The Special Education Handbook:

A brief overview of the history and requirements of Part B of the IDEA



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April 2015

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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

National Separation of Powers

The United States Constitution, drafted by our Founding Fathers at the Constitutional Convention in 1787 and ratified by the states in 1789, is the supreme law of the land. Among other things, the Constitution outlines this country's structure of government. As a way to ensure separation of powers and provide for a system of checks and balances, the Founders established three separate, co-equal branches of government: the legislative branch, the executive branch, and the judicial branch. Under this co-equal system of governance, the legislative branch makes the laws, the executive branch administers the laws, and the judicial branch interprets the laws as applied to specific cases.

Legislative Branch: Established by Article I of the Constitution, the legislative branch consists of the House of Representatives and the Senate, which together form the United States Congress. The Constitution grants Congress the sole authority to enact legislation, declare war, and confirm or reject certain presidential appointments.

Executive Branch: Article II of the Constitution, which establishes the executive branch, vests power in the President of the United States, who also serves in the role of head of state and Commander-in-Chief of the armed forces. The president is responsible for executing and enforcing the laws written by Congress. In order to carry out this responsibility, the president appoints the heads of federal executive branch departments and agencies, including the cabinet. The president's cabinet and independent federal agencies (such as the Department of Education, among others) are responsible for the day-to-day enforcement and administration of federal laws.

Judicial Branch: Article III of the Constitution establishes the judicial branch and vests power in one Supreme Court, while granting Congress the power to establish courts inferior to the Supreme Court. Accordingly, Congress has established the United States district courts, which try most federal cases, and 13 United States courts of appeals, which review appealed district court cases.

Sources of Law in the U.S. Legal System

Each branch of government plays a part in establishing the legal framework under which Americans operate. From the legislative branch of government, we get **statutes.** From the executive branch of government, we get **rules and regulations.** And from the judicial branch of government, we get **case law.** Each of these—statutes, rules and regulations, and case law—carries the force of law.

Statutes

The term "statute" means a law enacted by a legislative body of a government, whether federal or state. Federal statutes are enacted by Congress and must be followed by each state. State statutes are enacted by a state's legislature and apply within that state only. Neither federal nor state law may violate the U.S. Constitution nor may a state statute violate that state's own constitution. If a state law contradicts a federal law, the federal statute controls—that is, the federal statute "preempts" the state statute. Because there is not a federal statute to cover all areas of the law, where such gaps exist, state or local laws will usually control.

Regulations or rules

Authorized by a statute, a regulation is a general statement issued by an administrative agency, board, or commission that has the force and effect of law; however, rather than drawing its life from a decision made by a legislative body (like a statute), a regulation arises out of directive from a legislative body to an administrative agency, such as the Arizona Department of Education and the Arizona State Board of Education, to develop regulations to implement the statute. Put another way, typically Congress or a state's legislature will outline the broad or essential points of law in the statute and then delegate to the administrative agency responsible for administering the particular law the responsibility to elaborate the details and requirements to implement and enforce the statute. Regulations have the effect of law, and violating a regulation is essentially no different than violating the law that it implements.

Most regulations and rules are developed and enacted through an administrative rule-making process. Federal or state agencies proposing regulations or rules hold open meetings and public hearings, allowing citizens to comment publically and provide input into the creation of regulations and rules. Federal regulations are published in the *Federal Register* (the daily newspaper of the federal government) and rules created by state agencies in Arizona are published by the Secretary of State in the Arizona Administrative Code.

Case law

Laws made by the judicial branch are referred to as case law (or common law). Case law is essentially a body of law based on written opinions by courts, rather than laws created by legislative action.

There are both federal and state court decisions, depending upon whether the case was filed in a federal court or a state court. As noted earlier, the United States Supreme Court was established by Article III of the Constitution, which also granted Congress the authority to establish inferior courts. To that end, Congress established trial level courts in each of the 50 states and several territories known as the United States district courts and 13 regional United States courts of appeals, which review appealed district court cases. In Arizona, the supreme court was established by Article VI of the state constitution. The Arizona legislature established municipal and justice courts (courts of limited jurisdiction); superior courts (courts of general jurisdiction or trial courts); and the court of appeals.

States are not required to follow the case law of other states, but must adhere to the precedent established by previous decisions within the same jurisdiction. Additionally, Arizona, which is within the 9th Circuit Court of Appeals, must adhere to decisions of that court. As the ultimate arbiter of the Constitution, the supreme law of the land, U.S. Supreme Court precedent binds courts in all jurisdictions.

