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## Parent Training & Resource Center

### Parent's Resource Manual for Special Education Services

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The Family Resource Center for Disabilities and Special Needs (FRC)/Parent Training and Resource Center (PTRC) is not a legal services agency and cannot provide legal advice or legal representation. Any information contained in this manual or provided by FRC/PTRC staff is not intended as legal advice and should not be used as a substitution for legal advice.

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# The Parent Training and Resource Center (PTRC)

The Parent Training and Resource Center offers support and training to families accessing special education services for their children with disabilities. The PTRC is a program of the Family Resource Center for Disabilities and Special Needs funded through the United States Department of Education.

The Family Resource Center was founded with a mission to promote opportunities for learning, inclusion, and empowerment for individuals with disabilities and special needs, their families, and the community through education, advocacy and outreach.

This Manual is compiled as a resource for the PTRC Mentors to share with the families they support. Feel free to contact your Mentor or other PTRC staff if you have any questions about the content. *The materials in this Manual may be duplicated, however the materials must always be furnished to families without charge.*

For more information about the many services available through the Parent Training and Resource Center, please contact:

Parent Training and Resource Center  
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Your Parent Mentor: \_\_\_\_\_

## Important Information about your Mentoring Services

Parent mentoring is among the free services available from the Parent Training and Resource Center (PTRC) made possible by funding from the US Department of Education. You are encouraged to take advantage of other aspects of PTRC programming such as training workshops, newsletters, and education materials such as this guide.

Mentoring is the process by which an experienced person provides advice, support & encouragement to one with less experience. Our Mentors can be the helpmate who leads by guidance and example. Mentors have received years of specialized training in order to help in this way. Please remember that a Mentor (or any PTRC staff) is not a Lawyer, Social Worker, Service Coordinator, Physician or Mental Health Professional. Your Mentor can explain your rights and responsibilities under state and Federal law and provide you with information, resources, and direct support as you consider your child's education services. Your Mentor can accompany you to IEP and other school related meetings while you acquire the knowledge and skills necessary to understand your child's educational rights and the services available. Mentors are compensated for their work with families; the need is great, their time is valuable, and resources are limited. **The Mentor's help is not meant to be open-ended or indefinite. Funding prohibits long term support and may impact your continued access to this resource.**

Because funds are limited your Mentor will only be able to help you with those meetings and situations that are directly related to the education of your child with a disability. A successful experience with Mentoring will leave you with an increased knowledge and improved skills. In other words, your Peer Parent Mentor's responsibility is to help you learn to do it – not do it for you. The goal of the PTRC – and what the US Department of Education funds us to do – is to empower parents to be the best advocate they can for their child. Your Mentor is just one way the PTRC can help you reach that goal.

### **The following are activities you can expect from your Peer Parent Mentor:**

- Provide you with the Parent's Guide to Special Education Services
- Provide you with answers related to special education services
- Review records and discuss their meaning and significance
- Help you prepare for the IEP Meeting
- Help you prepare correspondence to school personnel or others
- Accompany you to IEP and other related meetings
- Model good skills and provide constructive feed-back
- Help you identify other local/state/National resources

### **The following activities are NOT expected from your Peer Parent Mentor:**

- Attend meetings unrelated to special education services
- Take responsibility for preparing your correspondence
- Meet with school personnel for you instead of with you

Please be mindful of the restrictions placed on the time Mentors can spend with each family. Please be gracious when you have reached the allotted amount of time. After that time, please call the PTRC office with questions. If you need services beyond what is available through the FRC/PTRC your Mentor will help you with referral to the appropriate agencies.





## **Section 1**

### **ADVOCACY**

#### **Section 1, Part A – Parent Advocacy**

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## Welcome to Holland

I am often asked to describe the experience of raising a child with a disability – to try to help people who have not shared that unique experience to understand it, to imagine how it would feel. It's like this...

When you're going to have a baby, it's like planning a fabulous vacation trip – to Italy. You buy a bunch of guidebooks and make your wonderful plans. The Coliseum, the Michelangelo David, the gondolas in Venice. You may learn some handy phrases in Italian. It's all very exciting.

After months of eager anticipation, the day finally arrives. You pack your bags and off you go. Several hours later, the plane lands. The stewardess comes in and says, "Welcome to Holland."

"Holland?!" you say. "What do you mean, Holland?" I signed up for Italy! I'm supposed to be in Italy. All my life I've dreamed of going to Italy.

But there's been a change in the flight plan. They've landed in Holland and there you must stay.

The important thing is that they haven't taken you to some horrible, disgusting, filthy place, full of pestilence, famine and disease. It's just a different place.

So you must go out and buy a new guidebook. And you must learn a whole new language. And you will meet a whole new group of people you would never have met.

It's just a different place. It's slower paced than Italy, less flashy than Italy. But after you've been there for a while and you catch your breath, you look around, and you begin to notice that Holland has windmills, Holland has tulips, Holland even has Rembrandts.

But everyone you know is busy coming and going from Italy, and they're all bragging about what a wonderful time they had there. And for the rest of your life you will say, "Yes, that's where I was supposed to go. That's what I had planned."

The pain of that will never, ever, go away, because the loss of that dream is a very significant loss.

But if you spend your life mourning the fact that you didn't get to Italy, you may never be free to enjoy the very special, the very lovely things about Holland.

Written by Emily Perl Kingsley

# **The Twelve Commandments for Parents of Children with Disabilities**

*by Virginia Richardson  
Parent Training Coordinator, Retired  
The PACER Center*

- I. Thou art thy child's best and most consistent advocate.
- II. Thou hast valuable information about your child. Professionals need your input.
- III. Thou shalt put it in writing and keep a copy.
- IV. Thou shalt try to resolve problems at the lowest level but not hesitate to contact a higher authority if a problem is not resolved.
- V. Thou shalt keep records.
- VI. Thou shalt seek out information when needed.
- VII. Thou shalt take time to think through information before making a decision.
- VIII. Thou shalt have permission to be less than perfect. Important lessons are learned from both successes and failures.
- IX. Thou shalt not become a martyr. Decide to take a break now and then.
- X. Thou shalt maintain a sense of humor. It is great for your emotional well-being and that of your child.
- XI. Thou shalt always remember to tell people when they are doing a good job.
- XII. Thou shalt encourage thy child to make decisions because one day he or she will need to do so.

## **Disability, Special Education, & Related Glossary of Terms**

**Accessible:** Easy to approach, enter, operate, participate in, or use safely, independently and with dignity by a person with a disability (i.e., site, facility, work environment, service or program).

**Accommodations:** Tools, materials, techniques, and procedures that provide equal access to instruction and assessment for students with disabilities. Designed to "level the playing field" for students with disabilities, accommodations are generally grouped into the following categories:

- Presentation (e.g., repeat directions, read aloud, use of larger bubbles on answer sheets, etc.)
- Response (e.g., mark answers in book, use reference aids, point, use of computer, etc.)
- Timing/Scheduling (e.g., extended time, frequent breaks, etc.)
- Setting (e.g., study carrel, special lighting, separate room, etc.).

**Aids for Activities for Daily Living (ADL):** Self-help aids for use in activities such as eating, bathing, shopping, home maintenance, etc.

**Adequate Yearly Progress (AYP):** An individual state's measure of yearly progress toward achieving state academic standards. "Adequate Yearly Progress" is the minimum level of improvement that states, school districts and schools must achieve each year.

**Administrative Hearing:** Formal judicial process where appeal is heard.

**Administrative Officer/Hearing Officer:** Person in charge of and decision-maker for formal appeals hearing.

**Age Equivalent Score:** In a norm-referenced assessment, individual student scores are reported relative to those of the norming population. This can be done in a variety of ways, but one way is to report the average age of people who received the same score as the individual child. Thus, an individual child's score is described as being the same as students that are younger, the same age, or older than that student (e.g. a 9 year old student may receive the same score that an average 13 year old student does, suggesting that this student is quite advanced).

**Aids for Activities for Daily living (AOL):** Self-help aids for use in activities such as eating, bathing, shopping, home maintenance, etc.

**Alternative Educational Placement (AEP), sometimes Alternative Educational Setting (AES):** An alternative classroom setting used to improve classroom behavior and address needs that cannot be met in a regular classroom setting.

**Alternate Dispute Resolution (ADR):** A variety of procedures for resolving disputes. ADR is a fair and efficient alternative to court adjudication that must be entered into voluntarily by all parties. Some of the more common ADR procedures are arbitration, mediation, and conciliation.

**Alternate Formats:** Formats usable by people with disabilities. These may include, but are not limited to, Braille, ASCII text, large print, and recorded audio.

**Alternate Methods:** Different means of providing information, including product documentation, to people with disabilities. Alternate methods may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and audio description.

**Americans with Disabilities Act:** The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities. It mandates equal opportunities for persons with disabilities in areas such as employment, public accommodations, transportation, state and local government services, and telecommunications.

