wide assessment



IEP CONTENTS

Each student's IEP must include:

- Implementation date
- Frequency, location, and duration of services
- Post-secondary transition planning, beginning at age 16
- Transfer of rights
- Special factors:
 - Behavior
 - Limited English proficiency
 - Braille consideration, if VI
 - Communication consideration, if HI
 - Assistive technology



IEP CONTENTS

Extended School Year (ESY)

- Special education and related services provided beyond the normal school year
 - Is not limited to summer break
 - Can be before or after school
- Consider regression, recoupment, whether child is at a critical learning stage, other factors
- Decision must be based on retrospective and predictive data
- Must be determined no later than 45 days prior to the last day of school
- ESY is *not*:
 - Day care
 - Respite care
 - Summer recreation program/summer school
 - Educational program to maximize child's academic potential



DELIVERY OF SERVICES

Special education

- Specially designed instruction
- Individualized to meet the student's unique needs
- Adaptation of the content, methodology, or delivery of instruction within the general education curriculum
- Different from accommodations



DELIVERY OF SERVICES

Related services

- Developmental, corrective, and other supportive services
- Required to assist the child in benefitting from special education
- Includes, but is not limited to:
 - Speech-language therapy
 - Occupational or physical therapy
 - Counseling
 - Transportation
 - Nursing services
 - Orientation and mobility



ACCOMMODATIONS

Accommodations are provisions made to allow a student to access and demonstrate learning

- Allow the student equal access to learning
- Do not substantially change the instructional level
- Do not substantially change the performance criteria
- Do not substantially change the content of the curriculum or a test
- Are required to be considered for state and district-wide assessment

❖ Accommodations are not the same as program modifications



LEAST RESTRICTIVE ENVIRONMENT

To the maximum extent appropriate, children with disabilities are educated:

- With their nondisabled peers
- In special classes or schools, or otherwise removed from the regular education environment *only* when education in the regular class cannot be achieved satisfactorily with the use of supplementary aids and services
- As close to home as possible
- In the same school he or she would attend if nondisabled



CONTINUUM

Schools must ensure the availability of a *continuum of alternative placements*:

- Services provided in the regular education classroom
- Resource setting
- Self-contained setting
- Private day school
- Home-based instruction
 - ❖ This is not the same as homebound or home-schooling
- Hospitals or institutions
- Residential treatment centers

Placement decisions are made by the IEP team and based on the student's unique needs, not on the school's service model



UNILATERAL PLACEMENTS

“Unilateral placement” is the placement of a child with a disability in a private school by the child’s parent rather than by the IEP team.

Parents may be reimbursed for the cost of the private placement if they can prove in a due process hearing:

- The IEP offered by the public school was inappropriate, and
- The parent’s placement was proper

Reimbursement may be reduced or denied if:

- Parents did not inform the school:
 - that they were rejecting the school’s placement
 - that they intended to enroll the child in a private school either at the most recent IEP meeting or 10 business days prior to the removal
- Parents did not make the child available for an evaluation
- Upon a judicial finding of unreasonableness



IMPLEMENTING THE IEP

Each child's IEP must:

- Be implemented as soon as possible following development
- Be in effect before a school can provide services
- Accessible to each teacher and staff member responsible for its implementation



REVIEW AND REVISION OF THE IEP

IEP teams must review each child's IEP periodically, but not less than annually, to determine if the child is making progress, and revise the IEP as appropriate to address:

- Any lack of expected progress in the general curriculum or toward annual goals
- The results of a re-evaluation
- The child's anticipated needs

❖ The IEP can be changed outside of the IEP team any time after the annual review if the parent and the school agree.



REVIEW AND REVISION OF THE IEP

In Arizona, IEP meetings must be held within 15 school days of a parent's written request, or at a mutually agreed upon time not to exceed 30 school days.



TRANSFER STUDENTS

Schools must ensure the continuity of services for transfer students.