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II. Anatomy of a Legal Citation

A legal citation is a reference to a specific legal publication in which a statute, regulation, or court decision is printed. A standard citation includes the volume number of the source, the title of the reporting source (usually abbreviated), and the first page on which the particular statute, rule, or decision is found.

Citing Statutes and Regulations

All statutes, whether state or federal, are published in books called codes. A code is compilation of laws that a legislative body has passed, typically divided by title or subject matter.

Federal statutes and regulations

The general format for citation to a federal statute or regulation consists of the title, then the code (abbreviated), followed by the section symbol (§) and the section number. For example:

Federal statute:

20 U.S.C. § 1414	Title 20 of the United States Code at section 1414

Federal regulation:

34 C.F.R. § 300.152	Title 34 of the Code of Federal Regulations at section 300.152

State statutes and rules

The format for citation to state statutes and rules varies among the states. In Arizona, we cite statutes and State Board of Education rules as follows:

State statute:

A.R.S. § 15-761	Arizona Revised Statutes at Title 15, section 761

State Board of Education rule:

A.A.C. R7-2-401	Arizona Administrative Code at Title 7, Chapter 2, Article 4

Citation to Court Decision

A citation to a court decision consists of a volume number, an abbreviation of the title of the book in which the decision is published, and the first page number of the case. When the same case is printed in different books, citations to more than one book may be given. Regardless of the court, citations to published opinions generally follow the following format: names of parties; volume number; the abbreviated name of the reporter (that is, the book in which the case is published); the first page of the case; and in parentheses, the deciding court and the year the decision was issued.[1] Below are three examples of published court opinions[2] in the following order—a case from the United States Supreme Court, a case from a U.S. Circuit Court of Appeals, and a case from a U.S. District Court:

- *Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982)
- *Poolaw v. Bishop*, 67 F.3d 830 (9th Cir. 1995)
- *Magyar v. Tucson Unif. School Dist.*, 958 F.Supp. 1423 (D. Ariz. 1997)

[1] In the case of a United States Supreme Court decision, only the date will appear in parenthesis.

[2] Not all case law is published. Generally, appellate court decisions that will be used as future precedent are published (reported) in sources (case reporters) specific to that court.

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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 Americans with Disabilities Act, 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 that provide public accommodations, including schools, 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 Elementary and Secondary Education Act (20 U.S.C. § 6301 *et seq.*)

The most recent reauthorization of the Elementary and Secondary Education Act (ESEA), originally passed in 1965, is commonly referred to as the No Child Left Behind Act of 2001 (NCLB). 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, the Act 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. The Act stresses stronger accountability for results, increased flexibility and local control, and expanded options for parents. It also 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 this law, as evidenced by the reauthorization of IDEA in 2004, when it was aligned to be consistent with many requirements of the ESEA. Most notably, ESEA 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 (42 U.S.C. § 11431et seq.)

The McKinney-Vento Homeless Assistance Act is the primary federal law dealing with the education of public school children and youth experiencing homelessness. 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.

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IV. The Special Education Framework

"If a child cannot learn in the way we teach ... we must teach in a way the child can learn."
~ Dr. O. Ivar Lovaas

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 Association 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 (EHA), 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.

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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

The IDEA defines *child with a disability* as a child who has a qualifying disability and by reason thereof is in need of special education and related services. In other words, under the IDEA it is not enough to simply have a qualifying disability. The disability must cause the child to ***need*** special education and related services in order to access the general curriculum, which is the same curriculum taught to *all* children.

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

- Autism (A)
- Developmental Delay (DD)
- Emotional Disability (ED)
- Hearing Impairment (HI)
- Mild Intellectual Disability (MIID)
- Moderate Intellectual Disability (MOID)
- Multiple Disabilities (MD)
- Multiple Disabilities with Severe Sensory Impairment (MDSSI)
- Orthopedic Impairment (OI)
- Other Health Impairment (OHI)
- Preschool Severe Delay (PSD)
- Severe Intellectual Disability (SID)
- Specific Learning Disability (SLD)
- Speech/Language Impairment (SLI)
- Traumatic Brain Injury (TBI)
- Visual Impairment (VI)

Although the IDEA defines each disability category, the specific qualifications for each category may vary from state to state. In Arizona, several of the categories require additional components other than those described in the IDEA, such as verification of a medical condition for some disabilities.[3]

In Arizona, when a child with a disability is eligible in more than one disability category, state per pupil funding is based on the category that has the highest add-on weight. Arizona does not restrict schools from addressing students' needs that are not specifically linked to their particular disability categories. Instead, individualized education program (IEP) teams *must* ensure that all needs are considered.