**Aphasia, Expressive:** The lack of ability to communicate orally.

**Aphasia, Receptive:** The inability to communicate aurally (listening).

**Applied Behavior Analysis (ABA):** A systematic process of studying and modifying observable behavior through a manipulation of the environment. Its principles are often applied in teaching individuals with autism and other developmental disorders. It uses an experimental approach of manipulating the environment and tracking alterations in behavior to understand and manipulate functional relationships between behavior and environments.

**Apraxia:** Difficulty in performing purposeful motor output, in the absence of paralysis or sensory limitation, due to brain lesion or dysfunction.

**Aptitudes:** Native and acquired characteristics that indicate a capacity for future success in learning.

**Arbitration:** Process that is more formal than mediation but that also involves a neutral third party; after presentation of both sides a third person decides issue. Normally the third person has experience in the area.

**Assessment:** Provides information and data which answer a specific set of questions for future planning, implementation, and evaluation.

**Assessment, Formal:** Provides data through the use of standardized, norm, or criterion-referenced instruments which have specific directions for administration, scoring, and interpretation.

**Assistive Technology:** Assistive technology is any item or piece of equipment used to maintain or improve the functional capabilities of individuals with disabilities.

**Attention Deficit Disorder:** Attention deficit disorder, commonly referred to as ADD, is a neurological disability characterized by inappropriate attention skills, impulsive behavior, and in some cases, hyperactivity (ADHD). ADD is marked by chronic behaviors that last at least six months and appear before age seven. The behaviors may include: fidgeting, difficulty remaining seated, difficulty following instructions, leaving tasks uncompleted, and appearing not to listen when others are speaking.

**Attention Span:** Duration of time one can attend to a specific task.

**Auditory:** Relating to hearing

**Auditory Discrimination:** The ability to distinguish (to discriminate) between sounds which are heard and sounds which may be somewhat alike.

**Auditory Dyslexia:** Difficulty translating speech into writing, distinguishing between certain sounds of speech accurately, and establishing sound with written equivalent.

**Auditory Memory:** The ability to remember information received through the auditory channel.

**Auditory Processing:** The ability to act upon auditory information in order to generalize, abstract, classify, integrate, etc.

**Auditory Processing Disorder (APD):** An inability to accurately process and interpret sound information. Students with APD often do not recognize subtle differences between sounds in words.

**Auditory Reception:** Auditory decoding; understanding spoken words.

**Auditory Sequencing:** The ability to recall previously heard details in their correct order.

**Augmentative Communication:** Augmentative communication refers to the supplementation or replacement of speech through the use of aided or unaided techniques. Sign language, gestures, and fingerspelling are examples of unaided communication, whereas aided communication is associated with technology. An example of aided communication would be a computer-based system that supports verbal and written communication.

**Aural:** Learning through listening; attending with the ears.

**Autism:** Autism is a developmental disability that appears before age three. It is characterized by qualitative differences in the areas of social competence and communication skills. Individuals with autism typically demonstrate a narrow range of interests, repeatedly engage in specific activities, and experience difficulties processing sensory input from the surrounding environment. Common behaviors include: a tendency to avoid social contact, a tendency to become upset by changes in routine, and an inability to effectively communicate.

**Auxiliary Aids and Services:** Devices or services that accommodate a functional limitation of a person with a communication-related disability that includes qualified interpreters and communication devices for persons who have deafness or hardness of hearing; qualified readers, taped texts, braille or other devices for persons with visual impairments; and adaptive equipment for persons with other communication disabilities.

**Behavioral Contracts:** A behavioral contract is a written document between an instructor and student which specifies: (a) agreed behaviors; (b) positive and negative consequences; and (c) time frame of the contract with review dates. The contract is then signed by the instructor, student, and others who participate in the contract. Behavioral contracts are a practical and creative way for instructors to help students of all ages improve various problematic behaviors, such as: Classroom and social behavior, substance abuse, and school attendance.

**Behavior Disorders:** Behavior disorders refer to a complex set of behavioral and emotional problems that are exhibited by children. Children with these disorders often engage in antisocial behavior. They are often physically and verbally aggressive and may lie, steal, perform vandalism, or "act out" in other ways. Children with behavior disorders may also experience depression. If disorders are not treated early in life the individual may continue to exhibit antisocial behavior into adulthood.

**Behavior Intervention:** A systematic implementation of procedures that result in lasting positive changes in an individual's behavior. Interventions may include positive strategies,

program or curricular modifications, and supplementary aids and supports required to address the disruptive behaviors in question. It is helpful to use data collected during a functional behavioral assessment to develop the plan and to determine the discrepancy between the student's actual and expected behavior.

**Behavior Intervention Plan (BIP):** A plan that includes positive strategies, program modifications, and supplementary aids and supports that address a student's disruptive behaviors and allows the child to be educated in the least restrictive environment (LRE)

**Bilingual Education:** An educational program in which two languages are used to provide content matter instruction. Bilingual education programs vary in their length of time, and in the amount each language is used.

**Birth Defects:** The term refers to any anomaly, functional or structural, that is caused before birth. A birth defect may be inherited or acquired and may be present in infancy or become apparent later in life.

**Blind:** A person's vision is evaluated by visual acuity (20/20 scale) and the range of peripheral vision. Normal vision is defined as 20/20 visual acuity and an average range of 180 degrees in peripheral vision. An individual is legally blind if after methods of correction, such as glasses or contact lenses, he/she has a visual acuity of 20/200 or higher denomination or a range of peripheral vision under 20 degrees.

**Brain Damage:** A structural injury to the brain from accident, disease, or surgery.

**Brain Injury:** The physical damage to brain tissue or structure that occurs before, during, or after birth that is verified by EEG, MRI, CAT, or a similar examination, rather than by observation of performance. When caused by an accident, the damage may be called Traumatic Brain Injury (TBI).

**Capacity:** The potential point at which learning ceases; set by the limits of the learner's intelligence and psychomotor functioning.

**Central Auditory Processing Disorder (CAPD):** A disorder that occurs when the ear and the brain do not coordinate fully. A CAPD is a physical hearing impairment, but one which does not show up as a hearing loss on routine screenings or an audiogram. Instead, it affects the hearing system beyond the ear, whose job it is to separate a meaningful message from non-essential background sound and deliver that information with good clarity to the intellectual centers of the brain (the central nervous system).

**Cerebral Palsy:** Cerebral palsy is a functional disorder caused by damage to the brain during pregnancy, delivery, or shortly after birth. It is characterized by movement disorders, such as: spasticity (tight limb muscles), purposeless movements, rigidity (severe form of spasticity), a lack of balance, or a combination of these disorders. Individuals also experience seizures, abnormal speech, hearing/visual impairments, and intellectual disability.

**Child with a disability:** A child who has a disability as defined in one of the 13 disability categories in IDEA and requires special education and related services; or a child aged 3 through 9 who is experiencing developmental delay.

**Child Find:** Ongoing activities undertaken by states and local school districts to locate, identify, and evaluate all children residing in the state who are suspected of having disabilities so that a free appropriate public education (FAPE) can be made available to all eligible children, including all children in public and private schools, including religious



schools.

**Cleft Palate:** A cleft palate is a birth defect characterized by a split or opening in the roof of the mouth. It results from failure of the parts of the roof of the mouth to join together during pregnancy. Cleft palates may be caused by genetic or environmental factors.

**Cognition:** Process of knowing, perceiving, or reasoning.

**Communication Disabilities:** Communication disabilities include any visual, hearing, or speech impairments that limit a person's ability to communicate.

**Consumer:** An individual with a disability in the context of one who receives services.

**Courses of study:** Middle and high school course work (or classes) that lead to a certain type of diploma and/or are required for post-secondary education.

**Crisis Management Plan:** A plan of action, usually included in the Behavior Intervention Plan (BIP) of a student's Individual Education Program (IEP), with the purpose of minimizing the risk of injury to student(s) and staff and to safely de-escalate and manage a potentially explosive situation.

**Crisis Situation:** A state of events or actions that poses an immediate threat to self or others.

**Curriculum-based Assessment:** A type of informal assessment in which the procedures directly assess student performance in learning-targeted content in order to make decisions about how to better address a student's instructional needs.

**Data Collection:** Data collection is collecting specific information about a student's academic or behavioral performance. Collecting data helps determine a program's effectiveness. Data collection has two critical components: information gathering and decision making. Information gathering may involve curriculum-based assessment, observing classroom behavior, grading papers, or parent interviews. The more structured and systematic the process, the more valid the information.

**Deaf-Blindness:** Deaf-blindness, or dual sensory impairment, is a combination of both visual and hearing impairments. An individual with deaf-blindness can experience severe communication, educational, and other developmental problems and cannot be accommodated by services focusing solely on visual impairments or solely on hearing impairments.

**Deafness:** Deafness can be defined as a total or partial inability to hear. An individual who is totally deaf is unable to hear with or without the use of a hearing aid, whereas a person who is partially deaf may be able to hear with the help of a hearing aid.

**Decoding:** The ability to translate a word from print to speech, usually by employing knowledge of sound-symbol correspondences. It is also the act of deciphering a new word by sounding it out.

