

The Special Education Handbook:
*A brief overview of the history and requirements of
Part B of the IDEA*



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"Education is not preparation for life; education is life itself." ~ John Dewey

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I. American Government in a Nutshell

“The people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived.”

~ James Madison

Three branches of government

- Legislative
- Executive
- Judicial

Where do our laws come from?

- From the Legislative branch of government, we get **statutes**.
- From the Executive branch of government, we get **rules and regulations**.
- From the Judicial branch of government, we get **case law**.

How does it all work?

- **Statutes** result from legislation created by federal and state legislatures. Federal laws and state laws should work in harmony with one another, but if they are inconsistent, federal law controls.
- **Regulations or rules** are part of the administrative law system. These allow a statute to be implemented and are created by administrative agencies (such as the Department of Education) established by the Executive branch of government. Regulations (federal) and rules (state) are typically more specific and detailed than the laws they implement.
- **Case law** is the written court decision that results from a lawsuit. There are both federal and state court decisions, depending whether the case was filed in a federal court or a state court. Both federal and state court systems are divided into levels. At the state level, in Arizona, the first level is the county Superior Court, which is the trial level. Once the trial court renders a final decision, either party can appeal to the next level, which is the Court of Appeals. The final level of appeal is to the State Supreme Court. The federal court system has a similar structure. The trial court level in federal court is called the United States District Court. An appeal from the U.S. District Court goes to a Circuit Court of Appeals. Arizona falls within the jurisdiction of the 9th Circuit Court of Appeals. An appeal from the circuit court level goes to the United States Supreme Court. The U.S. Supreme Court takes only the cases it wants to hear, so an appeal to the Supreme Court may be denied.

III. Education Laws

"Upon the subject of education, not presuming to dictate any plan or system respecting it, I can only say that I view it as the most important subject which we as a people may be engaged in. That everyone may receive at least a moderate education appears to be an objective of vital importance."

~ Abraham Lincoln

The primary law governing special education is the Individuals with Disabilities Education Act (IDEA). However, there are other laws that govern public schools' obligations to educate students with disabilities.

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 *et seq.*)

Unlike the IDEA, which is an education law, Section 504 is a civil rights law. Enforced by the United States Department of Education, Office for Civil Rights, Section 504 prohibits discrimination on the basis of disability in programs and activities, public and private that receive federal financial assistance. A person is "disabled" under Section 504 if he or she: (1) has a mental or physical impairment that substantially limits one or more major life activity, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. "Major life activities" include functions such as caring for oneself, performing manual tasks, walking, hearing, seeing, speaking, breathing, learning, or working.

Section 504, like the ADA, requires equality of treatment rather than imposing affirmative obligations. An evaluation is necessary before a student can be determined eligible under Section 504 and parents must be involved in the process whenever possible. An appropriate education for students eligible under Section 504 means an education comparable to that provided to students without disabilities and includes educational and related aids and services designed to meet the individual educational needs of the child, at no cost to the parents. There is no federal funding to serve children found eligible under Section 504.

The Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 *et seq.*)

The ADA is a civil rights act, enacted after the Rehabilitation Act, to broaden the scope of the prohibition on discrimination to the public and private sectors that prohibits discrimination solely on the basis of disability in employment, public services, and accommodations. Title II of the ADA applies to public entities, including public educational institutions. Title III of the ADA applies to private entities, including schools, that provide public accommodations, but does not apply to institutions controlled by religious organizations.

Eligibility under the ADA applies to any individual with a disability who: (1) has a mental or physical impairment that substantially limits one or more life activity, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. Under the ADA, schools must provide reasonable accommodations

to eligible students with a disability to perform essential functions. Reasonable accommodations may include, but are not limited to, redesigning equipment, assigning aides, providing written communication in alternative formats, altering existing facilities or building new facilities.

The No Child Left Behind Act (NCLB) (20 U.S.C. chapter 70)

The No Child Left Behind Act of 2001 is the most recent reauthorization of the Elementary and Secondary Education Act (ESEA), originally passed in 1965. NCLB was designed to close the gap between disadvantaged, disabled, and minority students, and their peers by ensuring that all children have access to high quality educational opportunities. NCLB phases in a system of accountability measures and quality requirements designed to ensure that, by the 2013-14 school year, all students achieve proficiency as measured against state academic achievement standards. NCLB stresses stronger accountability for results, increased flexibility and local control, and expanded options for parents. NCLB pays special attention to teacher quality and requires local education agencies that accept funds under Title I to hire only "highly qualified" teachers.

Students with disabilities are also impacted by NCLB, as evidenced by the reauthorization of IDEA in 2004, when it was aligned to be consistent with many requirements of NCLB. Most notably, NCLB affects students with disabilities through its requirement that schools and districts demonstrate adequate yearly (AYP) progress toward ensuring that every child achieves the proficient level of the state's standards at his or her grade level by the 2013-14 school year. The Act requires that students with disabilities as a subgroup demonstrate AYP toward the state's goals, through the use of assessments. Schools that do not achieve AYP over time may be subject to "improvement," including allowing parents to transfer their children to a better performing school within the district.

McKinney-Vento Homeless Assistance Act

The McKinney-Vento Homeless Assistance Act is the primary federal law dealing with the education of public school children and youth experiencing homelessness. It was reauthorized as Title X, Part C, of the No Child Left Behind Act in January 2002. The Act requires schools to ensure that homeless students have access to education and other services they need to meet the same high academic achievement standards as all students. More specifically, schools must ensure homeless students: (1) educational stability (which includes the right to stay in their school of origin), (2) transportation back to the school of origin, (3) immediate enrollment if the family chooses to enroll in the school in their new community, and (4) other support services, including special education, pre-school and services for teens living on their own.

IV. The Special Education Framework

A Brief History

Historically, children with disabilities in the United States were either excluded from the public educational setting all together and their education was a matter primarily left to families, or they were educated in segregated settings. With the advent of compulsory education, some attention was given to the treatment of individuals with disabilities in education.

After the landmark decision of *Brown v. Board of Education*, 347 U.S. 482 (1954), held that children had a right to an education on equal terms whatever their race, various court cases addressed the implications of this right in the context of educating children with disabilities. In *Pennsylvania Ass'n for Retarded Children (PARC) v. Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1972), the parties settled a suit challenging the state's policy of excluding children with intellectual disabilities from public education with a consent decree barring the state from "deny[ing] to any mentally retarded child access to a free public program of education and training." The *PARC* case was followed by a Washington, D.C. case, *Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.C. 1972), in which the court held that no child with a disability could be excluded from a regular school unless the child was provided with "adequate alternative educational services suited to the child's needs" and "a constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative."