[3]For details on any additional requirements in Arizona, see the Arizona State Board of Education rules at A.A.C. R7-2-401(E).

The FAPE Mandate

Under the IDEA, all children with disabilities ages three through 21 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. In Arizona, children with disabilities are entitled to receive a FAPE through the school in which they turn 22.

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 Educational 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).

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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.

As part of their procedural safeguards, schools must afford the parents of a child with a disability the opportunity 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. The law requires schools to take steps to ensure that one or both of the child's parents are present at each IEP team meeting and to take whatever action is necessary to ensure that the parents understand what is taking place, including arranging for interpreters for parents with deafness or whose native language is other than English.

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

If more than one person is qualified to act as the parent, schools should presume that the biological or adoptive parent is the parent under Part B of the IDEA when that individual is attempting to act as the parent, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

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 attempts[4]
- 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.

[4]The term "ward of the state" does not include a foster child.

V. Child Find

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

Identification

The IDEA requires states to identify, locate, 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 children attending private schools[5] and "highly mobile" children, which are those children who move frequently, such as military connected children; migrant children; homeless children; and children who are in the foster care system. The child find regulations also apply to children suspected of having a disability even though they are advancing from grade to grade. In addition, states must enact procedures to determine whether children identified as disabled are, in fact, receiving needed special education and related services. In other words, schools must ensure that those children who have already been "found" are receiving the necessary services.

Screening

Schools may not rely solely on parents to request special education services for their children, 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 in a new school without appropriate records of screening, evaluation and progress in school, or (3) upon notification of concern by the parent. In Arizona, screening procedures must include hearing and vision status and consideration of cognitive, academic, communication, motor, social, behavioral, and adaptive development. Screening does not include a comprehensive evaluation and parental consent is not required prior to screening.

Interventions

If the screening process or review of records indicates a concern, the school must take some action, including but not limited to the following possible pre-referral intervention strategies: vision or hearing acuity screening, social or emotional interventions, academic interventions, such as remediation or programmatic adaptations, referral to a pre-referral intervention team, etc. If the school suspects the child may be a child with a disability in need of special education and related services the child should be referred for a full and individual evaluation.

[5]School 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.

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VI. Evaluation

In order to determine whether a child is eligible to receive special education and related services, schools are required to conduct a full and individual evaluation to determine whether a child is or continues to be a child with a disability under the IDEA. The evaluation must be conducted by a multidisciplinary evaluation team (MET), which includes the IEP team members and other qualified professionals.

Evaluation Timeline

According to the IDEA, initial evaluations must be completed within 60 calendar days, but in Arizona, initial evaluations and reevaluations must be completed within **60 calendar days.**

In Arizona, the 60-day evaluation timeline can begin in either of two ways: (1) If the evaluation is initiated by a parent, the 60-day timeline begins on the date the school receives a written parental request for an evaluation. (2) If the evaluation is initiated by the school, the 60-day timeline begins on the date the school receives informed written consent to evaluate from the parent.

The 60-day timeline can conclude in either of two ways: (1) If the school does not suspect the child has a disability, or does not believe an evaluation is warranted, the school may refuse to conduct an evaluation by issuing a prior written notice (PWN) to refuse to evaluate. The timeline ends on the date the school provides the PWN to the parents. (2) If the school agrees to conduct an evaluation, whether it was initiated by the school or a parent, the 60 days conclude on the date the MET makes an eligibility determination—a decision as to whether the child is or is not eligible to receive special education and related services.

Exceptions to the 60-day rule are permitted in situations where the child changes schools while the evaluation process is underway or if the parent repeatedly fails or refuses to produce the child for the evaluation. Under Arizona rules, the school and the parents may agree in writing to extend the timeline by an additional 30 days if it is in the child's best interest.