**De-Escalation Skills:** Strategically employed verbal or non-verbal interventions used to reduce the intensity of threatening behavior before a crisis situation occurs.

**Developmental Aphasia:** A severe language disorder that is presumed to be due to brain injury rather than because of a developmental delay in the normal acquisition of language.

**Developmental Delays:** Developmental delays refer to conditions which represent a significant delay in the process of child development. The delays may involve cognitive, physical, communicative, social/emotional, and adaptive areas of development. Without special intervention, these delays may affect the educational performance of the child.

**Developmental Disabilities:** A developmental disability is a severe and long lasting disability which is the result of a mental and/or physical impairment, occurs before age 22, is likely to continue indefinitely, reflects the person's need for specialized services and/or treatment, and results in substantial functional limitations in three or more areas. The areas include: self-care, self-direction, economic self-sufficiency, independent living, learning, receptive or expressive language, and mobility.

**Differential Reinforcement:** Differential reinforcement is the reinforcement of one form of behavior and not another, or the reinforcement of a response under one condition but not another. Differential reinforcement uses positive reinforcement to differentiate or separate appropriate student behavior from inappropriate behavior by increasing one while decreasing the other.

**Direct Instruction:** An instructional approach to academic subjects that emphasizes the use of carefully sequenced steps that include demonstration, modeling, guided practice, and independent application.

**Disability:** A disability is basically defined as a mental or physical condition that restricts an individual's ability to engage in substantial gainful activity.

**Distractibility:** The inability to "tune out" extraneous stimuli, poor attention span, and/or intermittent concentration.

**Down Syndrome:** Down syndrome is a chromosomal condition (trisomy 21) caused by the presence of one extra chromosome. Individuals with Down syndrome experience slow physical and mental development and often exhibit certain identifiable physical characteristics, such as a round face, slanting eyes, and a small stature. People with Down syndrome usually function in the mild to moderate range of intellectual disability and may experience health problems.

**Due Process Complaint:** A written complaint filed by a parent or a school district involving any matter related to the identification, evaluation, educational placement or provision of a free, appropriate, public education to a student with a disability.

**Due Process Hearing:** A formal, quasi-legal procedure before an impartial hearing officer or administrative law judge (or panel of judges) who is not an employee of the state educational agency or school district. Both the parents and the school district present arguments and evidence.

**Dyscalculia:** A severe difficulty in understanding and using symbols or functions needed for success in mathematics.

**Dysgraphia:** A severe difficulty in producing handwriting that is legible and written at an age-appropriate speed.

**Dysphasia:** Difficulty comprehending the spoken word (receptive) and/or speaking (expressive).

**Dyslexia:** A severe difficulty in understanding or using one or more areas of language,

including listening, speaking, reading, writing, and spelling.

**Dysnomia:** A marked difficulty in remembering names or recalling words needed for oral or written language.

**Dyspraxia:** A severe difficulty in performing drawing, writing, buttoning, and other tasks requiring fine motor skill, or in sequencing necessary movements.

**Early Intervention:** Early intervention is an attempt to locate, identify, and evaluate young children with developmental disabilities or developmental delays and provide services to counteract these disorders and facilitate the child's development. Every state has organizations that provide early intervention services.

**Early intervention services:** Services to infants and toddlers are provided under Part C of IDEA. Part C established the Program for Infants and Toddlers with Disabilities, a federal grant program that assists states in operating a comprehensive statewide program of early intervention services for infants and toddlers with disabilities, aged birth through age 2 years, and their families. Early intervention services include multidisciplinary evaluation of needs of children and family-directed identification of the needs of each family as set out in an Individualized Family Service Plan (IFSP).

**Echolalia:** Echolalia is the constant repeating or parroting of what has been said by others. Individuals with autism and Tourette syndrome commonly exhibit echolalia.

**Every Student Succeeds Act (ESSA):** The ESSA, signed by President Obama on 12/10/2015 reauthorized the 50-year-old Elementary and Secondary Education Act (ESEA), the nation's national education law and longstanding commitment to equal opportunity for all students. It replaced No Child Left Behind Act (NCLB).

**English as a Second Language (ESL):** English learned in an environment where it is the predominant language of communication.

**English Language Learner (ELL):** Students whose first language is not English and who are in the process of learning English.

**Epilepsy:** Epilepsy is a physical condition that occurs when there is a sudden, brief disturbance in the function of the brain. This "disturbance" can alter an individual's consciousness, movements, or actions. The sudden change is referred to as an epileptic seizure. Most individuals with epilepsy can reduce or eliminate the risk of seizures through the regular use of appropriate medication.

**Essential Job Functions:** Fundamental job duties of an employment position that an individual with a disability holds or desires.

**Equal Employment Opportunity Commission (EEOC):** Federal agency responsible for overseeing and enforcing nondiscrimination in hiring, firing, compensation, promotion, recruitment, training, and other terms and conditions of employment regardless of race, color, sex, age, religion, national origin or disability.

**Expressive Language:** The aspect of spoken language that includes speaking and the aspect of written language that includes composing or writing.

**Family Educational Right to Privacy Act (FERPA):** A federal law that protects the privacy and access of student education records.

**Fetal Alcohol Syndrome (FAS):** Fetal alcohol syndrome refers to a group of symptoms exhibited by a child resulting from the mother's consumption of alcohol during pregnancy. The symptoms may include differing levels of intellectual disability, low birth weight, small size, and under development of the upper lip.

**Figure-Ground Perception:** The ability to select an object or form from the total field of incoming stimuli; the figure is the center of attention; the ground is the balance of the mass of stimuli.

**Fine Motor Activities:** Output by which the muscle system underlying delicate movements is exercised

**Fluency:** The ability to read a text accurately, quickly, and with proper expression and comprehension. Because fluent readers do not have to concentrate on decoding words, they can focus their attention on what the text means.

**Foster Parent** is an individual assigned by certain state or local agencies to serve as the custodian for a student. A foster parent may act as a parent if the natural parents' authority to make educational decisions on the student's behalf has been removed under state law and if the foster parent has an ongoing, long-term parental relationship with the student; is willing to make the educational decisions required of parents under state and federal law; and, has no interest that would conflict with the interests of the student.

**Fragile X Syndrome:** Fragile X syndrome, also known as Martin-Bell syndrome, is a genetic disorder that is the most common form of inherited mental retardation. Individuals with this disorder often have distinctive physical features, such as a long face and large prominent ears. People with Fragile X syndrome experience some degree of mental retardation along with speech and language delays. In addition, 15- 20% may also exhibit behaviors associated with autism.

**Free Appropriate Public Education (FAPE):** According to the Individuals with Disabilities Education Act (IDEA), free appropriate public education is defined as 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 state educational agency; (3) includes preschool, elementary, and secondary school education in the state involved; and (4) are provided in conformity with the child's individualized education program.

**Functional Behavior Assessment (FBA) or Functional Assessment (FA)** is a systematic process for identifying the events that trigger and maintain problem behavior in an educational setting. A Functional Behavior Assessment will describe specific problematic behaviors, report the frequency of the behaviors, assess environmental and other setting conditions where problematic behaviors occur and identify the factors that are maintaining the behaviors over time.

**Functional skills:** Skills needed for independent living, such as cooking, comparison shopping, working with or managing money, using public transportation, and knowing how to be safe in the community.

**General education curriculum:** The body of knowledge and range of skills that all students in the state are expected to master.

**Genetics:** Genetics is the study of heredity, and in particular, genes. Human genetics

attempts to understand human heredity in order to predict, diagnose, and treat genetic diseases.

**Graphic Organizers:** Text, diagram or other pictorial device that summarizes and illustrates interrelationships among concepts in a text. Graphic organizers are often known as maps, webs, graphs, charts, frames, or dusters.

**Gross Motor Activities:** Movement in which groups of large muscles are employed and rhythm and balance are of major importance.

**Group Homes:** Group homes are a housing option for individuals with developmental and other disabilities that allow them to live in residences within the community in a family-type setting. A small group of individuals with disabilities live together in a house and share household duties. The group home is usually supervised by live-in professionals or volunteer staff.

**Hydrocephalus:** Hydrocephalus refers to an abnormal accumulation of fluid (cerebrospinal fluid) within cavities, called ventricles, inside the brain. Hydrocephalus can be congenital, caused by complex genetic and environmental factors, or acquired from spina bifida, intraventricular hemorrhage, head trauma, meningitis, tumors and cysts. Individuals often experience mental and physical impairments and a variety of health problems.

**Hyperlexia:** Hyperlexia is a syndrome characterized by a child's precocious ability to read, combined with difficulty in understanding and using verbal language, and problems with social interactions.

**Hyperactivity:** Hyperactivity generally refers to a group of behavioral characteristics, such as aggressiveness, constant activity, impulsiveness, and distractibility. The actual behaviors displayed include: fidgeting, an inability to remain seated or still, excessive talking, poor impulse control, and an inability to play quietly. Hyperactivity is commonly associated with attention deficit disorder.