Prior to the *PARC* and *Mills* decisions, Congress had made some efforts to expand educational opportunities for children with disabilities by establishing a grant program to assist the states in expanding available programs. See Pub. L. No. 89-750, § 161, 80 Stat. 1204 (1966) (amending the Elementary and Secondary Education Act of 1965 to establish a grant program); Education for the Handicapped Act, Pub. L. No. 91-230, 83 Stat. 175, Part B (same); Pub. L. No. 93-380, 88 Stat. 579 (1974) (increasing funding and requiring states to adopt goal of educating all children with disabilities). In 1975, however, Congress enacted the Education for All Handicapped Children Act (EAHCA), which was later renamed the Individuals with Disabilities Education Act, better known as IDEA. [20 U.S.C. § 1400 *et seq.*]

In the years since its enactment, the IDEA has been amended and reauthorized, most recently in December of 2004, and has been the subject of countless court decisions over the exact nature of the educational guarantees, the scope of services required, the procedures by which decisions are to be made about necessary services, and the remedies available when students' substantive and procedural rights are violated.

IDEA (20 U.S.C. § 1400 *et seq.*)

Congress recognized the special needs of students with disabilities when it passed the Individuals with Disabilities Education Act (IDEA) in 1975, and reauthorized it in 1997 and again in 2004. The purpose of IDEA is to protect the rights of children with disabilities, and to ensure that they receive a *free, appropriate public education* (FAPE) in the *least restrictive environment*. *Free* means at no cost to the parent, and *appropriate* means that the child receives the supports and services that he or she needs to learn, taking into consideration his or her disability. The *least restrictive environment* means that, to the maximum extent appropriate, children with disabilities are educated with their nondisabled peers in the school he or she would attend if nondisabled.

Once a child has been identified as eligible for special education and related services, an individualized education program (IEP) must be developed before services commence. To ensure that each child's needs are addressed, the IEP must be developed at a meeting with the child's IEP team that must include at least one of the child's parents, at least one special education teacher of the child, at least one regular education teacher of the child, a representative of the public education agency, a person to explain the results of any evaluations, the child, when appropriate, and anyone else with special knowledge about the child as determined by the child's parents and the school, respectively. The IEP must specifically identify the educational needs of the individual student and outline a plan for meeting those needs. IDEA regulations outline the specific areas to be addressed in the IEP, including the student's present level of academic achievement and functional performance, measurable annual goals, and special education and related services that the child needs to make progress toward achieving those goals.

In short, the IDEA gives children with disabilities an individual entitlement to a FAPE and their parents certain procedural safeguards to ensure their right to meaningfully participate in decisions about their children's education.

Child with a Disability

In order to be eligible for special education services, a child must have one of the disabilities enumerated below, and must, because of that disability, need special education and related services in order to make progress in the general curriculum.

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

- Autism (A)
- Developmental Delay (DD)
- Emotional Disability (ED)
- Hearing Impairment (HI)
- Intellectual Disability (MIID, MOID, SID)
- Multiple Disabilities (MD)
- Multiple Disabilities with Severe Sensory Impairment (MDSSI)
- Orthopedic Impairment (OI)

- Other Health Impairment (OHI)
- Preschool Severe Delay (PSD)
- Specific Learning Disability (SLD)
- Speech and Language Impairment (SLI)
- Traumatic Brain Injury (TBI)
- Visual Impairment (VI)

The FAPE Mandate

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

As used in this part, the term free appropriate public education or *FAPE* means special education and related services that:

- 1) are provided at public expense, under public supervision and direction, and without charge;
- 2) meet the standards of the SEA (State Education Agency);
- 3) include preschool, elementary school, or secondary school education in the State; and
- 4) are provided in conformity with an individualized education program (IEP).

The Role of the Parent

The parents of children with disabilities must be given the opportunity to meaningfully participate in the special education process. They can provide valuable information about the child's strengths and needs, likes and dislikes, how the child learns, and his or her interests.

The law requires schools to allow parents to participate in meetings that concern the identification, evaluation, educational placement of their children, or the provision of a FAPE. This requirement does not include the requirement for parents to participate in informal conversations among school personnel, preparatory activities among school personnel to plan for the above mentioned meetings, or pre-referral intervention meetings internal to school personnel.

According to IDEA a parent means:

- a biological or adoptive parent
- a foster parent
- a legal guardian
- an individual acting in the place of a biological or adoptive parent (including a relative with whom the child lives or an individual who is legally responsible for the child's welfare)
- a surrogate parent

A surrogate parent for special education is an individual appointed by the Arizona Department of Education or a court of competent jurisdiction to ensure that a child's rights are protected when the child's parents are unable to do so.

Schools are required to ensure the appointment of a surrogate parent 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 attempts²
- The child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act

In order to be eligible to serve as a surrogate parent, the person must: (1) possess adequate knowledge and skills to represent the child, (2) may not be an employee of a state agency involved in the education or care of the child, (3) may not have an interest that would conflict with the child's best interest, and (4) must have a valid fingerprint clearance card issued by the Arizona Department of Public Safety.

²The term "ward of the state" does not include a foster child.

V. Child Find

The IDEA obligates schools to locate, identify, and evaluate all children with disabilities, and guarantees eligible children with disabilities a FAPE, based on the child's unique needs, in the least restrictive environment.

Identification

The IDEA requires states to locate, identify, and evaluate all children with disabilities residing in the state, aged birth to 21, who are in need of early intervention or special education services. This "child find" requirement applies to all children residing in the state, regardless of the severity of the disability, including "highly mobile" children with disabilities (such as migrant and homeless children, and wards of the state), and those attending private schools.³ In addition, states must enact procedures to determine whether children identified as disabled are, in fact, receiving needed special education and related services. The child find regulations also apply to children suspected of having a disability who are advancing from grade to grade.

Screening

Schools may not rely solely on parents to request special education services for their child, but must have a system in place to locate students in need of services. In Arizona, schools must screen all children for disabilities within 45 calendar days: (1) after the child enters a preschool program or Kindergarten, (2) after a child enrolls without appropriate records of screening, evaluation and progress in school, or (3) upon notification of concern by the parent. If the screening process or review of records indicates a possible disability, the school must take some action, including but not limited to the following possible pre-referral intervention strategies, such as: vision or hearing acuity screening, social or emotional interventions, academic interventions, such as remediation or programmatic adaptations, referral to a pre-referral intervention team, or referral for a full and individual evaluation.

³School districts are required, under IDEA, to conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located within the school district's boundaries. In Arizona this includes homeschooled children within the district's boundaries.

VI. Evaluation

In order to determine whether a child is eligible to receive special education and related services, the child must first be evaluated to determine whether he or she is a child with a disability under the IDEA. The evaluation must be conducted by a multidisciplinary evaluation team (MET), which includes the individualized education program (IEP) team members and other qualified professionals.

Initial Evaluation

Evaluation Timeline

Schools are required to conduct a full and individual evaluation before the initial provision of special education and related services to a child with a disability. The initial evaluation must be completed within **60 calendar days** unless the school and the parents agree in writing to an extension not to exceed an additional 30 days. In Arizona, the 60 day time frame begins on the date the school receives a written parental request for an evaluation, or, if initiated by the school, the date the school receives informed consent. The 60 days conclude the day the MET makes a determination concerning eligibility. Exceptions to this rule are permitted in situations where the student changes schools while the evaluation process is underway or if the parent repeatedly fails or refuses to produce the student for the evaluation.