Consent

Before the school may conduct the evaluation, it must provide prior written notice proposing to evaluate the child and obtain **informed written consent** from a parent. A parent's request to evaluate may not be taken as consent, since it is not informed as to the nature of any concerns the MET has about the child and the types of evaluations the MET wishes to conduct. Therefore, even when the parent initiates the evaluation by making a written request, prior to conducting an evaluation the school must obtain the parent's informed written consent based on the MET's review of existing data and determination of what types of additional data to collect.

Consent is not required if the team is only reviewing existing data, and consent is not required when a school is administering an assessment to **all** children, such as statewide tests. In the case of a reevaluation, the school does not need to obtain informed written consent if it can demonstrate that it made reasonable efforts to obtain such consent but despite those efforts the child's parents *failed to respond.*

If parents *refuse* to consent to an initial evaluation or reevaluation, the school may pursue consent through mediation or the due process system, but the school is not required to do so. The school is not considered to be failing to meet its obligations under the child find or evaluation requirements of the IDEA if it chooses not to pursue consent through those procedural safeguards options.

**Consent to evaluate does not constitute consent for the initial provision of special education and related services.

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Evaluation Requirements

In conducting an evaluation, schools are required 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 service needs, whether or not commonly linked to the disability category in which the child has been determined eligible.

Instrumentation

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.

Reevaluation Cycle

Schools are required to reevaluate each child with a disability if the school determines that the educational or related service 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 reevaluation. A student with a disability must be reevaluated at least once every three years, unless the parents and the school agree that a reevaluation is unnecessary. A child should not be evaluated more than once a year, unless the parents and the school agree otherwise.

Evaluation Process

In order to ensure children are evaluated in all areas of suspected disability and determine whether a child is or continues to be a child with a disability, the IDEA lays out a detailed and organized evaluation process. The process as outlined below is meant to be followed with fidelity.

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 of 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 not needed to determine eligibility
        i) Issue prior written notice to refuse evaluation
        ii) Inform parent(s) of the right to request additional data
        iii) Proceed to eligibility considerations
    b) If additional data are needed to determine eligibility
        i) Issue prior written notice to propose evaluation
        ii) Obtain parent's informed written consent
        iii) Conduct assessments, observations, etc.
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 reevaluation, 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 ability to access the general curriculum
        iii) And by reason thereof, whether the child needs special education and related services to make progress in the general curriculum

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 criteria under which an IEE is obtained must be the same criteria the school uses when it conducts its own evaluation, including the location of the evaluation and the qualifications of the evaluator. Additionally, schools may establish reasonable cost containment criteria. However, a school cannot independently determine that an IEE does not meet agency criteria; it must establish in a due process hearing that the IEE failed to meet agency criteria and/or that the parent was unable to show that unique circumstances existed that would permit the parent to disregard the agency criteria.

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 and evaluation with which the parents disagree.

NOTES

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 *all* special education and related services.[6] 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.
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.

[6]The discussion by the U.S. Department of Education to the consent regulation at 34 C.F.R. § 300.300(b)(4) is clear that revocation of consent for special education and related services has the effect of ending *all* special education and related services for the child and consequently the child will no longer be treated as a child with a disability. [34 C.F.R. Part 300, Analysis of Comments and Changes, Subpart D—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements, *Federal Register,* p. 73011] Furthermore, this discussion clarifies that revocation of consent for special education and related services is not the same as revocation of consent for a *particular* special education or related service. Rather, if a parent disagrees with a school providing a particular service as part of the student's FAPE, the parent may choose to exercise his or her procedural safeguards option to file a due process complaint to obtain a ruling regarding the appropriateness of the particular service. [*Id.*]

NOTES

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 enable the child to receive educational benefit.

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 set forth in the IEP and to enable them to access 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 included 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.

Implementing the IEP

Each child's IEP 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. Indeed, 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.

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

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, and 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.

Transfer Students

In the case of a child with a disability who has an IEP in effect and who, during the school year, transfers to a different school district or charter school within the *same* state, the receiving school, in consultation with the parents, is required to provide that student a FAPE, including services comparable to those in the IEP from the sending school until such time as the receiving school adopts the previous school's 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 during the school year to a *different* state, the receiving school, in consultation with the parents, is required to provide that student with a FAPE, including services comparable to those in the IEP from the sending school until such time as the receiving school conducts an evaluation, if determined to be necessary, and develops and implements 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. [A.R.S. § 15-828(G)]

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 (which, in Arizona is at age 18);
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;
    d. may be a member of the IEP team serving in another role as long as he or she meets the criteria described in letters a – c.
5) an individual who can interpret the instructional implications of evaluation results—who may be one of the team members already serving in another role;
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]
7) whenever possible, the child with a disability;
8) if postsecondary 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.