**Hyperkinesis:** Overactivity or excessive motor movement.

**Hypoactivity:** Pronounced lack of physical activity

**Hypokinesis:** Lack of normal bodily movement and motor activity.

**Inclusion:** In general, inclusion refers to a set of practices and beliefs that all children should be educated, regardless of disability, in their neighborhood school, and in age appropriate general education settings with appropriate supports and services.

**Impulsivity:** Behavior characterized by acting hastily without thinking through the consequences of acts.

**Independent Living:** The concept of independent living involves the belief that individuals with disabilities have the same rights and responsibilities as other people in society. Thus, services provided to the public should be accessible to persons with disabilities, and systems of support should be made available to help individuals with disabilities live within the community and lead more independent lives affording them as much independence and autonomy as possible.

**Individual with a Disability:** Person who has a physical or mental impairment that substantially limits one or more of that person's major life activities, has a record of such impairment, or who is regarded as having such impairment.

**Independent Educational Evaluation (IEE):** An evaluation conducted by a qualified examiner, who is not employed by the school district at the public's expense.

**Individualized Education Plan (IEP):** The IEP is the plan agreed upon by the school administrator, teacher, parents, and other relevant professionals. The IEP is comprised of seven parts: (1) present level of functioning or performance, (2) annual goals, (3) short term instructional objectives or goals, (4) indication of any special (related) services needed, (5) amount of time spent in regular education classroom, (6) when plan will begin, be reviewed, and end, and (7) evaluation of goals and objectives.

**IEP Team:** Those responsible for developing and reviewing a student's IEP annually. The IEP Team must include: the parent(s)/guardian, a special education teacher, a regular education teacher, a person knowledgeable about general curriculum, a person who can interpret the instructional implications of evaluation results, a Local Education Authority (LEA), and, when appropriate, the student. When transition issues are being discussed, the team should include a career or technical education representative.

**Individualized Family Service Plan (IFSP):** Part C of IDEA directs states to develop and implement a comprehensive, coordinated, multidisciplinary program of early intervention services for infants and toddlers with disabilities and their families. The law requires that an IFSP is created to establish an agreement between families and professionals that the necessary resources will be provided to help the child and the family achieve their goals and satisfy their needs.

**Individualized Transition Plan (ITP):** The Individualized Transition Plan is the part of a person's individualized Education Plan (IEP) that identifies the long range goals of the person in respect to life after school. Transition services are a coordinated set of activities that are designed to help a student with disabilities move from school to life after school. The person's life after school may include: post-secondary education, vocational training, integrated employment, continuing and adult education, independent living, participation in the community, and other activities. The ITP indicates how the individual will be supported or helped to participate in his/her preferred activities and achieve his/her goals.

**Individuals with Disabilities Education Improvement Act (IDEA 2004):** The law that guarantees all children with disabilities access to a free and appropriate public education.

**Informed consent:** Procedure to ensure that the parent:

- Has been fully informed of all information related to the proposed activity (in his native language, or other mode of communication)
- Understands and agrees in writing to carrying out the activity for which consent is sought
- Understands that giving consent is voluntary and may be revoked at any time
- Understands that revoking consent will not apply to an activity that has already occurred. Informed consent is required for an evaluation, a reevaluation and for the initial delivery of special education services.

**Intellectual Disability:** A mental disability that limits the intellectual capacity of an individual. A person is considered to have intellectual disability if: they have an IQ below 70, the condition is present before age 18, and limitations exist in two or more adaptive skill areas. The adaptive skill areas include: communication, self-care, home-living, social skills, leisure, health and safety, self-direction, functional academics, and employment.

**Intelligence:** Learner's ability to perceive relationships such as logical, spatial, numerical, and verbal, to learn to recall and to solve problems measured by verbal and non-verbal performance tests.

**IQ Scores:** The intelligence quotient (IQ) is a number used to express a person's relative intelligence as measured by performance tests to compute an individual's IQ score. The majority of scores fall between 70 and 130, with a score above 130 considered gifted and a score below 70 considered mentally deficient. However, intelligence tests have been widely criticized for not accurately depicting an individual's mental capabilities.

**Interim Alternative Educational Setting (IAES):** A setting other than the student's current placement that enables the student to continue to receive educational services according to his/her IEP. The IAES must enable the student to continue to participate in the general education curriculum, although in another setting, and progress toward meeting the goals set out in the IEP. Students in an IAES should also receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again. The particular IAES is determined by the student's IEP team.

**Intervention:** A change in instructing the student in the area of learning difficulty to try to improve learning and achieve adequate progress.

**Job Coach:** A person hired by the placement agency or provided through the employer to furnish specialized on-site training to assist an employee with a disability in learning and performing a job and adjusting to the work environment.

**Kinesthetic:** Pertaining to the muscles - doing, talking (the muscles of speech) and writing (the muscles of the hand and arm) as well as general body movement.

**Learning Disabilities:** Learning disabilities is a broad term used to refer to disorders that affect a person's ability to interpret what they see or hear and link information from different parts of the brain. These disorders usually manifest as problems with reading, writing, reasoning, or mathematics. Learning disabilities are neurological, lifelong disorders, but can often be overcome through appropriate intervention and support.

**Learning Modalities:** Approaches to assessment or instruction stressing the auditory, visual, or tactile avenues for learning that are dependent upon the individual.

**Learning Strategy Approaches:** Instructional approaches that focus on efficient ways to learn, rather than on curriculum. It includes specific techniques for organizing, actively interacting with material, memorizing, and monitoring any content or subject.

**Learning Styles:** Approaches to assessment or instruction emphasizing the variations in temperament, attitude, and preferred manner of tackling a task. Typically considered are styles along the active/passive, reflective/impulsive, or verbal/spatial dimensions.

**Least Intrusive Physical Skills:** Safely matching the intervention to the circumstances of the crisis from the least intrusive to most restrictive non-harmful techniques of physically restraining a student.

**Least Restrictive Environment (LRE):** A learning plan that provides the most possible time in the regular classroom setting.

**Limited English Proficient (LEP):** The term used by the federal government, most states,

and local school districts to identify those students who have insufficient English to succeed in English-only classrooms

**Listening Comprehension:** Understanding speech. Listening comprehension, as with reading comprehension, can be described in "levels" - lower levels of listening comprehension would include understanding only the facts explicitly stated in a spoken passage that has very simple syntax and uncomplicated vocabulary. Advanced levels of listening comprehension would include implicit understanding and drawing inferences from spoken passages that feature more complicated syntax and more advanced vocabulary.

**Local Education Agency (LEA):** A public board of education or other public authority within a state that maintains administrative control of public elementary or secondary schools in a city, county, township, school district or other political subdivision of a state.

**Major Life Activity:** Basic activities that the average person in the general population can perform with little or no difficulty, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working

**Mechanical Restraint:** The use of any device or material attached or adjacent to the student's body, which the student cannot easily remove, and that restricts freedom of movement or normal access to any portion of the student's body. Mechanical Restraint does not refer to a protective or stabilizing device ordered by a physician, or appropriate professional, when it is used as prescribed or directed.

**Mediation:** A confidential, voluntary process that allows parties to resolve disputes without a formal due process hearing. An impartial mediator helps the parties to express their views and positions and to understand the other's views and positions. The mediator's role is to facilitate discussion and help parties reach an agreement -- not to recommend solutions or take positions or sides.

**Mental Illness:** Refers to any illness or disorder that has significant psychological or behavioral manifestations, is associated with painful or distressing symptoms, and impairs an individual's level of functioning in certain areas of life. There are several different types of mental illness with differing levels of severity. The cause of mental illness is relatively unknown. Therapy and appropriate medication are the most common forms of treatment.

**Mentoring:** Mentoring is an educational process where the mentor serves as a role model, trusted counselor or teacher who provides opportunities for professional development, growth and support to less experienced individuals in career planning or employment settings. Individuals receive information, encouragement and advice as they plan their careers.

**Multidisciplinary Team (MDT):** The school-based team responsible for implementing the procedures, including evaluations, necessary to determine eligibility if a student is suspected of having a disability. The MDT must include a person qualified to conduct an individual diagnostic examination (i.e. school psychologist) and at least one teacher or specialist in the area of the child's suspected disability.

**Multi-sensory Learning:** An instructional approach that combines auditory, visual, and tactile elements into a learning task. Tracing sandpaper numbers while saying a number fact aloud would be a multi-sensory learning activity.

**Natural Supports:** Supports provided to an employee with a disability from supervisors and co-workers, such as mentoring, friendship, socializing at breaks or after work, providing



feedback on job performance or learning a new skill together.

**No Child Left Behind (NCLB):** The No Child Left Behind Act of 2001 was recently reauthorized in 2015 as the Every Student Succeeds Act (ESSA).

**Nonverbal Learning Disability:** A neurological disorder which originates in the right hemisphere of the brain. Reception of nonverbal or performance-based information governed by this hemisphere is impaired in varying degrees, causing problems with visual-spatial, intuitive, organizational, evaluative, and holistic processing functions.