Consent

Either the school or the parent may initiate a request for an initial evaluation, but before the school may conduct the evaluation, it must provide prior written notice and obtain **informed written consent** from a parent. Consent is not required if the team is merely reviewing existing data as part of an evaluation or administering an assessment to **all** children.

If a parent refuses to consent to the evaluation, the school may pursue consent through mediation or the due process system. **Consent to evaluate does not constitute consent to provide services.**

Re-evaluation

Evaluation Timeline

Schools are required to re-evaluate each child with a disability if the school determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a re-evaluation, or if the child's parents or teachers request a re-evaluation. A student with a disability should be re-evaluated not more than once a year, unless the parents and the school agree otherwise, and at least once every three years unless the parents and the school agree that a re-evaluation is unnecessary. Re-evaluations must be completed within **60 calendar days** unless the school and the parents agree in writing to an extension not to exceed an additional 30 days. In Arizona, the 60 day time frame begins on the date the

school receives a written parental request for an evaluation, or, if initiated by the school, the date the school receives informed consent. The 60 days conclude the day the MET makes a determination concerning eligibility.

Consent

Either the school or the parent may initiate a request for a re-evaluation, but before the school may conduct the evaluation, it must provide prior written notice and obtain **informed written consent** from a parent. Consent is not required if the team is merely reviewing existing data as part of an evaluation or administering an assessment to all children.

Before the school conducts a re-evaluation, it must obtain informed written parental consent, unless it can demonstrate that it took reasonable measures to obtain consent and the parent did not respond.

Evaluation Process

In conducting an evaluation, schools must be sure to assess the child in all areas of suspected disability, using a variety of assessment tools and strategies—not just a single measure or assessment—that provide relevant information for determining whether the child is a child with a disability and the appropriate educational program for the child. The evaluation must be sufficiently comprehensive to identify all of the child’s special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

Evaluations are to be conducted in a language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally unless it is not feasible to do so. Materials and procedures used to assess a child who is limited English proficient should be selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child’s English language skills.

Schools must ensure that assessments and other evaluation materials used to assess a child are technically sound, valid and reliable, are selected and administered so as not to be discriminatory on a racial or cultural basis, and are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessment. For any assessment that is conducted under non-standard conditions, the evaluation report should include a description of how it varied from standard conditions.

The evaluation process should consist of the following elements:

- 1) Review of existing data
 - a) Current information provided by the student's parent(s)
 - b) Current classroom-based assessments
 - c) Teacher and related service provider observations
 - d) Formal assessments such as state and district-wide assessments
- 2) Team determination on whether to collect additional information in order to determine whether the child is or continues to be a child with a disability
 - a) If additional data are needed
 - i) Issue prior written notice to propose evaluation
 - ii) Obtain parent's informed written consent
 - iii) Conduct assessments, observations, etc.
 - b) If additional data are not needed
 - i) Issue prior written notice to refuse evaluation
 - ii) Inform parent(s) of the right to request additional data
 - iii) Proceed to eligibility considerations
- 3) Eligibility considerations
 - a) Upon review of all data the team will determine:
 - i) The present levels of academic achievement and functional performance of the child
 - ii) The child's educational needs
 - iii) In the case of a re-evaluation, whether additions or changes to the special education and related services are needed
 - iv) Whether the determinant factor is based on educational disadvantage
 - v) Whether the determinant factor is based on limited English proficiency
- 4) Eligibility determination
 - a) On the basis of the review of existing data and new data collected (if any), and taking the eligibility considerations into account, the team will determine if the child is or continues to be a child with a disability and his/her educational needs, specifically:
 - i) Whether the child has a disability
 - ii) Whether the disability adversely affects the child's progress in the general curriculum
 - iii) And by reason thereof, whether the child needs special education and related services

Independent Educational Evaluation

If parents disagree with an evaluation conducted by the school, they have a right to an Independent Educational Evaluation (IEE), which is an evaluation conducted by a qualified examiner who is not employed by the school responsible for the child's education. Upon request for an IEE, the school must provide parents with information about where to obtain an IEE, and the criteria the school uses for its evaluations. The federal regulations that implement the IDEA allow schools to ask parents for an explanation of why they object to the agency's evaluation; however, parents are not required to provide such explanation.

When a parent requests an IEE the school must, without unreasonable delay, ensure that an IEE is provided at public expense—that is, at no cost to the parent—or initiate a due process hearing to show that its evaluation is appropriate. If an administrative law judge determines that the school's evaluation is appropriate, the parent is still entitled to an IEE, but not at public expense.

An IEE at public expense or one paid for by the parent (so long as the evaluation meets the agency's criteria) must be considered by the team in any decision made regarding the provision of FAPE to the child.

Parents are entitled to only one IEE at public expense each time the school conducts an evaluation with which the parents disagree.

VII. Consent for Services

Consent for Initial Provision of Services

Schools must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. If the parent fails to respond or refuses to consent to services, the school may not provide the services and may not challenge the parent's decision by requesting mediation or a due process hearing. If the parent fails to respond or refuses to consent to services, the school is not required to convene an IEP team meeting or develop an IEP for the child, and will not be in violation of the requirement to provide the child a FAPE.

Revocation of Consent

Parents have the right to revoke consent for their child to receive special education and related services. If, at any time after the school's initial provision of special education and related services, parents revoke consent **in writing** for the continued provision of special education and related services, the school:

- 1) May not continue to provide special education and related services to the child, but must provide prior written notice before ceasing provision of special education and related services;
- 2) May not utilize mediation or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
- 3) Will not be considered to be in violation of the requirement to make a FAPE available to the child because of the failure to provide the child with further special education and related services; and
- 4) Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.

VIII. The Individualized Education Program (IEP)

"Being disabled should not mean being disqualified from having access to every aspect of life."

~ Emma Thompson

Schools must provide eligible children with disabilities special education and related services in accordance with the child's individualized education program (IEP). An IEP is defined as a written statement for a child with a disability that is developed, reviewed, and revised in accordance with the specific guidelines set forth in the IDEA. The program described in the IEP document must be reasonably calculated to ensure the eligible child receives a FAPE.

While an IEP is not a performance contract and does not constitute a guarantee by the school and/or the teacher that a child will progress at a specified rate, schools and teachers are required to make a good faith effort to assist children in achieving the goals listed in the IEP in order to help them have access to and make progress in the general curriculum. Schools must follow the program outlined in the IEP by providing the services, accommodations, modifications, and other supplementary items described within the document.

The law specifies what information must be contained in each IEP, but it does not specify what the IEP document must look like. In Arizona, schools decide what the IEP form will look like.