[7]The determination of knowledge or special expertise lies solely with the party who invites the individual to the meeting.

Excusals

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. In this case, the parent must agree *in writing* prior to the meeting 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 prior to the meeting, 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. It is important to remember that consent is more than just an agreement; it means that the parent has been fully informed of all relevant information in his or her native language or other mode of communication. Further, consent means that the activity for which his or her consent is being sought has been described and that the parent understands and agrees in writing to the carrying out this activity.

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 postsecondary 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. The 9th Circuit Court of Appeals recently held that a school's failure to ensure the parent's participation in an IEP meeting following the parent's request to delay the meeting, as opposed to an affirmative refusal to participate, amounted to a denial of FAPE for the student. 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.

NOTES

IEP Development

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 most recent evaluation; and
4) the child's academic, developmental, and functional needs.

The IEP document must contain:

1) PLAAFP: A statement of the child's present levels of academic achievement and functional performance including how the child's disability affects his or her involvement and progress in the general curriculum (the same curriculum taught to nondisabled children).
2) Measurable annual goals: A statement of measurable goals, including academic and functional goals, designed to meet the child's needs that result from the disability and meet the child's other educational needs. For children who take alternate assessments include benchmarks or short-term objectives.
3) Progress reports: A statement of how the child's progress toward meeting annual goals will be measured and a description of how parents will be regularly informed of the child's progress toward meeting those goals.
4) Services & supports:
    a. A statement of the special education and related services and supplementary aids and services—based upon peer-reviewed research to the extent practicable—that the school will provide to the child.
    b. 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.
    c. 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) Accommodations for assessments: A statement of any individual accommodations that are necessary to measure the child's academic and functional performance on State and district-wide assessments.
    a. Although the IDEA does not specifically require IEPs to include classroom accommodations, the United States Department of Education advises that IEPs include classroom accommodations for children whose IEP teams determine those accommodations to be necessary to ensure those children receive a FAPE. [*Letter to Wilson,* 43 IDLER 165 (OSEP 2004)]
7) Alternate 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 child will take.
8) Implementation date: The projected date that services and modifications will begin and the anticipated frequency, location, and duration of those services and modifications.
9) Postsecondary transition: Beginning with the first IEP to be in effect when the child turns 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.
10) Transfer of majority rights: 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 and documented:

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.
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 days, 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 short or long 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.

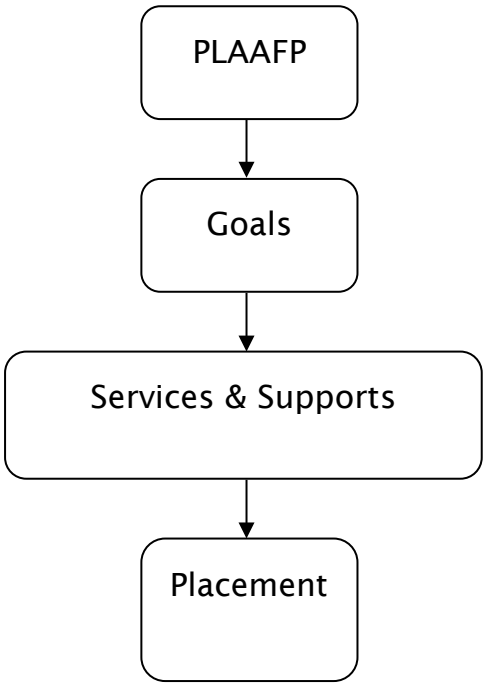
The determination of whether a student is eligible for ESY services must take into account least restrictive environment considerations and be determined by the IEP team, using a multifaceted inquiry based on the following criteria: (1) retrospective data, such as past regression and the rate of recoupment, 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.

The IEP Process

In consideration of all the required IEP content, the development of an IEP is meant to follow a particular process wherein the team first examines what they currently know about a child's performance and educational needs. Using that knowledge the team can decide what goals are appropriate for the child. Based on the child's educational needs and appropriate goals, the IEP team can then determine the services, supports, and modifications that will assist the child in accessing the general curriculum and making progress toward annual goals. Finally, knowing the child's strengths and needs, the goals he or she will work on, and the types and amounts of services and supports to be delivered, the team can determine what educational placement will provide the child with the least restrictive environment in which to access a free appropriate public education.