- In state transfers
- Out of state transfers
- Timeline for obtaining records



PROCEDURAL SAFEGUARDS NOTICE (PSN)

- The IDEA includes a system of “procedural safeguards” to protect the rights of children with disabilities and their parents.
- These procedural safeguards must be given to parents in the form of a notice written in the parents’ native language and in an easily understandable manner.



PROCEDURAL SAFEGUARDS NOTICE (PSN)

The PSN must be provided at least once a year, and/or:

- Upon initial referral for an evaluation by the school or parental request for an evaluation
- Upon receipt of the first administrative complaint in a school year
- Upon receipt of the first due process complaint in a school year
- Upon removal of the student for disciplinary reasons when the removal constitutes a change in placement
- Upon parental request



PROCEDURAL SAFEGUARDS NOTICE (PSN)

The PSN must include an explanation of the following topics:

- Independent educational evaluations (IEE)
- Prior written Notice (PWN)
- Parental consent
- Access to educational records
- Dispute Resolution
- Child's placement during the pendency of a due process hearing
- Placement in an interim alternative educational setting (IAES)
- Unilateral placement of children in private schools at public expense by their parents



PRIOR WRITTEN NOTICE (PWN)

Prior written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of the FAPE.

- PWN is a vital component of procedural safeguards.
- PWN is a record of decisions that have been made but have not yet been acted upon
- PWN gives parents notice so they may seek resolution if they disagree with a decision



WHEN IS A PWN GIVEN?

- Upon **IDENTIFICATION** or initial referral by the school for the child to be evaluated
- Upon the proposal or refusal to **EVALUATE**
 - Collection of additional evaluation data
 - Eligibility determination
- Upon proposal or refusal to initiate or change **PLACEMENT** in special education and within the continuum of alternate placements
- Upon the proposal or refusal to initiate or change the provision of **FAPE**



PWN FOR IDENTIFICATION

- PWN for identification is required when a decision is made to refer a child not currently identified as a child with a disability for evaluation.
- The purpose of the PWN is to outline for parents the decision to refer the child to the multi-disciplinary evaluation team (MET) and the reasons for the referral.
- PWN is provided **BEFORE** the review of existing data (RED)
 - ❖ This PWN comes **BEFORE** any psycho-educational evaluative “testing” occurs.



PWN FOR EVALUATION:

COLLECTION OF ADDITIONAL DATA

- PWN for evaluation is required when the team has made a decision regarding the collection of additional data.
- Review of Existing Data is **completed** and a decision has been made by the team whether or not to collect more data to determine:
 - Whether a child meets the criteria for a particular category of disability
 - Present levels of performance and educational needs
 - Whether the child needs special education and related services to make progress in the general curriculum



PWN FOR EVALUATION:

COLLECTION OF ADDITIONAL DATA

- The purpose of the PWN is to outline for parents the decisions made regarding evaluation:
 - The team determined that there is no need to collect additional data
 - The team determined that additional data are needed
 - The team must obtain parental consent to collect additional data.
 - ❖ This PWN comes **BEFORE** any psycho-educational evaluative “testing” occurs.



PWN FOR EVALUATION: ELIGIBILITY DETERMINATION

- PWN for evaluation is also required when the team has determined whether the child is a child with a disability.
- The purpose of the PWN is to inform the parents:
 - whether the child meets the criteria for a particular disability
 - whether the disability is impacting the child's ability to successfully access the general curriculum
 - whether the child needs special education and related services in order to make progress
- PWN is provided once the eligibility determination has been made, and if appropriate, the need for services has been identified.
 - ❖ This PWN comes **AFTER** any psycho-educational evaluative "testing" occurs.



PWN FOR EDUCATIONAL PLACEMENT

- PWN for placement is required when decisions about a child's placement within the continuum of alternate placements has been made. (The child has *already* been evaluated and found eligible for special education.)
 - For initial placement in special education a parent must provide informed written consent before the delivery of any services.
 - Exiting special education constitutes a change in placement and requires a PWN.
 - Graduation from high school with a regular high school diploma is a change in placement.
 - Disciplinary removals that constitute a change in placement require a PWN.
- PWN is provided after a parent consents to initial provision of services and after the IEP has been developed or amended and placement has been determined.



FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

- PWN is required for FAPE after an IEP has been developed or amended.
 - When the team has determined what constitutes special education and related services for this student
 - When a parent requests additions or modifications to FAPE that the school refuses
- The purpose of the PWN is to outline for the parents the actions proposed as a result of the IEP review or amendment and/or those actions that are refused such as:
 - Special education and related services
 - Measurable annual goals
 - Supplementary aids and services



DISCIPLINE

The 10-day Rule:

- School personnel may remove a student with a disability who commits a violation of the student code of conduct for not more than **10 school days** to an appropriate interim alternative educational setting, another setting, or suspension.



DISCIPLINE

Remember to consider:

- In-school suspensions
- Partial day suspensions
- Bus suspensions
 - ❖ These all may “count” toward 10 days, depending upon circumstances.



THE 11TH DAY

After a student with a disability has been removed from his or her current placement for 10 school days in a school year, services must be provided during any subsequent removals.



CHANGE OF PLACEMENT

A change of placement occurs if:

- The student is removed for more than 10 consecutive school days.
- The student is subjected to a series of removals that constitute a pattern because:
 - they cumulate to more than 10 school days in a school year;
 - the child's behavior is substantially similar to his behavior in previous incidents that resulted in a removal; and
 - because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
 - School personnel determine on a case-by-case basis if a pattern of removals constitutes a change of placement.



PROVISION OF SERVICES

School personnel, in consultation with at least one of the student's teachers, decide what educational services to offer during removals that do not constitute a change of placement.



PROVISION OF SERVICES

The **IEP team** determines the extent to which services are necessary to enable the child to progress in the general curriculum and appropriately advance toward achieving the goals set out in his or her IEP during removals that constitute a change of placement.



NOT a Change of Placement

Provide services as determined by school personnel in consultation with at least one of the student's teachers.

Day 11

First 10 Days = FAPE Free Zone

Procedural Safeguards Notice

PWN for change of placement

Manifestation Determination

Change of Placement

Provide services as determined by the student's IEP team.



MANIFESTATION DETERMINATION

- A manifestation determination is a meeting to determine if the child's behavior that gave rise to the disciplinary incident was a manifestation of his or her disability.
- The manifestation determination is conducted by the school, the parent, and relevant members of the IEP team (as determined by the parent and the school).
- The manifestation determination must take place within **10 school days** of any decision to change the placement of a child with a disability due to a violation of a code of student conduct.



MANIFESTATION DETERMINATION

A manifestation determination is required when:

- A school is considering removing a child from his or her current educational placement for more than 10 consecutive school days
- A school is considering removing a child from his or her current educational placement more than 10 cumulative school days in a school year, if that removal is deemed a change in placement
- Any time placement is made in an Interim Alternative Educational Setting (IAES)



MANIFESTATION DETERMINATION

The conduct shall be deemed a manifestation of the child's disability if either of the following apply:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability

OR

- If the conduct in question was the direct result of the school's failure to implement the IEP



MANIFESTATION DETERMINATION

If the behavior **IS** a manifestation of the child's disability, the IEP team must:

- Conduct a functional behavioral assessment, if one has not already been done;
- Implement a behavior intervention plan; or
- If a behavior intervention plan is already in place, review and modify it as necessary to address the current behavior; and
- Return the child to the placement from which he or she was removed UNLESS:
 - The offense involved “special circumstances” (drugs, weapons, or serious bodily injury); or
 - The parents and school agree to a change of placement



MANIFESTATION DETERMINATION

If the behavior is **NOT** a manifestation of the child's disability, the school :

- May go forward with a regular disciplinary action
- Must continue to provide the student with a free appropriate public education (FAPE), although in another setting



SPECIAL CIRCUMSTANCES

School personnel may remove a student with a disability to an Interim Alternative Educational Setting (IAES) for not more than *45 school days*, regardless of whether the behavior is a manifestation of the student's disability under three "special circumstances."