IEP Team

The IEP team is a group of individuals charged with developing, reviewing, and revising the IEP and is required to consist of the following members:

- 1) not less than one of the child's parents, or the adult student, if legal rights have transferred;
- 2) not less than one of the child's regular education teachers (if the child is or may be participating in the regular education environment);
- 3) not less than one of the child's special education teachers, or where appropriate, not less than one of the child's special education providers;
- 4) a representative of the child's school who:
 - a. is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - b. is knowledgeable about the general curriculum; and
 - c. is knowledgeable about the availability of the school's resources;
- 5) an individual who can interpret the instructional implications of evaluation results—who may be one of the above members;
- 6) at the parent's or school's discretion, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate;
- 7) whenever possible, the child with a disability;
- 8) if transition services are being discussed, the student and representatives of other agencies who are likely to be responsible for paying for or providing transition services;

- 9) if the public agency is considering a private school placement, a representative of the private school; and
- 10) If a child with a disability was previously served under Part C of IDEA (early intervention related to infants and toddlers), if the parent requests, the child's Part C service coordinator, to assist in the smooth transition of services at the initial IEP meeting.

A member of the IEP team is not required to attend an IEP meeting, in whole or in part, if the parent and the school agree that the particular member's attendance at the meeting is not necessary because the member's area of the curriculum or related service is not being discussed or modified. The parent must agree *in writing* that the particular member is not required to attend the meeting.

A member of the IEP team may be excused from attending an IEP meeting, in whole or in part, when the member's area of the curriculum or related service is being discussed if the parent and the school consent to the excusal, and the member submits written input into the development of the IEP prior to the meeting. The parent's consent to the excusal must be in writing.

IEP Team Meetings

Schools are responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the IEPs of children with disabilities.

Schools are responsible for taking steps to ensure that one or both parents of a child with a disability are present at each IEP meeting or are, at least, given the opportunity to participate. Parents should be notified through the use of a “**meeting notice**” early enough so that they will have an opportunity to attend the meeting, which is required to be scheduled at a mutually agreed on time and place. The IDEA does not require the school to schedule an IEP meeting outside regular school hours to accommodate parents or their experts. [*Letter to Thomas*, 51 IDELR 224 (OSEP 2008)]

The meeting notice must indicate the purpose, time, and location of the meeting and who will be in attendance, and it must inform parents of their right to bring to the meeting any individual with knowledge or special expertise about the child. Additionally, if the purpose of the meeting is to discuss transition services, the meeting notice must inform the parents that the school is inviting the student, and identify any other agency that will be invited to send a representative. Consent of the parents or adult student is required to invite an outside agency representative.

If neither parent can attend the meeting, the school may use other methods to ensure their participation, such as individual or conference call, or video conferencing. The school may conduct an IEP meeting without the parents if it is unable to convince the parents to attend. If the school holds an IEP meeting without the parent, it must have a record of its attempts to arrange a mutually agreed on time and place, such as detailed phone records, copies of correspondence sent to the parents and responses received, and/or detailed records of visits made to the parents’ home(s) or place(s) of employment and the results of those visits.

Consensus

In making decisions about a child’s educational program, the IEP team should work toward consensus, but if it is unable to do so, the school has the ultimate responsibility to ensure that the child receives a FAPE. It is not appropriate for the IEP team to make decisions based upon a majority “vote.” If the team is unable to reach consensus, the individual acting as the school representative must make the final decision and the school must state its proposal or refusal regarding the child’s educational program in a prior written notice (PWN) to the parent. The parent may seek resolution of any disagreement by filing a due process complaint or requesting mediation with the school.

The IEP Document

At the beginning of each school year, schools must have an IEP in effect for each child with a disability. Schools are required to give the parent a copy of the child's IEP free of charge. In developing IEPs, teams must consider the following:

- 1) the child's strengths;
- 2) the parents' concerns for enhancing their child's education;
- 3) the results of the child's initial evaluation or most recent evaluation; and
- 4) the child's academic, developmental, and functional needs.

The IEP document must contain:

- 1) a statement of the child's present levels of academic achievement and functional performance (PLAAFP), including how the child's disability affects his or her involvement and progress in the general curriculum (the same curriculum as for nondisabled children);
- 2) measurable annual goals (academic and functional) designed to meet the child's educational needs and to be involved in and make progress in the general curriculum, which must be aligned with the Arizona Academic Standards, and for children who take alternate assessments (i.e. children with significant cognitive disabilities), a description of benchmarks or short-term objectives;
- 3) how the child's progress toward meeting goals will be measured and a description of how parents will be regularly informed of the child's progress toward meeting those goals;
- 4) a statement of the special education and related services and supplementary aids and services—based upon peer-reviewed research to the extent possible—that the school will provide to the child, any program modifications or supports for school personnel so that the child can make progress towards achieving annual goals, be involved in and make progress in the general education curriculum, participate in extracurricular and other nonacademic activities, and participate with both disabled and nondisabled children in these activities;
 - a. Although IDEA does not define the term "supplementary aids and services," the United States Department of Education suggests several possibilities including, but not limited to, modification of the regular class curriculum, behavior management techniques, assistance of an itinerant teacher with special education training, special education training for the regular class teacher, use of assistive technology, provision of note-takers, and use of a resource center or a combination of these.
- 5) an explanation of the extent, if any, to which the child will participate with nondisabled children in the regular classroom setting and in other activities;
- 6) a statement of any individual accommodations that are necessary to measure the child's academic and functional performance on State and district-wide assessments. If the IEP team determines that the child will take an alternate assessment, the IEP must include a statement of why the child cannot participate in the regular assessment and what particular alternate assessment the student will take;

- 7) the projected date that services and/or modifications will begin and the anticipated frequency, location, and duration of those services and modifications; and
- 8) beginning at age 16, appropriate measurable postsecondary goals that:
 - a. are based on age appropriate transition assessments that take into account the child's strengths, interests, and preferences;
 - b. include the areas of employment and education and/or training, and independent living skills where appropriate;
 - c. are accompanied by a coordinated set of transition activities aimed at assisting the child in reaching those goals, which are specifically designed as an outcomes oriented process that promotes movement from school to post-school life; and,
- 9) beginning no later than one year before the child reaches the age of majority (18 in Arizona), a statement that the child has been informed of the rights, if any, that will transfer to him or her upon reaching the age of majority.

The following special factors must also be considered:

- 1) In the case of a child whose behavior impedes the child's learning or that of others, the IEP team needs to consider the use of positive behavioral interventions and supports, or other strategies, to address the behavior;
- 2) In the case of a child who is limited English proficient, the team must consider the child's language needs as they relate to the IEP;
- 3) In the case of a child who is blind or visually impaired, the IEP team must consider the use of Braille, as appropriate for the child;
- 4) In the case of a child who is deaf or hard of hearing, the IEP team must consider the child's communication needs; and
- 5) The IEP team must consider whether a child needs assistive technology devices and services.

Extended School Year

Schools are required to ensure that extended school year services are available to students, as necessary, in order to provide a FAPE. Extended School Year (ESY) services are defined to mean special education and related services that are provided to a child with a disability beyond the school's normal school year, in accordance with the child's IEP, at no cost to the parent. A child's need for ESY services is to be determined on an individual basis by the IEP team. Schools are not permitted to limit ESY services to particular categories of disability or to unilaterally limit the type, amount, or duration of the services. Moreover, eligibility for ESY services cannot be based on need or desire for day care or respite care, an educational program to maximize the student's academic potential, or a summer recreation program.