**Norm-referenced Assessment:** A type of assessment that compares an individual child's score against the scores of other children who have previously taken the same assessment. With a norm-referenced assessment, the child's raw score can be converted into a comparative score such as a percentile rank.

**Occupational Therapy (OT):** A rehabilitative service to people with mental, physical, emotional, or developmental impairments. Services can include helping a student with pencil grip, physical exercises that may be used to increase strength and dexterity, or exercises to improve hand-eye coordination.

**Paraplegia:** Paraplegia is paralysis of the legs and lower part of the body. Paraplegia often involves loss of sensation as well as loss of movement. It is usually caused by injury or disease in the lower spinal cord, or brain disorders, such as cerebral palsy.

**Peer Review:** The evaluation of creative work or performance by other people in the same field in order to maintain or enhance the quality of the work or performance in that field. This process is used by publishers and editors of academic/scholarly journals to ensure that the articles they publish meet the accepted standards of their discipline.

**Perseveration:** The tendency to or process of continuing an activity long beyond the time for which it makes any sense to do so.

**Physical Escort:** The touching or holding a student with a minimum use of contact for the purpose of directing movement from one place to another.

**Physical Restraint:** The use of physical force or a mechanical device to restrict the free movement of all or a portion of the student's body. The holding of a student with any purpose other than providing safety and support is considered Physical Restraint. Physical Restraint does not include briefly holding a student in order to calm or comfort the student; holding a student's hand or arm to escort the student safely from one area to another; holding a child for a brief time in order to prevent an impulsive behavior that threatens the child's immediate safety (i.e. running in front of a car); moving a disruptive student who is unwilling to leave an area or breaking up a fight in the school building or on school grounds.

**Physical Therapy (PT):** Instructional support and treatment of physical disabilities, under a doctor's prescription, that helps a person improve the use of bones, muscles, joints and nerves.

**Positive Behavior Interventions:** Procedures used to provide positive intervention whenever a student displays, or is likely to display, a targeted serious behavior problem. Positive Behavior interventions are implemented as a part of a student's Behavior Intervention Plan (BIP).

**Positive Behavior Support (PBS):** The assessment and reengineering of environments so

people with problem behaviors experience reductions in their problem behaviors and increase social, personal, and professional quality in their lives. (Horner, 1999).

**Positive Behavior Plan:** The design, implementation, and evaluation of individual or group instructional and environmental modifications, including programs of behavioral instruction, to produce significant improvements in behavior through skill acquisition and the reduction of problematic behavior.

**Postsecondary education;** Formal education or training beyond high school, including college, university, vocational school and trade school.

**Pre-referral Process:** A procedure in which special and regular teachers develop trial strategies to help a student showing difficulty in learning remain in the regular classroom.

**Prior Written Notice:** A written notice that the school must provide to the parents of a student with a disability within a reasonable time if they wish to:

- Evaluate the student
- Determine whether the student is eligible for special education services
- Change the student's evaluation, educational placement or IEP
- Refuse the parents' request to evaluate their child or change their child's educational plan (IEP) or placement

**Progress monitoring:** A scientifically based practice used to assess students' academic performance and evaluate the effectiveness of instruction. Progress monitoring can be implemented with individual students or an entire class.

**Quadriplegia:** Quadriplegia is the paralysis of all four limbs.

**Reasonable Accommodation:** (1) Modification or adjustment to a job application process that enables a qualified applicant with a disability to be considered for the position; (2) modifications or adjustments to the work environment, or to the manner or circumstances under which a position held or desired is customarily performed, that enable qualified individuals with disabilities to perform the essential functions of that position; or (3) modifications or adjustments that enable an employee with a disability to enjoy the same benefits and privileges of employment as similarly situated employees without disabilities.

**Receptive Language:** Language that is spoken or written by others and received by the learner; listening and reading.

**Related services:** Supportive services that are required to assist a child with a disability to benefit from special education.

**Resolution Session:** A mandatory meeting that the school district must convene within 15 days of receiving the parents' due process complaint. The resolution session includes parents, members of the IEP team relevant to the complaint, and a representative of the school district who has decision-making authority.

**Resource Program:** A program model in which a student with a disability is educated in a regular classroom for most of each day, but also receives regularly scheduled individual services in a separate resource classroom.

**Response to Intervention (RTI):** A multi-tier approach to the early identification and support of students with learning and behavior needs. This comprehensive, multi-step general education process closely monitors how the student is responding to different types of services and instruction.

**Scaffolding:** A way of teaching in which the teacher provides support in the form of modeling, prompts, direct explanations, and targeted questions - offering a teacher-guided approach at first. As students begin to acquire mastery of targeted objectives, direct supports are reduced and the learning becomes more student-guided.

**School Resource Officer (SRO):** A school based certified law enforcement officer whose primary responsibility is to maintain and enforce local, state and federal laws on the Public School campus.

**Scientific, research-based instruction:** Curriculum and educational interventions that are research based and have been proven to be effective for most students.

**Seclusion:** The confinement of a student alone in a secured room or other space from which the student is physically prevented from leaving.

**Section 504 of the Rehabilitation Act of 1973:** “Section 504” is a civil rights declaration that prohibits discrimination against persons for reasons of disability. Section 504 prevents exclusion “from the participation in, be denied the benefits of, or be subjected to discrimination under any program or any activity receiving Federal financial assistance”. It is important to note that the definition of disability under Section 504 is much broader than under IDEA, thus students who do not meet eligibility requirements under IDEA may qualify for protection under Section 504. As in IDEA, Section 504 has specific procedural requirements for the identification, evaluation, placement and procedural safeguards of students.

**Section 504 Plan:** A documented plan designed to identify and eliminate impediments to full participation in activities by students with disabilities. Developed by the MDT (with input from other vested individuals including parents), the 504 Plan specifies accommodations to the regular education environment in order to insure a student’s receipt of FAPE. For those students whose behavior interferes with learning, the 504 Plan should include a BIP.

**Section 508:** Section of the amended Rehabilitation Act requiring all federal agencies to make their electronic and information technologies available to people with disabilities.

**Seizure Disorder:** (see epilepsy)

**Self-Advocacy:** The ability to articulate one’s needs and make informed decisions about the supports necessary to meet those needs. It is a form of advocacy occurring any time people speak or act on their own behalf to improve their quality of life, effect personal change, or correct inequalities.

**Self-monitoring:** The mental act of knowing when one does and does not understand what one is reading.

**Slow Learner:** Child or adult with a measured IQ from 70-80.

**Spatial Orientation:** Refers to an awareness of self in space; this includes direction, position, distance, and the judging thereof.

**Special Education (SPED):** Services offered to children who possess one or more of the following disabilities: specific learning disabilities, speech or language impairments, mental retardation, emotional disturbance, multiple disabilities, hearing impairments, orthopedic impairments, visual impairments, autism, combined deafness and blindness,

traumatic brain injury, and other health impairments.

**Specially designed instruction:** Ways that special education professionals adapt the content, methodology (approaches to teaching certain grade level content), or the delivery of instruction to address the unique needs that result from the child's disability. Specially designed instruction should also ensure that the eligible child has access to the general curriculum so that he or she can meet the educational standards of the school district that apply to all children.

**Specific Learning Disability:** A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

**Speech Language Pathologist (SLP):** An expert who can help children and adolescents who have language disorders to understand and give directions, ask and answer questions, convey ideas, and improve the language skills that lead to better academic performance.

**Speech Impairments:** The term, speech impairment, refers to disorders that impair an individual's ability to verbally communicate. This could include the inability to speak, the inability to maintain a flow or rhythm of speech (e.g., dysfluency, or stuttering), or the inability to pronounce certain sounds.

**Spina Bifida:** Spina Bifida refers to an incomplete closure in the spinal column during prenatal development.

**State Complaint:** A written complaint that can be filed by any organization or individual claiming that a school district within the state has either violated a requirement of Part B of IDEA (the part that contains all requirements regarding the delivery of special education services) or the state's special education law or regulations. State complaints must be filed within one year of the alleged violation.

**Supplementary Aids and Services:** Aids, services, and other supports that are provided in general education classes or other education-related settings to enable students with disabilities to be educated along with non-disabled students to the maximum extent appropriate. Supplementary services include, but are not limited to, the following: itinerant or resource assistance, sign language interpreting, tutoring, consultation, note taking, assistive technology services, and training for general educators. Supplementary aids include, but are not limited to, the following: large-print textbooks, auditory trainers, curriculum adaptations, classroom modifications, adaptations, time management, behavior management, augmentative communication, and assistive technology devices.

**Surrogate Parent:** A person appointed to act in place of parents when a student's parents or guardians cannot be identified or cannot be located or when the student is a ward of the State. The surrogate parent may represent the student in all matters relating to the identification, evaluation, and educational placement of the student and to the provision of FAPE.