SPECIAL CIRCUMSTANCES

- The child carries or possesses a **weapon** to or at school, on school premises, or to or at a school function
- The child knowingly possesses or uses **illegal drugs**, or sells or solicits the sale of a **controlled substance**, while at school, on school premises, or at a school function
- The child has inflicted **serious bodily injury** upon another person while at school, on school premises, or at a school function



DEFINITION OF “WEAPON”

A device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length

18 U.S.C. § 930



DEFINITION OF “ILLEGAL DRUGS” & “CONTROLLED SUBSTANCES”

The term controlled substance means a drug or other substance identified under schedule I, II, III, IV, or V in section 202(c) of the Controlled Substances Act.

The term illegal drug means a controlled substance but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional.



DEFINITION OF “SERIOUS BODILY INJURY”

This term does not apply to every assault, but applies in situations that do not involve a weapon, but that involve:

- A substantial risk of death
- Extreme physical pain
- Protracted and obvious disfigurement
- Protracted loss or impairment of the function of a bodily member, organ, or mental faculty

18 U.S.C. § 1365(h)



INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)

An IAES is a temporary educational placement for a period of up to 45 school days, other than the student's original placement, where students may be sent:

- Under the “special circumstances” without initiating a due process hearing (principal may make determination)
- By initiating an expedited due process hearing, if school personnel can show that maintaining the student in his or her current placement is substantially likely to result in injury to self or others



INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)

The IAES is determined by the IEP team, must be *appropriate*, and must:

- Enable to the student to continue to participate in the general curriculum (though in a different setting),
- Provide services and modifications described in the student's IEP that will enable the student to progress toward meeting the goals set out in his or her IEP
- Provide behavioral intervention services and modifications to address the behavior so that it does not recur



APPEALS

- IDEA allows a parent who disagrees with any decision regarding placement (IAES) or the manifestation determination to initiate an expedited due process hearing
- IDEA allows school personnel to initiate a due process hearing if they believe that maintaining the student's current placement is substantially likely to result in injury to self or others



PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION

A child who is not yet eligible under the IDEA, but who commits a violation of the student code of conduct, may assert the rights and protections of IDEA's disciplinary provisions if the school *had knowledge* that the child was a child with a disability before the behavior that precipitated the disciplinary action took place.



PRIOR KNOWLEDGE

A school will be deemed to “have knowledge” if, prior to the violation:

- The child’s parent expressed concern *in writing* to the school’s supervisory or administrative personnel, or to the child’s teacher, that the child is in need of special education services
- The parent had requested that the student receive an evaluation for special education
- The child’s teacher, or other school personnel, had expressed directly to the director of special education or to other supervisory personnel, specific concerns about a pattern of behavior demonstrated by the child



NO PRIOR KNOWLEDGE

A school will **NOT** be deemed to “have knowledge” if, prior to the violation:

- The parent refused to allow the school to evaluate the child or refused to allow the school to provide services to the child
- If the school had already evaluated the child and he or she was found ineligible
- If the parent has revoked consent for special education services



DISPUTE RESOLUTION OPTIONS

- MEDIATION
- DUE PROCESS HEARING SYSTEM
- ADMINISTRATIVE COMPLAINTS



MEDIATION

The Individuals with Disabilities Education Act (IDEA) mandates that states establish procedures to allow parties to disputes involving any matter under IDEA to resolve those disputes through mediation.



MEDIATION

- Mediation is voluntary, informal, and is offered at no cost to either party.
- The Arizona Department of Education/ Dispute Resolution (ADE/DR) selects mediators, and evaluates and monitors the mediation system.



MEDIATION

- IDEA requires mediation agreements to be in writing and signed by the parent and a school representative with authority to bind the agency.
- The agreement must include a statement regarding confidentiality.
- The agreement is enforceable in a state court of competent jurisdiction or in federal court.