ESY services are necessary if either: (1) the benefits that the student gained during the regular school year would be significantly jeopardized if he or she is not provided educational services, or (2) the student would experience severe or substantial regression if he or she is not provided educational services during recesses or summer months and the regression would result in substantial skill loss of a degree and duration that would seriously impede the student's progress toward educational goals. The IEP team shall determine if the student is eligible to receive ESY services no later than 45 days prior to the last day of the school year.

The determination of whether a student is eligible for ESY services must take into account least restrictive environment considerations and be determined by the IEP team, using a multifaceted inquiry based on the following criteria: (1) retrospective data, such as past regression and the rate of recoupment, and (2) predictive data, when empirical data is not available, which may be proven by expert opinion based upon a professional individual assessment.

Transportation

Schools must provide transportation as a related service if it is necessary to assist a child with a disability to benefit from special education. The determination of whether a child needs transportation is to be made by the IEP team, taking into account whether the child's disability prevents the child from using the same transportation as nondisabled children, or from getting to school in the same manner as nondisabled students. It is presumed that most children do not require transportation as a related service, particularly if integrated transportation can be achieved by providing accommodations, such as lifts, or other equipment adaptations on regular school vehicles. If transportation is a required related service, the transportation arrangement must be clearly described in the IEP, and the service must be provided at no cost to the parent.

IX. Delivery of Services

"If a child cannot learn in the way we teach ... we must teach in a way the child can learn."

~ Dr. O. Ivar Lovaas

Specially Designed Instruction

Schools, teachers, and parents commonly misunderstand the difference between providing special education and providing accommodations.

Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to address the unique needs of the child that result from his or her disability, and to ensure the child access to the general curriculum so that he or she can meet the educational standards that apply to all children.

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, school nurse services designed to enable a child with a disability to receive a FAPE, early identification and assessment of disabilities in children, counseling services, including rehabilitative counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. The term does not include a medical device that is surgically implanted, or the replacement of such device.

Accommodations means the provisions made to allow a student to access and demonstrate learning. Accommodations do not substantially change the instructional level, the content or the performance criteria, but are made in order to provide a student equal access to learning and equal opportunity to demonstrate what is known. Accommodations shall not alter the content of the curriculum or a test, or provide inappropriate assistance to the student within the context of the test.

In short, accommodations are intended to assist a child in a particular situation with a particular activity, assignment, or test by ensuring the child's access to the activity. Conversely, specially designed instruction may substantially change the content of a particular activity and is instruction intended not only to provide access to a particular task at a given point in time, but to teach the child strategies and methodologies to mitigate the impact of the disability across all circumstances or in any situation.

Placement

Least Restrictive Environment

The IDEA's Least Restrictive Environment (LRE) provision requires that, 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 not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. However, this does not mean that the LRE will be the same for every child with a disability. In each case, the IEP team must decide the most appropriate educational setting in which the child can receive a FAPE given his or her unique needs.

Additional rules regarding placement require that children with disabilities be educated as close to home as possible, and in the same school he or she would attend if not disabled, unless the IEP specifies some other arrangement. In a situation where a child will not participate fully with peers without disabilities, the IEP must include an explanation of why and to what extent.

Continuum

The law requires schools to ensure that there is a "continuum of alternative placements" available to meet the needs of students with disabilities who cannot be educated in the regular classroom for part or all of the school day. The *continuum* must be designed to ensure that there is an appropriate setting for each child with a disability, based on the child's specific needs, and includes general education classes, special education classes, special schools, home instruction, and instruction in hospitals or institutions.

The Placement Decision

The placement decision must be made by a group of people, including the parents and other people knowledgeable about the child, the meaning of the evaluation data, and the placement options. Placement is generally the last in a series of decisions, and occurs only after a child is evaluated and an IEP is developed. Thus, the appropriate goals, services, and supports should be determined before deciding where they will be provided. Placement must be reviewed annually and must be individually determined for the child based on the IEP goals and services to be provided rather than developing goals and services to "fit" the placement. Factors that may be considered in determining placements include the educational benefits to the child with a disability, the non-academic and social benefits to the child, and the degree of disruption that the child will cause to his or her learning and the learning of others. Factors that may not be considered in determining placements include the disabled child's category of disability, the severity of the disability, and the availability or cost of placements or special education and related services.

Requirements for Unilateral Placements by Parents Seeking Public Payment

Schools are not required to pay for the cost of education, including special education and related services, for a student with a disability at a private school if the school made a FAPE available to the student and the parents still chose to place the student in the private school. If a parent disagrees with the school about the availability of a FAPE in the public school or has questions about the financial responsibility for the private placement, the parent may request a due process hearing.

A court or hearing officer may require the school to reimburse the parents for the cost of the private placement if the parents can demonstrate that: (1) the offered IEP was *inappropriate*, and (2) the parent's placement was proper under IDEA.

Reimbursement may be reduced or denied if:

- The parents did not, either at the most recent IEP meeting they attended or 10 business days prior to their removal of the child, inform the IEP team that they were rejecting the placement proposed and that they intended to enroll the child in a private school at public expense;
- If the parents did not make their child available for an evaluation that the public school informed the parents it intended to perform; or
- Upon a judicial finding of unreasonableness.

Implementing the IEP

IEPs should be implemented as soon as possible following the IEP meeting at which the IEP is developed. An IEP must be in effect before a school can provide special education and related services. Schools must ensure that IEPs are accessible to each regular education teacher, special education teacher, related service provider, or other service provider who is responsible for implementing that IEP, and that each of those individuals is informed of his or her specific responsibilities related to the implementation of the IEP. Moreover, all relevant school personnel must be informed of the specific accommodations, modifications, and supports that must be provided to each child in accordance with his or her IEP.

Review and Revision

The IEP team is required to **review** each child's IEP periodically, but not less than annually, to determine if the child is making progress toward achieving annual goals, and **revise** the IEP as appropriate to address: (1) any lack of expected progress in the general curriculum or toward meeting the annual goals, (2) the results of a re-evaluation, or (3) the child's anticipated needs.

If the IEP needs to be revised at any time after the annual review, the parents and the school may agree to make necessary changes to the IEP without convening an IEP team meeting, but may instead develop a written document to modify or amend the IEP. If changes are made in this manner, the school must ensure that the IEP team is informed of those changes. Upon request, the school must give the parent a copy of the revised IEP with the amendments incorporated.

In Arizona, if a parent or the school requests an IEP review *in writing*, the review must occur within 15 school days of receipt of the request, or at a mutually agreed upon time, but not to exceed 30 days from receipt of the request.

Transfer Students

In the case of a child with a disability who has an IEP in effect and who transfers to a different school district or charter school within the *same* state, the receiving school is required to provide that student a FAPE, including services comparable to those in the IEP from the sending school, in consultation with the parents, until such time as the receiving school adopts the previously held IEP or develops and implements a new IEP.

In the case of a child with a disability who has an IEP in effect and who transfers to a *different* state, the receiving school is required to provide that student with a FAPE, including services comparable to those in the IEP from the sending school, in consultation with the parents, until such time as the receiving school conducts an evaluation, if determined to be necessary, and develops a new IEP.