NOTES

IX. Delivery of Services

"I cannot emphasize enough the importance of a good teacher."
~ Temple Grandin

Specially Designed Instruction

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. Special education is meant to provide a child with a disability skills, techniques, and strategies designed with the unique needs resulting from their particular disabilities in mind and aimed at mitigating the effects of those disabilities. Specially designed instruction does not merely provide momentary access to information, but rather creates knowledge in a child with a disability by teaching a transferrable set of skills that can be used across settings and time.

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 maintenance or replacement of such a device.

Schools, teachers, and parents commonly misunderstand the difference between providing special education and providing accommodations. Accommodations are 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 do not alter the content of the curriculum or a test, or provide inappropriate assistance to the student within the context of the test. Accommodations are task or situation dependent, whereas specially designed instruction should be portable and useful in mitigating 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 preschool, 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. The IEP team must determine which environment puts the least amount of restrictions on the child's opportunity to learn.

Additional rules regarding educational 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. Ensuring the availability of this continuum does not require public agencies to have every possible placement option at all campuses, but rather these options may be available through locating students at other schools within the public agency, placement at private schools, or placement at other public agencies if such financial and logistical relationships exist. Lack of an appropriate placement within a given school does not eliminate a public agency's obligation to ensure a child is educated in his or her LRE.

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 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 IEP offered by the public school 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.

NOTES

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 public schools provide written notice to parents that includes a full explanation of the procedural safeguards. This procedural safeguards notice (PSN) must be written in a manner that is easily understandable to the general public and must be written in the parent's native language or other mode of communication, 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.

In accordance with IDEA, procedural safeguards shall be given to parents once a year and: (a) upon initial referral for evaluation by the school or parental request for an evaluation; (b) upon receipt of the first State administrative complaint and 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 education records
- The opportunity to use the due process complaint system and the State complaint system, including the time period for filing a complaint, the opportunity for the school to resolve the complaint, and the difference between a due process complaint and a State complaint
- The availability of mediation
- A child's placement during the pendency of any due process complaint
- 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
- Due process hearings, appeals, civil actions, and attorneys' fees

NOTES

XI. Prior Written Notice

The IDEA requires schools to provide written notice to the parents of a child with a disability a reasonable time before the school *proposes* or *refuses* to initiate or change the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child. This notice, called a "prior written notice" or "PWN" is provided to parents *prior* to the school acting on the proposals or refusals described in the notice.

A PWN must include the following content:

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;
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 relevant to the school's proposal or refusal.

The notice must be written in language understandable to the general public and provided in the parent's native language or other 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 parents PWN to document their proposals and refusals to initiate or change the identification, evaluation, educational placement, or provision of FAPE to the child.

- **Identification:** A PWN must be provided to the parents of a preschool or school-aged child who is *identified* through child find measures and referred by the school for an initial evaluation.

- **Evaluation:**
    - Collection of additional data: Schools must provide PWN *before* collecting additional evaluation data. **OR** Schools must provide PWN refusing to collect additional data after the IEP team determines that no additional evaluation data is needed to complete the evaluation process.

    - Eligibility: PWN must be provided after the IEP team has determined whether the child is or is not eligible as a child with a disability as this completes the evaluation process. This PWN would document either a school's proposal to make the child eligible for special education or the school's refusal to make the child eligible.

- **Educational placement:** Schools must provide PWN when there is a proposal or refusal to initiate or change a child's educational placement, including:
    - Initial placement of a child into special education upon initial eligibility for special education and related services
    - Exiting a child from special education altogether when the child's IEP team determines the child is no longer eligible as a child with a disability
    - Graduation from high school with a regular high school diploma
    - Disciplinary removals that constitute a change of placement
    - A decision about the educational placement of a child along the continuum of alternative placements

- **Free Appropriate Public Education (FAPE):** PWN must be provided when there is a proposal or refusal to initiate or change the provision of a FAPE, such as before implementation of the initial IEP, or before a revised IEP can be implemented. When an IEP team decides to add to, subtract from, or otherwise alter what constitutes a FAPE for a child, parents must be provided PWN documenting the resulting proposals and refusals.

NOTES

XII. 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.[8] The law applies to all schools that receive funding from the United States Department of Education.

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 student[9]

[8]Under 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.

[9]This 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.

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.