MEDIATION

Mediation is confidential, and nothing said in the mediation can be used as evidence in a due process hearing or civil proceeding.



DUE PROCESS

Due process provides a means for parents and schools to resolve any matter relating to identification, evaluation, placement, or the provision of a free appropriate public education.



DUE PROCESS

Parents, students who have reached the age of majority, or a school may request due process.



DUE PROCESS

Since August of 2005, Arizona operates under a **one-tier due process system** and all hearings are conducted by the Arizona Office of Administrative Hearings (OAH) by an Administrative Law Judge (ALJ).



DUE PROCESS

IDEA requires that a request for a due process hearing be made within **two (2) years** of the date the complainant knew or should have known about the alleged action, unless the parent was prevented from requesting the hearing due to specific misrepresentations by the school that the problem was resolved, or if the school withheld information requested by the parent.



DUE PROCESS

Due process complaint notice:

- Must be filed with the Arizona Department of Education **and** the other party.
- Must be “sufficient.”
- May be amended only with written consent of the other party, or with permission from the due process hearing officer, but not later than five (5) days before the hearing.



DUE PROCESS

The party against whom due process has been filed has 10 days to respond to the complaint.



DUE PROCESS

Before a hearing may occur, the IDEA requires a mandatory “resolution period” of 30 days:

- Parties can attempt resolution in a “resolution session”

OR

- Parties may agree to mediation



RESOLUTION SESSION

- Part of the mandatory resolution period built in to the due process system
- A meeting that must occur after a parent has filed a due process hearing request and before the due process hearing timeline begins
- Provides the parents the opportunity to discuss their due process complaint and the facts that form the basis of the complaint
- Provides the public education agency (PEA) is the opportunity to resolve the parents' complaint



DUE PROCESS HEARING TIMELINE

The standard 45-day due process hearing timeline begins at the end of the 30-day resolution period, or the day after one of the following events:

- Both parties agree in writing to waive the resolution meeting
- After either the mediation or the resolution session starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible
- Both parties agree in writing to continue mediation at the end of the 30-day resolution period, but later, the parent or PEA withdraws from the mediation process
 - ❖ If one of the above occurs, immediately notify the administrative law judge and the ADE/DR.



DUE PROCESS

During the hearing, the child “**stays put**” in his or her current placement.



DUE PROCESS

In 2005, the United States Supreme Court issued a decision that the burden of proof in a due process hearing lies with the party seeking relief.

Schaffer v. Weast



EXPEDITED DUE PROCESS

- A due process hearing relating to disciplinary matters involving a student with a disability.
- Parties have seven (7) days from the date the hearing is requested to hold a resolution meeting, and 15 days to reach resolution.
- If resolution is unsuccessful, the hearing must be conducted within 20 school days of the date the request was received.
- The hearing officer has 10 days following the hearing to issue a decision.



EXPEDITED DUE PROCESS

The student remains in the interim alternative educational setting (IAES) pending the hearing officer's decision or until the disciplinary period expires, whichever occurs first, unless the parties agree otherwise.



DUE PROCESS

- Either party may appeal the hearing officer's final decision to a state court of competent jurisdiction or federal court.
- In Arizona, the party bringing the action must file for an appeal within 35 days of receipt of the hearing officer's written decision.



DUE PROCESS

IDEA has long allowed parents to recover attorney's fees from schools under certain circumstances.



DUE PROCESS

- Fees may be recovered *from the parent's attorney* for filing a complaint, or continuing litigation that is frivolous, unreasonable, or without foundation.
- Fees may be recovered from the *parent or the parent's attorney* for filing a complaint or otherwise continuing litigation for an improper purpose such as harassment, to cause unnecessary delay, or to needlessly increase the cost of litigation.