In either case, the receiving school must take reasonable steps to promptly obtain the child's records (including the IEP and supporting documentation) from the sending school. Specifically, in Arizona, the receiving school has five school days to request records from the child's previous school and that school has 10 school days to send the records.

X. Procedural Safeguards

When Congress enacted the IDEA, they included a system of “procedural safeguards” to protect the rights of children with disabilities and their parents.

The IDEA requires that procedural safeguards be in the form of a notice that must include a full explanation of the procedural safeguards, written in the parent’s native language and in an easily understandable manner.

In accordance with IDEA, procedural safeguards shall be given to parents once a year and/or: (a) upon initial referral for evaluation by the school or parental request for an evaluation; (b) upon receipt of the first State administrative complaint or the first due process complaint in the school year; (c) when a school removes a student for disciplinary reasons and the removal constitutes a change of placement; and (d) upon request by the parent. The procedural safeguards notice must provide an explanation of the following topics:

- Independent educational evaluations (IEE)
- Prior written notice
- Parental consent
- Access to educational records
- Dispute resolution (including State administrative complaints, due process, mediation, appeals, civil actions, and attorneys’ fees)
- Child’s placement during the pendency of a due process hearing
- Procedures for students who are subject to placement in an interim alternative educational setting
- Requirements for unilateral placement by parents of children in private schools at public expense

Prior Written Notice

The IDEA requires schools to provide written prior notice to the parents of a child with a disability in a timely manner any time the school *proposes* or *refuses* to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education.

This notice, called a “prior written notice” or “PWN,” must include the following items:

- 1) a description of the action proposed or refused by the school;
- 2) an explanation of why the school proposes or refuses to take the action;
- 3) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- 4) a statement that the parents of a child with a disability have protection under the procedural safeguards provided in the IDEA and how a copy of those procedural safeguards may be obtained (unless a PWN is given because of an initial referral, in which case, the parents will already be receiving a copy of their procedural safeguards);
- 5) sources for parents to contact to obtain assistance in understanding the IDEA;
- 6) a description of other options considered by the IEP team and the reason why those options were rejected; and
- 7) a description of other factors that are relevant to the school’s proposal or refusal.

The notice must be written in language understandable to the general public and provided in the native language or in the mode of communication used by the parent, unless it is clearly not feasible to do so. If the parent’s native language or other mode of communication is not a written language, the school must take steps to ensure that the notice is translated orally and that the parent understands the content of the notice; the school must maintain written evidence that these steps were undertaken.

Schools must give PWN in the following situations:

- **Identification:** PWN must be provided when a student is referred by the school for an initial evaluation. Parents of a preschool or school-aged child identified through child-find measures as being a child with a possible disability must be given a PWN.
- **Evaluation:**
 - Collection of additional data: Schools must provide PWN before obtaining consent for the collection of additional data or after the IEP team determines that no additional data is needed in the evaluation process.
 - Eligibility: PWN must be provided after the IEP team has determined a student’s eligibility for special education as this completes the evaluation process.

- **Educational placement:** Schools must provide PWN when there is a proposal or refusal to change a child's educational placement.
 - Graduation from high school with a regular high school diploma is a change of educational placement, and therefore, a PWN must be provided.
- **Free Appropriate Public Education (FAPE):** PWN must be provided when there is a change or refusal to change the provision of a FAPE, before implementation of the initial IEP, or before a revised IEP can be implemented.

Disciplinary actions: PWN must be given prior to the 11th consecutive day of suspension and/or before an accumulation of removals from the child's current placement that constitutes a pattern, or after the decision to expel a student, but prior to the expulsion.

One PWN may address numerous issues, to the extent appropriate, but should be drafted clearly and carefully to include required information for each issue being addressed.

- PWN must be given to parents *after* decisions have been made, but *prior to* implementation.

XI. Behavior and Discipline

"It's too much to expect in an academic setting that we should all agree, but it is not too much to expect discipline and unvarying civility."

~ John Howard

Building principals and school administrators are responsible for ensuring that schools are safe, disciplined, and drug free. Children with disabilities have many protections under the IDEA; however, special education law cannot interfere with school safety.

If a school takes disciplinary action against a child with a disability, it must notify the parents the same day and inform them of their procedural safeguards. A child with a disability is subject to the same consequences or punishments as other children, but a child with a disability is guaranteed certain protections under the IDEA.

Remember that nothing in the IDEA prohibits a school from reporting a crime committed by a student with a disability to local law enforcement. If a school does report a crime to law enforcement, it must ensure that copies of the student's special education and disciplinary records are transmitted to the law enforcement agency to the extent permitted under the Family Educational Rights and Privacy Act (FERPA).⁴

Disciplinary Actions

The 10-day rule: (otherwise known as the "FAPE-free zone")

School personnel may remove a child with a disability who commits a violation of the student code of conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for **not more than 10 school days**, to the extent such alternatives are applied to students without disabilities. That is, if a student with a disability is removed from the educational setting for less than 10 days in a school year, the school is not required to convene an IEP team meeting, conduct a manifestation determination, do a functional behavioral assessment, develop a behavior intervention plan, or provide services, if educational services are not provided to students without disabilities who are similarly removed.

Once past the 10 "FAPE-free" days, the school's responsibilities change.

⁴Absent prior parental consent, FERPA permits disclosure if it is pursuant to a subpoena or court order, in connection with an emergency, or in accordance with a specific state statute.

Change of Placement

In determining whether to order a change of placement for a student with a disability who violates a student code of conduct, school personnel may consider any unique circumstances on a case-by-case basis. A change of placement occurs if:

- 1) The student is removed for more than 10 consecutive school days.
- 2) 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 and because of such factors as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

In-school suspensions, partial days, and bus suspensions

The comments to the federal regulations address these tricky areas as follows:

- In-school suspensions are not counted toward the 10 days if the child is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive services as set forth in his or her IEP, and continue to participate with nondisabled peers to the extent he or she would in the current placement.
- Portions of a day that a child is suspended do count toward the 10 cumulative days.
- Bus suspensions count if transportation is part of the student's IEP and no alternative transportation is provided.

Manifestation Determination

A manifestation determination is required if the school is considering removing a child with a disability from his or her educational placement for more than 10 school days in a given school year when that removal is deemed a change of placement or placement is made in an interim alternative educational setting (IAES).

The manifestation determination: The manifestation determination must be conducted by “the local educational agency, the parent, and relevant members of the IEP team (as determined by the parent and the local educational agency).” The law does not specify who “relevant members of the IEP team” are, but logic dictates that they would be those team members with an expertise regarding the student’s disability and teachers or administrators with direct knowledge of the student and/or the disciplinary incident.

Procedures: 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 the student code of conduct. The team conducting the manifestation determination must review all relevant information in the student’s file, including the student’s IEP, any teacher observations, and any relevant information provided by the parents.

Standard of review: The conduct shall be deemed to be a manifestation of the child's disability if either of the following applies:

- 1) The conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- 2) The conduct in question was the direct result of the public education agency's failure to implement the IEP.