**Supported Employment:** Supports that help people with severe disabilities (e.g.,

psychiatric, mental retardation, significant learning disabilities, traumatic brain injury) find competitive work in an integrated setting where they might not otherwise be able to do so. The supports can include job coaches, transportation, assistive technology, specialized job training and individually tailored supervision.

**Tactile-kinesthetic:** A term frequently used synonymously with "motor." Combining the sensory impressions of touch and muscle movement.

**Time-Out:** A behavior management technique in which a student, for a limited and specified time, is placed in an environment where access to positive reinforcement is unavailable. Time out should not be confused with seclusion because in a Time Out setting a student's movement is not physically restricted.

**Title I:** The portion of the Elementary and Secondary Education Act, as amended (ESSA) provides financial assistance to local educational agencies (LEAs) and schools with high numbers or high percentages of children from low-income families to help ensure that all children meet challenging state academic standards.

**Title V:** The portion of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of a disability by the Federal government, Federal contractors, by recipients of Federal financial assistance, and in Federally-conducted programs and activities.

**Title IX:** The portion of the Education Amendments Act of 1972 that prohibits exclusion on the basis of sex from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

**Token Economy:** A token economy is a system of individual reinforcement of target behaviors in which tokens are administered and exchanged later for backup reinforcers. To be successful, a person must be reinforced for increasing or decreasing existing behavior as well as successive approximations of the behaviors we wish to establish.

**Tourette Syndrome:** Tourette syndrome is a genetic, neurological disorder characterized by repetitious, involuntary body movements and uncontrollable vocal sounds. Tourette syndrome is detected before age 18 and most commonly affects males. The majority of individuals with Tourette syndrome experience mild symptoms that do not impede them from performing their normal activities.

**Transition:** Commonly used to refer to the change from secondary school to post-secondary programs, work, and independent living typical of young adults. The term is also used to describe other periods of major change such as from early childhood to school or from more specialized to mainstreamed settings.

**Undue Hardship:** With respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of certain factors. These factors include the nature and cost of the accommodation in relationship to the size, resources, nature, and structure of the employer's operation.

**Universal screening:** A step taken by school personnel to determine which students are "at risk" for not meeting grade level standards. Universal screening can be accomplished by reviewing a student's recent performance on state or district tests or by administering an academic screening to all students in a given grade.

**Visual Impairment:** A visual impairment is an impairment of sight that cannot be corrected

by glasses or contact lenses. This includes individuals with low vision as well as people who are legally blind.

**Vocational Rehabilitation:** Programs designed to help individuals with disabilities enter or reenter gainful employment.

**Vocational Rehabilitation Agency:** A publicly funded state agency that provides direct and indirect services to youth with disabilities as they transition from school to work, in order to maximize their employability, independence and integration into the workplace and the community.

[These terms and definitions were collected from the following sources: Dr. Jean Lokerson, ERIC Digest: Southwest Educational Laboratory (SEDL); Dr. Linda Wilmshurst and Dr. Alan Brue, A Parent's Guide to Special Education, American Management Association, 2005; The Partnership for Reading; Learning Disabilities Council; Dr. Don Deshler, University of Kansas; the U.S. Department of Labor, and Project REST (Restraint: Efficacy, Safety, & Training)]

# **Developmental Skills & Milestones**

## **By 3 months of age**

### **Motor Skills**

- lift head when held at your shoulder
- lift head and chest when lying on his stomach
- turn head from side to side when lying on his stomach
- follow a moving object or person with his eyes
- grasp rattle when given to her
- wiggle and kick with arms and legs

### **Sensory and Thinking Skills**

- turn head toward bright colors and lights
- turn toward the sound of a human voice
- recognize bottle or breast
- respond to your shaking a rattle or bell

### **Language and Social Skills**

- make cooing, gurgling sounds
- smile when smiled at
- communicate hunger, fear, discomfort (through crying or facial expression)
- usually quiet down at the sound of a soothing voice or when held

## **By 6 months of age**

### **Motor Skills**

- hold head steady when sitting with your help
- reach for and grasp objects
- play with his toes
- help hold the bottle during feeding
- explore by mouthing and banging objects
- move toys from one hand to another
- pull up to a sitting position on her own if you grasp her hands
- sit with only a little support
- roll over
- bounce when held in a standing position

### **Sensory and Thinking Skills**

- open his mouth for the spoon
- imitate familiar actions you perform

### **Language and Social Skills**

- babble, making almost sing-song sounds
- know familiar faces
- laugh and squeal with delight
- scream if annoyed
- smile at herself in a mirror

## **By 12 months of age**

### **Motor Skills**

- drink from a cup with help

- feed herself finger food like raisins, grasp small objects by using her thumb and index or forefinger
- use his first finger to poke or point
- put small blocks in and take them out of a container
- knock two blocks together
- sit well without support
- crawl on hands and knees
- pull himself to stand or take steps holding onto furniture
- stand alone momentarily
- walk with one hand held

### **Sensory and Thinking Skills**

- copy sounds and actions you make
- respond to music with body motion
- try to accomplish simple goals (seeing and then crawling to a toy)
- look for an object she watched fall out of sight (such as a spoon that falls under the table)

### **Language and Social Skills**

- babble, but it sometimes “sounds like” talking
- say his first word
- recognize family members’ names
- try to “talk” with you
- respond to another’s distress by showing distress or crying
- show affection to familiar adults
- show apprehension about strangers
- raise her arms when she wants to be picked up
- understand simple commands

## **13-18 Month Milestones**

### **Motor Milestones**

- walks independently
- squats to pick up a toy
- stacks two objects
- helps with getting dressed/undressed

### **Sensory Milestones**

- has a regular sleep schedule
- eats an increasing variety of foods

### **Communication Milestones**

#### *By 15 months:*

- understands 50 words
- may use 5-10 words
- combines sounds and gestures
- imitates simple words and actions
- consistently follows simple directions
- shows interest in pictures
- can identify 1-2 body parts when named

#### *By 18 months:*



- responds to questions
- repeats words overheard in conversation
- continues to produce speech-like babbling
- points at familiar objects and people in pictures
- understands “in” and “on”
- responds to yes/no questions with head shake/nod

#### **Feeding Milestones**

- increases variety of coarsely chopped table foods
- holds and drinks from a cup

### **19 – 24 Month Milestones**

#### **Communication Milestones**

*By 21 Months:*

- uses at least 50 words
- understands new words quickly
- consistently imitates new words
- names objects and pictures
- understands simple pronouns (me, you, my)
- identifies 3-5 body parts when named

*By 24 months:*

- uses gestures and words during pretend play
- beginning to use 2 word phrases
- uses simple pronouns (me, you, my)
- understands action words
- enjoys listening to stories
- follows 2-step related directions e.g. “Pick up your coat and bring it to me”

### **2 – 3 Year Milestones**

#### **Communication Milestones**

*By 30 months:*

- consistently uses 2-3 word phrases
- uses “in” and “on”
- at least 50% of speech is understood by caregiver
- follow 2-step unrelated directions, e.g. “give me the ball and go get your coat”
- understands basic nouns and pronouns
- understands “mine” and “yours”

*By 36 months:*

- asks “what” and “where” questions
- uses plurals, e.g. “dogs”
- most speech is understood by caregiver
- simple understanding of concepts including color, space, time
- understands “why” questions
- understands most simple sentences

### **What most children do by 4 years of age:**

#### **Social and Emotional**

- enjoys doing new things

- plays “Mom” and “Dad”
- is more and more creative with make-believe play
- would rather play with other children than by himself
- cooperates with other children
- often can’t tell what’s real and what’s make-believe
- talks about what she likes and what she is interested in

#### **Language/Communication**

- knows some basic rules of grammar, such as correctly using “he” and “she”
- sings a song or says a poem from memory such as the “Itsy Bitsy Spider” or the “Wheels on the Bus”
- tells stories
- can say first and last name

#### **Cognitive (learning, thinking, problem-solving)**

- names some colors and some numbers
- understands the idea of counting
- starts to understand time
- remembers parts of a story
- understands the idea of “same” and “different”
- draws a person with 2 to 4 body parts
- uses scissors
- starts to copy some capital letters
- plays board or card games
- tells you what he thinks is going to happen next in a book

#### **Movement/Physical Development**

- hops and stands on one foot up to 2 seconds
- catches a bounced ball most of the time
- pours, cuts with supervision, and mashes own food

### **What most children do by five years of age**

#### **Social and Emotional**

- wants to please friends
- wants to be like friends
- more likely to agree with rules
- likes to sing, dance, and act
- is aware of gender
- can tell what’s real and what’s make-believe
- shows more independence (for example, may visit a next-door neighbor by himself [adult supervision is still needed])
- is sometimes demanding and sometimes very cooperative

#### **Language/Communication**

- speaks very clearly
- tells a simple story using full sentences
- uses future tense; for example, “Grandma will be here.”
- says name and address

#### **Cognitive (learning, thinking, problem-solving)**

- counts 10 or more things

- can draw a person with at least 6 body parts
- can print some letters or numbers
- copies a triangle and other geometric shapes
- knows about things used every day, like money and food

### **Movement/Physical Development**

- stands on one foot for 10 seconds or longer
- hops; may be able to skip
- can do a somersault
- uses a fork and spoon and sometimes a table knife
- can use the toilet on her own
- swings and climbs

### **Characteristics of 6-8 year olds**

#### **Emotional/Social Changes**

- show more independence from parents and family
- start to think about the future
- understand more about his or her place in the world
- pay more attention to friendships and teamwork
- want to be liked and accepted by friends

#### **Thinking and Learning**

- show rapid development of mental skills
- learn better ways to describe experiences and talk about thoughts and feelings
- have less focus on one's self and more concern for others

### **Characteristics of 9-11 year olds**

#### **Emotional/Social Changes**

- start to form stronger, more complex friendships and peer relationships. It becomes more emotionally important to have friends, especially of the same sex.
- experience more peer pressure.
- become more aware of his or her body as puberty approaches. Body image and eating problems sometimes start around this age.