ADMINISTRATIVE COMPLAINTS

Anyone can file a complaint, including:

- Parents
- Advocates
- Teachers
- Students
- An organization
- An individual from another state



ADMINISTRATIVE COMPLAINTS


Complaints must meet the following criteria:

- Must be signed and must include contact information
- Must include a statement that a public agency has violated a requirement of Part B of the IDEA or a state special education statute
- Must clearly identify the issue and state sufficient facts
- Must include the name and address of the child and the name of the school the child is attending (if alleging a violation with respect to a specific child,
 - If the child is homeless (as defined by the McKinney-Vento Homeless Assistance Act), the complaint must include available contact information.
- Must include a proposed resolution



ADMINISTRATIVE COMPLAINTS

Dispute Resolution does not have the authority to investigate:

- Matters involving Section 504 of the Rehabilitation Act
 - Civil rights violations
 - Allegations of abuse or neglect
 - Allegations involving immoral or unprofessional conduct by certificated individuals
 - Issues that have already been resolved in a due process hearing or issues currently the subject of a due process hearing
- 

ADMINISTRATIVE COMPLAINTS

- Complaints must allege a violation that occurred not more than **one year** prior to the date the complaint was filed.
- The ADE/DR has **60 calendar days** to investigate a complaint and issue a formal report outlining the findings of fact and the determination of compliance or non-compliance
 - ❖ Holidays and school vacations do not affect these timelines.



ADMINISTRATIVE COMPLAINTS

The 60-day timeline may only be extended if:

- Exceptional circumstances exist with respect to the particular complaint; or
- The complainant and the school agree to extend the time in order to engage in mediation.



ADMINISTRATIVE COMPLAINTS

During the 60-day investigation period, a complaint investigator will:

- Review all relevant information
- Carry out an on-site investigation if determined to be necessary
- Give the complainant the opportunity to submit additional information, either verbally or in writing, about the complaint allegations
- Provide the school the opportunity to respond to the complaint allegations (which may include a proposal to resolve the complaint)
- Provide the complainant and the school the opportunity to voluntarily engage in mediation
- Issue a written decision



ADMINISTRATIVE COMPLAINTS

**Letters of Findings
are final and
are not subject to appeal.**



CORRECTIVE ACTION

If noncompliance is identified, the SEA is required to ensure that it is corrected within one year.

Corrective action must address:

- The needs of the child, such as the need for compensatory services or monetary reimbursement
- Appropriate future provision of services for all children with disabilities



CORRECTIVE ACTION

Corrective action may take many forms, but should address any student specific noncompliance as well as systemic noncompliance.

- School may be required to provide compensatory services to a student.
- School may be required to create written procedures to remediate noncompliance.
- School may be ordered to receive training.