If the behavior *is* a manifestation: If the team conducting the manifestation determination determines that the behavior is a manifestation of the child's disability, the IEP team must:

- 1) Conduct a functional behavioral assessment (FBA), if one has not already been done;
- 2) Implement a behavior intervention plan (BIP), if one has not already been implemented.
- 3) If a BIP is already in place, review it and revise it as necessary to address the current behavior.
- 4) Return the child to the placement from which the child was removed *unless*:
 - a. The offense involved "special circumstances" (drugs, weapons, or serious bodily injury); or
 - b. Parents and school agree to a change of placement as part of the modification of the BIP.

If the behavior is *not* a manifestation: If the team conducting the manifestation determination determines that the behavior is not a manifestation of the child's disability, the school may go forward with regular disciplinary action, but must continue to provide the student with a free appropriate public education (FAPE).

Provision of Services

If the disciplinary action that gave rise to the removal was not a manifestation of the student's disability, the school may apply the relevant disciplinary procedures to a child with a disability in the same manner and for the same duration as for a nondisabled child. However, in the case of a student with a disability who has been removed from his or her current placement for more than 10 days in a given school year, for the remainder of the removal period, the school must provide services to the extent 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. Services may be provided in an interim alternative educational setting.

If a series of short suspensions constitutes a change of placement, 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 future removals. If the same series of short suspensions does *not* constitute a change of placement, the **school principal in consultation with at least one of the child's teachers** decides what educational services to offer.

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 in the following cases:

- 1) The child carries or possesses a weapon to or at school, on school premises, or to or at a school function;
- 2) 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; or
- 3) The child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

The term "weapon" means 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.

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.

The term "serious bodily injury" does not apply to every assault, but applies in situations that do not involve a weapon, but that involve:

- 1) substantial risk of death;
- 2) extreme physical pain;
- 3) protracted and obvious disfigurement; or
- 4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Interim Alternative Educational Setting (IAES) placements

School personnel may remove a student to an IAES for 45 school days under the “special circumstances” discussed above without initiating a due process hearing. At the end of that 45-day period, if the school believes it would be dangerous for the student to be returned to his or her original placement, the school can request an expedited due process hearing to request that the student remain in the IAES for an additional 45 school days.

A school that believes that maintaining the child in the placement he or she was in when the disciplinary incident occurred would result in injury to the child or to others may request an expedited due process hearing to have the child removed to an appropriate IAES for up to 45 school days. Schools may make repeated requests for the hearing officer to order the student to remain in the IAES for an additional 45 school days if they believe it would be dangerous to return the child to the original placement.

The IAES is determined by the IEP team. It must be appropriate and enable the student to continue to participate in the general curriculum, although in a different setting, and to progress toward meeting the goals set out in his or her IEP. In the IAES, the student must receive the services and modifications described in his or her IEP, as well as services and modifications to address the behavior so that it does not recur.

Appeals

Expedited due process hearings: IDEA allows the parent of a child with a disability who disagrees with any decision regarding placement (i.e., the IAES) or the manifestation determination, or a school that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, to request an expedited due process hearing. The hearing shall occur within 20 *school* days of the date the hearing is requested, with a determination resulting within 10 *school* days after the hearing.

“Stay put”: If a parent files for an expedited due process hearing, “stay put” placement is in the IAES during the pendency of the appeal. That is, the student remains in the IAES until the hearing officer decides the case, or until the time period for which the school has assigned the student to the IAES has run out, whichever occurs first.

Hearing Officer Authority: In an expedited due process hearing, the hearing officer has the authority to order a change of placement. The hearing officer can either return the child to the placement from which the child was removed, or may order the child to an appropriate IAES for not more than 45 school days if the school can prove that returning the child to his or her current placement is “substantially likely to result in injury to the child or to others.”

Protections for Children Not Yet Eligible for Special Education and Related Services

A child who has not yet been determined eligible for special education but who commits a violation of the student code of conduct may assert the rights and protections under 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. A school will be deemed to "have knowledge" if, prior to the violation:

- 1) The parent of the child 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 and related services;
- 2) The parent had requested that the child receive an evaluation for special education; or
- 3) 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.

Exception: The school will *not* be deemed to "have knowledge" if, prior to the disciplinary action (1) the parent refused to allow the school to evaluate the child, (2) the parent refused to allow the school to provide services to an eligible child, (3) the school had already evaluated the child and the child was determined to not be a child with a disability, or (4) the child's parent has revoked consent for special education and related services.

If the parent requests an evaluation of the child during the time period that the child is subject to disciplinary action, the school must conduct the evaluation in an expedited manner. During the pendency of the evaluation, the child remains in the educational placement determined by the school.

- While not required by law, if a parent had previously refused to allow the school to either evaluate the child or provide services, prior to any long-term suspension or expulsion, the school may want to offer the parents a second chance as a best practice.

XII. Dispute Resolution

The IDEA and its implementing regulations mandate that states make available formal processes for families of children with disabilities age 3 through 21 and public schools to resolve special education-related disputes. State Educational Agencies (SEA) are required to offer mediation, a due process hearing system, and a state administrative complaint system.

Mediation

Mediation is a part of parents' procedural safeguards under the IDEA. It is an informal process during which an impartial mediator helps parents and schools experiencing conflict reach a suitable agreement about a student's special education program. Only parents or adult students and schools can be parties to mediation and both parties must voluntarily agree to enter into mediation. SEAs are required to make mediation available to parents and schools at no cost to either party.

The goal of mediation is for parties to reach a compromise regarding disputes over special education matters. A successful mediation will result in a written agreement signed by both parties.

Due Process Hearing System

Like mediation, the due process hearing system is part of parents' procedural safeguards under the IDEA. The most formal of the dispute resolution options; a due process hearing may be used to resolve any matter relating to the identification, evaluation, educational placement of a child, or the provision of a free appropriate public education to the child. Only parents or adult students and schools can be parties to a due process. One of the parties must file a due process complaint to begin the process, and the filing party bears the burden of proof in the hearing.

In a due process hearing, an administrative law judge (ALJ) or independent hearing officer (IHO) will consider the parties' arguments and evidence and will issue a decision.

State Administrative Complaint System

Unlike mediation and due process, the state administrative complaint system is not part of the system of procedural safeguards outlined in the IDEA, but rather is part of the SEA's general supervision responsibilities and is outlined in the regulations that implement the IDEA. It allows members of the community to alert the SEA to potential violations of the IDEA and its implementing regulations. In this way, the complainant becomes one source of information in the SEA's investigation of the allegations.

The SEA has 60 calendar days from the date it identifies the complaint to issue written findings detailing whether the public school is in compliance or out of compliance in relationship to the allegations asserted by the complainant. The investigation will include a thorough review of information presented within documentation and via interviews with participants in the particular case.

If the SEA identifies noncompliance with state and federal special education requirements it will dictate corrective action that the school must undertake to correct any noncompliance and mitigate the likelihood of the reoccurrence of the noncompliance. Corrective action must be completed in accordance with the schedule prescribed by the SEA, but in no case may take more than one year to complete.