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 SEA 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 pertaining 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, parents can ask that their children's educational records that are collected, maintained, or used under the IDEA be amended if they believe that information contained in the records is inaccurate, misleading, or violates privacy or other rights. If the school decides not to amend the record(s), the parent or eligible student has the right to a formal hearing conducted by the school. After the hearing, if the school still decides not to amend the record(s), the parent or eligible student has the right to place a statement in the record(s) commenting on the contested information and why he or she disagrees with the school's decision not to amend it. The statement must be maintained as long as the school maintains the contested record(s).

NOTES

XIII. 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 agreement about a student's special education program. Mediation is a problem-solving process rather than an adversarial process. It allows the parties to communicate directly with each other as they work toward a mutually agreeable solution. The goal of mediation is for parties to reach a compromise regarding disputes over special education matters and to memorialize that compromised solution into a written agreement signed by both parties.

Either a parent of a child with a disability or a public education agency may request mediation as a way to resolve disputes involving any matter that arises under the IDEA or its implementing regulations. Mediation may be used to resolve issues in a due process complaint or it may be requested, by the parent or the school, as a stand-alone process to address concerns or disputes that arise. Mediation is offered at no cost, must be voluntary on the part of both parties, and may not be used to deny or delay a parent's right to a due process hearing. The Arizona Department of Education maintains a list of qualified mediators who are trained annually in the area of special education law and are knowledgeable about current trends in mediation and mediation techniques.

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 hearing. One of the parties must file a due process complaint to begin the process, and there is a two-year statute of limitations on requests for a due process hearing. The filing party bears the burden of proof in the hearing.

In 2004, Congress added a mandatory 30 calendar day resolution period, which commences the day the complaint is received by the non-filing party. Within 15 calendar days of receiving the due process complaint notice and before a hearing may occur, the school must convene a meeting with the parent and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the complaint. The purpose of this meeting—called a resolution session—is for the parties to discuss the complaint and attempt to resolve the issues without the need for a hearing.

This meeting must occur unless waived in writing by both parties, or unless both parties agree to mediation. The resolution session must include a representative of the school who has decision-making authority on behalf of the school, but may not include the school's attorney unless the parents are accompanied by an attorney. The parent and the school determine the relevant members of the IEP team to attend the meeting. The resolution session *must* occur before a due process hearing can be held, unless it is waived in writing by both parties, or the parties agree to participate in mediation.

If the school has not resolved the due process complaint to the parent's satisfaction within 30 calendar days of receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur. The 45 calendar day timeline for issuing a final decision begins at the expiration of the 30 day resolution period; upon the parties agreeing in writing to waive the resolution meeting; or after the resolution meeting or mediation if the parties agree in writing that they are unable to resolve the dispute.

In a due process hearing, an administrative law judge will consider the parties' arguments and evidence and will issue a decision. Once a due process complaint is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless the complainant and the school agree otherwise, the child must *stay put* in his or her current (that is, last agreed upon) educational placement.

**** EXPEDITED DUE PROCESS HEARING**

The parent of a child with a disability may file a request for an expedited due process hearing if he or she disagrees with: (1) any decision regarding placement made under the special education discipline provisions; or (2) the manifestation determination. A school may request an expedited due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

Unless the parents and the school agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within seven calendar days of receiving notice of the expedited due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint. An expedited due process hearing must be conducted within 20 school days of the date the hearing request is received, and the administrative law judge has 10 school days after the hearing to issue a decision.

The student stays put in the Interim Alternative Educational Setting (IAES) pending the judge's decision or until the disciplinary period expires, whichever occurs first, unless the parties agree otherwise.

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 falls under the SEA's general supervision responsibilities and is outlined in the regulations that implement the IDEA. The SEA is responsible for ensuring that public schools comply with Part B of the IDEA and a complaint is a way for members of the community to notify the SEA that there is or may be noncompliance with the IDEA in a public school. A formal complaint is considered a request for the SEA to investigate an alleged failure by a public school to comply with a legal requirement of the IDEA or an alleged violation of a right of a parent and/or child with disabilities who is eligible, or believed to be eligible, for services based on federal and state laws and regulations governing special education.