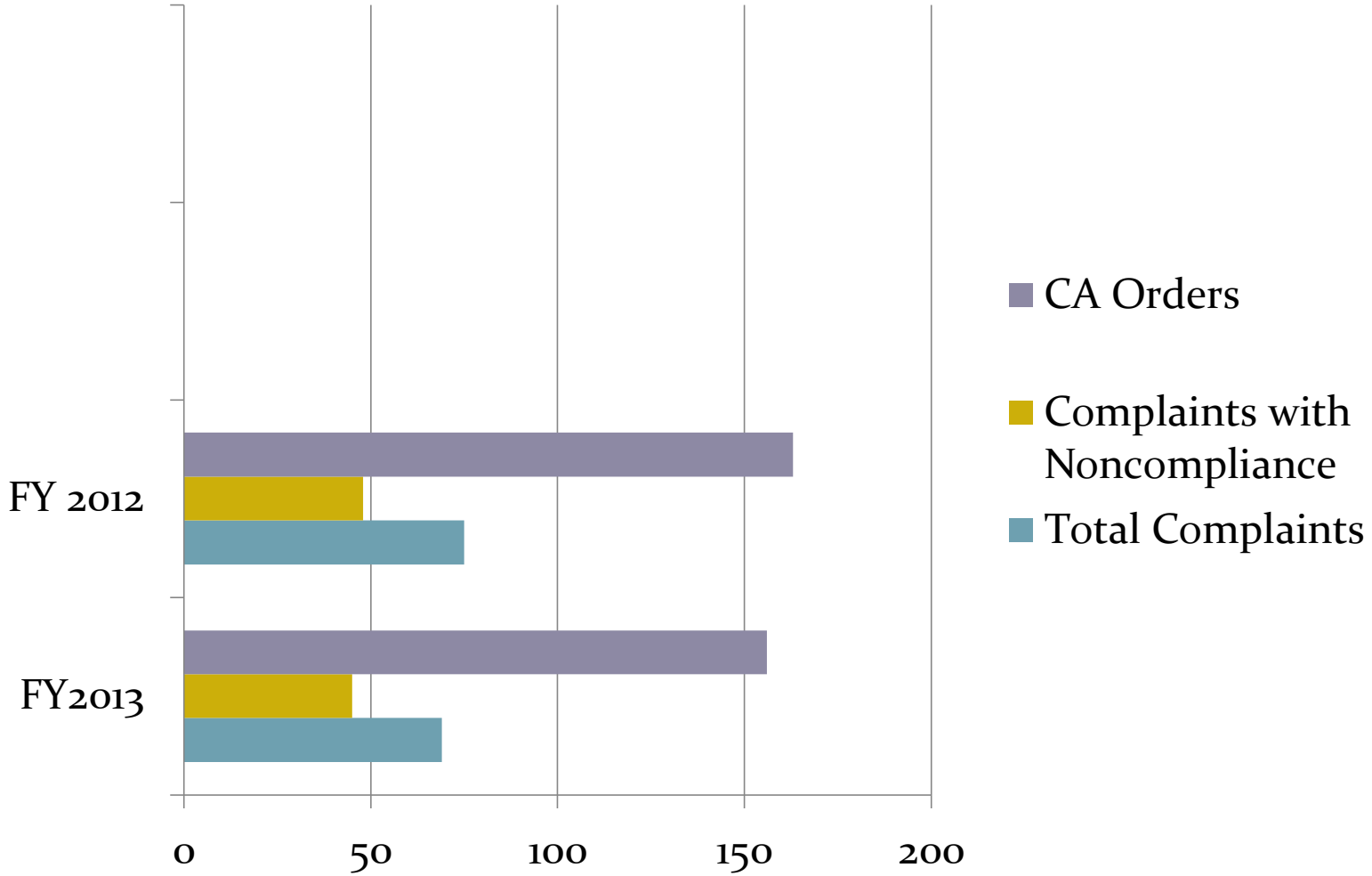
ENFORCEMENT

Failure to comply with a corrective action plan can result in the following enforcement actions:

- Interruption of federal funds.
- Redirection of federal funds to ensure the child receives a free appropriate public education (FAPE).
- Violations reported to the sponsoring entity and remedies sought through the appropriate board, if applicable.



COMPLAINT DATA



FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy interests of parents and “eligible” students, which are students who have turned 18 or attend postsecondary institutions.



COMPONENTS OF FERPA

FERPA has two main components:

- Parents have the right to inspect and review their children's education records maintained by the school.
- With few exceptions, schools are prohibited from disclosing confidential student records without prior parental consent.



RIGHT TO INSPECT AND REVIEW

FERPA requires schools to allow parents of students who are or have been in attendance at the school to inspect and review their child's education records within 45 days of a request to do so.



EDUCATION RECORDS

Education records are:

- Records that are directly related to a student.
- Records that are maintained by a school or a party acting on the school's behalf.

Education records exist in a variety of formats.

- Digital/Electronic
- Handwritten
- Printed



EDUCATION RECORDS

Education records are *not*:

- Personal notes or memory aids
- Records kept in the sole possession of the maker
- Records of the school's law enforcement unit



RIGHT TO CONSENT TO DISCLOSURE

FERPA requires schools to obtain consent of parents of students who are or have been in attendance at the school prior to the disclosure of education records, with a few exceptions.



DISCLOSURE

Disclosure means to permit access to or the release, transfer, or other communication of confidential education records to any party by any means, including oral, written, or electronic.