XIII. Confidentiality

The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy interests of parents and “eligible students” regarding education records.⁵ The law applies to all schools that receive funding from the United States Department of Education.

In a nutshell, FERPA has two main components:

- The law provides parents the right to inspect and review their child’s education records maintained by the school.
- With few exceptions (noted below), the law prohibits schools from releasing confidential student records without prior written parental consent.

FERPA allows schools to disclose records without consent to the following parties or under the following conditions:

- School officials with legitimate educational interest
- Other schools to which a student is transferring
- Specified officials for audit or evaluation purposes
- Appropriate parties in connection with financial aid to a student
- Organizations conducting certain studies for or on behalf of the school
- Accrediting organizations
- To comply with a judicial order or lawfully issued subpoena
- Appropriate officials in cases of health and safety emergencies
- State and local authorities, within a juvenile justice system, pursuant to specific State law
- To a caseworker or other representative of a State or local child welfare agency or tribal organization authorized to access a student’s case plan when that agency or organization is legally responsible for the care and protection of the student⁶

Additionally, schools may disclose, without consent, “directory” information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA.

⁵Under FERPA, an eligible student is one who reaches the age of 18 or attends a postsecondary institution, at which point the rights under FERPA transfer to the student.

⁶This recent addition to the list of exceptions comes as a result of the Uninterrupted Scholars Act, which amends FERPA. To be clear, this only includes situations where the child is in the care and custody of the child welfare agency, and disclosure without consent is not allowable in other circumstances, such as Protective Services investigations.

The IDEA imposes its own requirements regarding the confidentiality of student records on top of those imposed by FERPA. The regulations that implement the IDEA require that the State Educational Agency provide parents with:

- 1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
- 2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- 3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
- 4) A description of all of the rights of parents and children regarding this information, including the rights under the FERPA.

The parent, or his or her representative, has the right to inspect and review all of the student's educational records collected, maintained, or used by the school, including those that relate to the identification, evaluation, educational placement of the student, or the provision of a free appropriate public education to the student. Schools must comply with a request for review:

- Without unnecessary delay and within 45 days after the request, and
- Before any meeting regarding an IEP or a special education due process hearing.

A parent's right to review records includes:

- A response to reasonable requests for explanations and interpretations of the records.
- The right to request that the school provide copies of the records if failure to provide copies would effectively prevent the parent from exercising the right to inspect and review records. Schools may charge parents a fee for copies as long as the fee does not effectively prevent the parent from exercising his or her right to inspect and review the records; schools cannot charge a fee for the search and retrieval of records.
- The right to have a representative inspect and review the records.

If any education record includes information on more than one student, the parent only has the right to inspect and review the information relating to the parent's child or be informed of that specific information. Schools must keep a record of parties obtaining access to education records collected, maintained, or used under the IDEA (except access by parents and authorized employees), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Just as FERPA requires, under the regulations that implement the IDEA, a parent "who believes that information contained in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child" can ask that the record be amended and if that request is denied, has a right to a hearing.

Parents or eligible students have the right to request a school amend records they believe to be inaccurate, misleading, or in violation of the student's rights of privacy. If the school decides not to amend the record, the parent or eligible student has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement in the record commenting on the contested information and why he or she disagrees with the school's decision not to amend the record.

Citations to relevant State and Federal statutes, regulations, and rules

Disability Categories:	Arizona Revised Statutes (A.R.S.) § 15-761
Definition of FAPE:	20 United States Code (U.S.C.) § 1401(9); 34 Code of Federal Regulations (C.F.R.) § 300.17
 The Role of the Parent	
Definition of parent:	34 C.F.R. § 300.30; A.R.S. § 15-761(22)
Surrogate parent:	A.R.S. § 15-763.01
Parent Participation:	34 C.F.R. § 300.322
Child Find:	20 U.S.C. § 1414(a)(1)(A); 34 C.F.R. § 300.111; Arizona Administrative Code (A.A.C.) R7-2-401(D)
Evaluation:	20 U.S.C. § 1414; 34 C.F.R. §§ 300.301-306; A.A.C. R7-2-401((E)
Evaluation timeline:	34 C.F.R. § 300.301(a); A.A.C. R7-2-401(E)(3) and (4)
Consent for evaluation:	34 C.F.R. § 300.300(a)
Evaluation process:	34 C.F.R. §§ 300.304-311
IEE:	34 C.F.R. § 300.502
Consent for Services:	34 C.F.R. § 300.300(b)
Revocation of Consent:	34 C.F.R. § 300.300(b)(4)
IEP:	20 U.S.C. § 1414(d); 34 C.F.R. §§ 300.320-328
IEP team:	34 C.F.R. § 300.321
IEP meetings:	34 C.F.R. § 300.322; 34 C.F.R. § 300.328
IEP development:	34 C.F.R. § 300.324
ESY:	34 C.F.R. § 300.106; A.R.S. § 15-881; A.A.C. R7-2-408
 Delivery of Services	
Special education:	20 U.S.C. § 1402(29); 34 C.F.R. § 300.39
Related services:	20 U.S.C. § 1402(26); 34 C.F.R. § 300.34
Accommodations:	A.A.C. R7-2-401(B)(1)

Placement

Least Restrictive Environment: 34 C.F.R. § 300.114
 Continuum of
 alternative placements: 34 C.F.R. § 300.115
 Placement decision: 34 C.F.R. § 300.116
 Unilateral placements: 20 U.S.C. § 1412(a)(10)(C);
 34 C.F.R. § 300.403;
Burlington Sch. Comm. V. Dep't of Educ., 471
 U.S. 370 (1985)

Implementing the IEP: 34 C.F.R. § 300.323
 Review/revision: 34 C.F.R. § 300.324(b); A.A.C. R7-2-401(G)(7)
 Transfer students: 34 C.F.R. § 300.323(e); A.R.S. § 15-828(F)

**Procedural Safeguards
 Notice:** 34 C.F.R. § 300.504

Prior Written Notice: 34 C.F.R. § 300.503

Behavior and Discipline: 34 C.F.R. §§ 300.530 through 300.536

Controlled Substance/
 Illegal Drug: 20 U.S.C. § 1415(k)(7)(A) and (B);
 21 U.S.C. § 812(c)

Serious Bodily Injury: 20 U.S.C. § 1415(k)(7)(D);
 18 U.S.C. § 1365(h)(3)

Weapon: 20 U.S.C. § 1415(k)(7)(C);
 18 U.S.C. § 930(g)(2)

Dispute Resolution:

Mediation: 34 C.F.R. § 300.506; A.A.C. R7-2-405.02
 Due Process Hearing System: 34 C.F.R. §§ 300.507 through 300.513;
 A.A.C. R7-2-405

State Administrative
 Complaint System: 34 C.F.R. §§ 300.151 through 153;
 A.A.C. R7-2-405.01

Confidentiality: 20 U.S.C. § 1232g; 34 C.F.R. Part 99;
 34 C.F.R. §§ 300.610 through 300.625