#### **Thinking and Learning**

- face more academic challenges at school.
- become more independent from the family.
- begin to see the point of view of others more clearly.
- have an increased attention span.

### **Characteristics of 12-14 year olds**

#### **Emotional/Social Changes**

- show more concern about body image, looks, and clothes
- focus on themselves; going back and forth between high expectations and lack of confidence
- experience more moodiness
- show more interest in and influence by peer group
- express less affection toward parents; sometimes might seem rude or short-tempered

- feel stress from more challenging school work
- develop eating problems
- feel a lot of sadness or depression, which can lead to poor grades at school alcohol or drug use, unsafe sex, and other problems

### **Thinking and Learning**

- have more ability for complex thought
- be better able to express feelings through talking
- develop a stronger sense of right and wrong

## **Characteristics of 15-17 year olds**

### **Emotional/Social Changes**

- have more interest in the opposite sex
- go through less conflict with parents
- show more independence from parents
- have a deeper capacity for caring and sharing and for developing more intimate relationships
- spend less time with parents and more time with friends
- feel a lot of sadness or depression, which can lead to poor grades at school, alcohol or drug use, unsafe sex, and other problems

### **Thinking and Learning**

- learn more defined work habits
- show more concern about future school and work plans
- be better able to give reasons for their own choices, including about what is right or wrong

*More information on child developmental milestones can be found at:  
<http://www.cdc.gov/ncbddd/childdevelopment/index.html>*

## **If you have concerns about your child's development act early by talking to your child's doctor if your child:**

- Doesn't show a wide range of emotions
- Shows extreme behavior (unusually fearful, aggressive, shy or sad)
- Unusually withdrawn and not active
- Is easily distracted, has trouble focusing on one activity for more than 5 minutes
- Doesn't respond to people, or responds only superficially
- Can't tell what's real and what's make-believe
- Doesn't play a variety of games and activities
- Can't give first and last name
- Doesn't use plurals or past tense properly
- Doesn't talk about daily activities or experiences
- Doesn't draw pictures
- Can't brush teeth, wash and dry hands, or get undressed without help
- Loses skills he once had

**<http://www.cdc.gov/ncbddd/childdevelopment/index.html>**

## **Tips on Establishing and Maintaining Home Records**

### **Establishing a Record**

When dealing with any agency, including the public schools, your chances are better if you have a written record of all communications with that agency. Good record keeping is an essential part of the special education process. Effective advocacy requires that parents keep careful track of all school documents, phone calls, and meetings attended.

A comprehensive, well-organized file can help parents identify patterns and discrepancies in a child's learning and behavioral characteristics, keep track of progress or lack of progress, prepare for the IEP meetings and other school contact, and obtain an appropriate education program with little delay if your child changes teachers, grades, or schools. Parents should save important records in an organized way to use for special education planning and to keep track of their child's educational progress. Remember to take your own notes at every meeting you attend.

The following provides guidance and offers suggestions that will help you create a record that can be beneficial as you advocate for your child in public school.

#### **What should be in a record**

- All correspondence (letters/emails/texts) from you to the school district and other agencies about your child
- All correspondence to you from the school district and other agencies about your child.
- All reports from the school, doctors, service providing (or other) agencies such as: report cards, parent-teacher conference reports, diagnostic reports, minutes or reports of meetings with school personnel, IEP report, etc.
- A log of telephone calls giving the dates and time and length of the call, who initiated the call, who participated in the call (i.e.: sometimes calls are transferred to more than one person or are conference calls), a summary of the conversations, i.e.: who said what, what conclusions were reached or what action was promised, etc.

#### **How to develop and keep a record**

To begin a home file, review your child's school file and request copies of any documents needed. You may want to include more than just records that address your child's education. The following are suggestions for establishing and maintaining a record of contacts with the schools or other agencies.

1. Purchase a 3-ring notebook, pocket folder, or small file. This will be the one location where you will keep all information related to the record.
2. Organize the record in whatever way helps you to locate the information quickly. (It is suggested you use reverse chronological order with the most recent information first.)
3. Place all written reports, minutes of meetings, letters, etc., in the record.
4. Write down all phone calls. You may want to have the telephone log as a separate section in your record.
5. For meetings and phone calls for which there is no record, ask the school or other agency people to supply a summary of the meeting or call. If you agree with the summary, file it.

Here are some recommendations on documents that should be kept as part of your child's record:

- Medical, psychological & developmental histories
- A list of your child's medication
- Names and contact information for physicians, therapists, school personnel, organizations, and other people involved in your child's care
- Chain of command within the school system, including school, district, & state personnel
- Notes about your child's strengths & weaknesses, likes & dislikes, learning styles, & behavior characteristics
- Individual Education Program (IEP) documents (the current IEP and at least the past two IEPs)
- All school evaluation summary reports
- IEP progress reports
- Procedural Safeguards Notice
- Signed release of information forms
- Notes from IEP meetings and conversations with team members
- Records of telephone calls made and meetings attended
- Copies of evaluations done outside of the school
- Meeting notices
- Treatment Plans
- Report cards
- Statewide and districtwide assessment scores and reports
- Awards and samples of schoolwork
- Attendance and health records
- Annual student handbook
- Behavior reports (including bus reports, detention, suspensions)

### **Recording Meetings**

It is within your rights to record a meeting. However, it is a good idea to notify the school or district in advance if you intend to record the meeting. The LEA will want to record the meeting as well and if they are not prepared to do so the meeting will likely be rescheduled at the last minute. This disruption in schedule could influence the attitudes of all involved.

Make sure that you obtain a copy of all documents related to your IEP or other school-based meetings. It is a good idea to request that notes taken during the meeting are read aloud in order to clarify any inconsistencies.

The IDEA gives you the right to look at all of your child's education records. This includes records about his or her identification, evaluation, educational placement, discipline report, and special education program. You also have the right to ask the school to explain and interpret the records for you. You may ask the school to give you a copy of your child's records. They may charge you a reasonable fee for making a copy.

## What is an Evidence-based Practice?

(Information from The PACER Center)

Both the Individuals with Disabilities Education Act (IDEA) and Elementary and Secondary Education Act (ESEA) require that schools use programs, curricula, and practices based on "scientifically-based research" "to the extent practicable." This means that whenever possible, the educational interventions being used must be strongly supported by evidence from well-conducted research studies. Educational research may be said to be scientific when it:

- Uses a sound research design. The outcomes of students receiving a tested teaching strategy or intervention are compared to similar students who do not receive the intervention.

- Is based on high quality data analysis. Researchers must be sure to carefully collect, store and examine the data.

- Involves other researchers to review the results. The study should be reported in a journal so other researchers can review the methods used and repeat the research in other settings.

Under IDEA, instruction is individualized based on the student's needs. That's why it is especially important that the knowledge and experience of professionals and parents are also considered when deciding how to teach a student with disabilities. Professionals and parents should know about instructional practices and interventions that have been shown by research to be most effective. These research-based practices should then be matched with a student's unique needs and skills when developing a student's Individualized Education Program (IEP). It is important to record what works so that evidence can emerge over time that offers new insights into teaching and learning for students with disabilities.

### How do I help ensure my child is receiving evidence-based instruction?

If you have questions about an educational practice that is being used with your child, you can ask the teacher or other school staff about the research supporting the practice. As part of the discussion at your child's IEP meeting, it is important to ask whether there is evidence that supports the academic, social and behavioral practices or interventions that are being proposed. You can also review the websites below when preparing for Individualized Education Program (IEP) meetings to find information about different practices being considered.

### Where do I find information on evidence-based practices?

The U.S. Department of Education and other agencies and organizations maintain websites and databases with information on evidence-based practices in the field of education:

What Works Clearinghouse: <https://ies.ed.gov/ncee/wwc/>

The What Works Clearinghouse is housed at the U.S. Department of Education's Institute of Education Sciences. What Works Clearinghouse produces practice guides and reports with recommendations for schools on interventions in various topical areas.

Promising Practices Network: <http://www.promisingpractices.net/>

The Promising Practices Network provides research-based information on programs and practices that have been shown to be effective in improving the lives of children, including educational outcomes.