DISCLOSURE WITHOUT CONSENT

FERPA prohibits schools from disclosing students' education records, or personally identifiable information contained in those records, without the written consent of their parents, with a few exceptions.



PERSONALLY IDENTIFIABLE INFORMATION

Personally identifiable information includes but is not limited to:

- Students' names
- Names of students' family members
- Addresses of students or their families
- Personal identifiers such as social security numbers or student numbers
- A list of personal characteristics that would make the student's identity easily traceable
- Other information that would make the student's identity easily traceable



DISCLOSURE WITHOUT CONSENT

FERPA allows the release of records *without* prior consent to certain parties under certain conditions:

- School officials with legitimate interest
- Other schools to which a student is transferring
- Specified officials for audit or evaluation purposes
- Appropriate parties in connection with financial aid
- Organizations conducting certain studies for/on behalf of the school
- Accrediting organizations
- In compliance with a judicial order or lawfully issued subpoena
- Appropriate officials in cases of health and safety emergencies
- State and local authorities within juvenile justice
- Appropriate representatives of agencies responsible for the care and custody of children, in accordance with the Uninterrupted Scholars Act



DIRECTORY INFORMATION

Without consent, schools may disclose “directory information.”

- Information contained in an educational record that is not generally considered harmful or an invasion of privacy if disclosed
- Student’s name, address, phone number, date and place of birth, honors/awards, dates of attendance
 - Schools must give public notice of the categories of information it has designated as directory information;
 - Schools must allow parents/eligible students a reasonable time to request that directory information not be disclosed without consent.



ANNUAL NOTIFICATION UNDER FERPA

Schools must annually notify parents and eligible students of their rights under FERPA.

- Right to inspect and review records
- Right to request amendment of records
- Right to consent to disclosure of records
- Right to file a complaint regarding a school's failure to comply with FERPA

Notice may be given by any means that are reasonably likely to inform parents and eligible students of their rights.



CONFIDENTIALITY UNDER THE IDEA

The IDEA incorporates FERPA into its regulations and also imposes additional confidentiality requirements .

Under IDEA, State Educational Agencies must provide notice to parents of children with disabilities about their rights under FERPA and IDEA.

- The ADE provides this notice in English and Spanish on the website:

www.ade.az.gov/ess/resources/forms



RIGHT TO INSPECT AND REVIEW RECORDS UNDER THE IDEA

- Parents/eligible students or their representatives have the right to inspect and review all education records pertaining to identification, evaluation, placement, and the provision of a free appropriate public education (FAPE).
- Schools must comply with a request to review records within 45 days as well as before any IEP meeting or meeting related to a special education due process hearing.
- The right to review records includes a response to reasonable requests for explanations of the records.
- Parents/eligible students may request that schools provide copies of the records.
 - Schools may charge for copies of records if the fee doesn't interfere with the right to review the records.



RECORDS ACCESS UNDER THE IDEA

- If education records include information on more than one child, a parent/eligible student only has a right to review the information pertaining to his or her child/him or herself.
- Schools must maintain a record of parties who accessed the student's records.
- If a parent/eligible student believes that information contained in a record is inaccurate or misleading, he or she can ask for the record to be amended.
 - If the school decides not to amend the record the parent/eligible student has a right to a formal hearing regarding the requested amendment.
 - If following the hearing the school still decides not to amend the record the parent/eligible student may place a statement in the record commenting on the contested information.



ANNUAL NOTIFICATION UNDER IDEA

Schools must annually notify parents of children with disabilities and eligible students of their rights regarding accessing education records.

- Right to inspect and review records
- Right to request amendment of records
- Right to consent to disclosure of records

This notice must be provided to parents of children with disabilities and eligible students as part of a procedural safeguards notice that must be provided at least annually.



CONTACT INFORMATION

Kacey Gregson

Deputy Director of Legal Services

Kacey.Gregson@azed.gov

Shannon Chavez

Corrective Action Compliance Monitor

Shannon.Chavez@azed.gov

Dispute Resolution: 602-542-3084