Because the State complaint system is not a procedural safeguard, any individual or organization may file a State administrative complaint. The SEA can only investigate allegations of violations of Part B of the IDEA that occurred within the past year. The SEA has 60 calendar days from the date it identifies the complaint to conduct an investigation into the allegations presented in the complaint and to issue written findings. Every investigation includes a thorough review of information presented within documentation and via interviews with relevant parties in the particular case. The investigation concludes with the issuance of a formal written report, which is the SEA's independent determination as to whether the public school has violated a requirement of Part B of the IDEA. In accordance with 34 C.F.R. § 300.152(a), the report must address each allegation in the complaint and includes the findings of fact, conclusions of law, and the reasons for the SEA's final decision.

If the SEA identifies noncompliance with State and/or 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.

NOTES

XIV. 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 that changes his or her placement, it must notify the parents the same day by providing written notice that meets the requirements described in 34 C.F.R. § 300.503 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).[10]

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 10 or fewer days in a school year, the school is not required to issue prior written notice, 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.

[10]Absent 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.

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 participate 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 out of school do count toward the 10 cumulative days. In this circumstance it would be appropriate to have a system in place to count hours.[11]
- Bus suspensions count if transportation is a related service required included in the student's IEP and no alternative transportation is provided.

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

Change of Placement[12]

In determining whether a disciplinary removal that constitutes a change of placement is appropriate 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.[13]
2) The student is subjected to a series of removals that constitute a pattern because:[14]
    - The removals 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 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.

    ❖ The **school** determines on a case-by-case basis whether the pattern of removals constitutes a change of placement. A parent may challenge the school's decision by requesting a due process hearing.

[11]It does not matter what vocabulary word or words the school uses when referring to these partial day removals. If the child is removed for disciplinary reasons, those partial day removals count toward the 10 "FAPE-free" days.

[12]"Change of placement" used in this section refers to removing a student completely from the educational placement set forth in his or her IEP to a disciplinary setting. In this context the disciplinary change of placement is the school's decision and should not be confused with an IEP team's decision to change a student's educational placement by moving him or her to a different point along the continuum of alternative placements.

[13]When a disciplinary removal is for more than 10 consecutive school days, it is automatically considered a change of placement. No further analysis is needed.

[14]When a series of removals cumulate to more than 10 school days during a school year the school must undertake an analysis of these factors to determine whether the current removal constitutes a change of placement.

Provision of Services

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 participate in the general curriculum and appropriately advance toward achieving the goals set out in his or her IEP. In other words, on the 11th day of removal in a school year and every day thereafter, services must be made available to the child. Services may be provided in an interim alternative educational setting.

If a series of short suspensions that cumulate to more than 10 days constitutes a change of placement, the **IEP team** determines the extent to which services are necessary to enable the child to participate in the general curriculum and appropriately advance toward achieving the goals set out in his or her IEP. If a series of short suspensions that cumulate to more than 10 days 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.

Manifestation Determination

A manifestation determination is required within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct.

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;[15] or
2) The conduct in question was the direct result of the public education agency's failure to implement the IEP.

[15]This does not simply refer to the child's eligibility category, but rather to the particular way the child's disability—whatever that may be—impacts him or her. The team conducting the manifestation determination should *never* presume that particular eligibility categories automatically do or do not cause or have a direct and substantial relationship to the behavior that resulted in disciplinary action.

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 in the same manner and for the same duration as for a nondisabled child, but must continue to provide the student with a free appropriate public education (FAPE).

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, regardless of whether the behavior is determined to be a manifestation of the child's disability. Additionally, if a school believes that maintaining the child in the placement he or she was in when the disciplinary incident occurred would result in harm to the child or to others, the school may request an expedited due process hearing to have the child removed to an appropriate IAES for up to 45 school days. A school may make repeated requests for the hearing officer to order the student to remain in the IAES for an additional 45 school days if the school believes 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 must 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 supports to address the behavior so that it does not recur.

NOTES

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 harm 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 decision resulting within 10 *school* days after the hearing.

"Stay put": If a parent files a request 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.

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.

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

Child with a Disability:	34 Code of Federal Regulations (C.F.R.) § 300.8; Arizona Revised Statutes (A.R.S.) § 15-761; Arizona Administrative Code (A.A.C.) R7-2-401(E)
Definition of FAPE:	20 United States Code (U.S.C.) § 1401(9); 34 C.F.R. § 300.17; A.R.S. § 15-764(A)(1)
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; 34 C.F.R. § 300.501(b)
Child Find:	20 U.S.C. § 1414(a)(1)(A); 34 C.F.R. § 300.111; 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