# What Can We Do to Keep Children Safe Who Might Wander?

## Tips for Parents, Teachers, and Other Caregivers

### Plan

- Watch the child's behaviors
- Have an emergency plan to respond
- Keep information about the child up-to-date (picture, description)
- Secure your home (fences, door locks)
- Keep identification on the child (ID bracelet or information card)

### Prevent

- Notice signs that the child may wander off before it happens (for example, child makes a certain sound or looks towards the door)
- Be alert about the child's location
- Provide a safe location
- Inform neighbors and school workers
- Alert first responders

### Teach Safety Skills

- Responding to safety commands ("stop")
- Stating name and phone number (or showing ID)
- Swimming, crossing the street

### First Responders

First responders are vital for maintaining the health and safety of members of our communities. They are likely to be called upon in the event of a missing child or youth. It is important for first responders to be prepared by knowing which children in the community might wander, having family contact information, and having a plan to respond.

### Healthcare Providers and Other Professionals

Healthcare and other professionals need to be aware of wandering as a safety issue. Their role includes discussing safety issues and helping caregivers come up with prevention and response plans.

## Six Tips to Help Prevent Wandering and Wandering-Related Tragedies

*From AWAARE: Autism Wandering Awareness Alerts Response Education Coalition*

*These 6 tips target children with autism but may be applied to any child who wanders.*

### 1. Secure Your Home

Consider contacting a professional locksmith, security company or home improvement professional to promote safety and prevention in your home. You may find it is necessary to prevent your loved one from slipping away unnoticed by installing secure dead bolt locks that require keys on both sides, a home security alarm system, inexpensive battery-operated alarms on doors, placing hook and eye locks on all doors above your child's reach, fencing your yard, adhering printable STOP SIGNS to doors, windows and other exits, etc.

### 2. Consider a Tracking Device



Check with local law enforcement for Project Lifesaver or LoJak SafetyNet services. These tracking devices are worn on the wrist or ankle and locate the individual through radio frequency. Various GPS tracking systems are also available.

### **3. Consider an ID Bracelet**

Medical ID bracelets will include your name, telephone number and other important information. They may also state that your child has autism and is non-verbal if applicable. If your child will not wear a bracelet or necklace, consider a temporary tattoo with your contact information.

### **4. Teach Your Child to Swim**

Swimming lessons for children with special needs are available at many YMCA locations. The final lesson should be with clothes on. Remember: teaching your child how to swim does not mean your child is safe in water. If you own a pool, fence it and if neighbors have pools, let them know of these safety precautions and your child's tendency to wander. Remove all toys or items of interest from the pool when not in use.

### **5. Alert Your Neighbors**

It is recommended that caregivers plan a brief visit with neighbors to introduce their loved or provide a photograph. Knowing your neighbors can help reduce the risks associated with wandering.

### **6. Alert First Responders**

Providing first responders with key information before an incident occurs may improve response. Informational handouts should include all pertinent information and be copied and carried with caregivers at all times. Circulate the handout to family, neighbors, friends and co-workers, as well as first responders.

#### **Smart911.com**

Smart911 is a free service available nationwide that allows families to provide detailed information about their household directly to 9-1-1 and first responders during an emergency. Families will create a Safety Profile of information and can provide information about family members, home address, pets, and even vehicles that will automatically display on the 9-1-1 call taker's screen when anyone in the home makes an emergency call. Before responders arrive on the scene, they can be aware of specific needs of an individual with autism, such as how to approach them or if they are non-verbal. Additionally, the Smart911 Safety Profile can include a picture and physical description in the event that the individual has wandered. These details can save valuable seconds or even minutes during an emergency.

Additional resources for families can be found on the Internet:

The National Center for Missing and Exploited Children has resource tips on keeping your child safe: <http://www.missingkids.com/Families>

The National Autism Association developed a comprehensive resource guide "Big Red Safety Box" which can be found at: <http://nationalautismassociation.org/wp-content/uploads/2015/04/BeREDyCaregiver2015.pdf>

## Foster, Kinship, and Surrogate Parents

**Foster care** is a system in which a minor has been placed into a ward, group home, or private home of a state-certified caregiver, referred to as a "foster parent". The placement of the child is normally arranged through the government or a social service agency.

South Carolina Department of Social Services Children and Youth in Foster Care Bill of Rights:

I have the right to:

1. Be treated as a normal and important human being.
2. Be cared for with love and affection.
3. Be provided adequate food, shelter and clothing.
4. Be heard and involved with the decisions of my life.
5. Be informed about and have involvement with my birth family and siblings, including the right to reject visits or contacts.
6. Complete information and direct answers to my questions about choices, services and decisions.
7. Reasonable access to my caseworker or a person in the agency who can make decisions on my behalf.
8. Express my opinion and have it treated respectfully.
9. Request the support and services that I need.
10. Individualized care and attention based on my unique skills and goals.
11. Ongoing contact with significant people in my life such as teachers, friends, my personal supports and relatives.
12. Access to my case record to help me meet my goals.
13. Personal property, personal space and my privacy.
14. Be notified of changes that affect my permanence, safety, stability or well-being.
15. Practice my own religion.
16. Know what is expected of me in my foster placement.
17. Be cared for without regard to race, color, national origin, sex, religion or disability.
18. Caretakers who are interested in me and will support my involvement in social and school activities.
19. Have goals.
20. A plan for my future and the support I need to accomplish it.

**Kinship** care refers to the care of children by relatives or, in some jurisdictions, close family friends (often referred to as fictive kin). Relatives are the preferred resource for children who must be removed from their birth parents because it maintains the children's connections with their families.

Children may come to live with their grandparents or other relatives in a number of ways, and only some of these ways involve the child welfare system. Kinship care arrangements fall roughly into three categories:

(1) **Informal kinship care** refers to arrangements made by the parents and other family members without any involvement from either the child welfare system or the juvenile court system. In this type of arrangement, the legal custody of the children remains with the parents, and the parents can legally take back the children at any time. The kin caregivers in these circumstances may have difficulty enrolling the children in school,

obtaining health insurance, authorizing medical care, and obtaining some other benefits, because they do not have legal custody of the children.

(2) Voluntary kinship care refers to situations in which the children live with relatives and the child welfare system is involved, but the State does not take legal custody. In some cases, children have been placed with relatives by a court, and in other cases an arrangement is made by the child welfare agency with no court involvement. In voluntary kinship care, the children are in the physical custody of the relatives but they may remain in the legal custody of the parents, or the parents may sign over temporary legal custody to the kin. Some States have consent forms that parents can sign to allow kin caregivers to have some temporary decision-making power regarding the children (for instance, to seek medical treatment or enroll the children in school).

(3) Formal Kinship care refers to cases in which the children are placed in the legal custody of the State by a judge, and the child welfare system then places the children with grandparents or other kin. In these situations, the child welfare agency, acting on behalf of the State, has legal custody and must answer to the court, but the kin have physical custody. The child welfare agency, in collaboration with the family, makes the legal decisions about the children, including deciding where they live. The child welfare agency is also responsible for ensuring that the children receive medical care and attend school.

There is a local agency that can help kinship care families:

**HALOS - Because Family Matters - 4995 Lacross Rd. Suite 1250 - North Charleston, SC 29406 - Phone: 843-990-9570 – Web: <http://charlestonhalos.org/>**

HALOS provides links to financial assistance for food and health care and connect families to the legal help they need to establish legal guardianship. They have support groups and help access professional care and provides a 12-18 month enhanced case management with a Success Coach.

### **Surrogate Parents**

In general, the IDEA allows only a “parent” to act on behalf of a student with a disability. But IDEA includes several categories of persons in the definition of parent: A birth or adoptive parent; the foster parent, unless state law or the foster parent’s contract prohibits being the special education decision maker; a guardian who has the authority to act as the child’s parent or who has the authority to make education decisions for the child; a family member with whom the child lives who is caring for the child, or someone who is legally responsible for the child’s welfare or a surrogate parent. If a person does not fall into one of these categories, that person cannot make special education decisions for the child.

A surrogate parent is a volunteer appointed by a juvenile court judge or an education agency to make education decisions for a child. School districts are responsible for assigning a surrogate parent for a child with a disability, or a child who needs an evaluation to determine if he has a disability; if the child has no parent, as determined by special education law, they are unable to locate the parent after making reasonable effort, the child is considered a ward of the state or the child qualifies as an unaccompanied homeless youth. A surrogate parent has all of the rights and can make all of the special education or early intervention decisions that are usually made by the child’s parents. Surrogate parents can review educational records, request and consent to evaluation and reevaluations and challenge the recommendations of the education agency by asking for mediation or by requesting a hearing. A surrogate parent does not have any rights outside of the special education system.

## **McKinney-Vento Homeless Assistance Act**

The McKinney-Vento Education for Homeless Children and Youth (McKinney-Vento) program is authorized under Title VII-B of the McKinney-Vento Homeless Assistance Act, most recently re-authorized December 2015 by the Every Student Succeeds Act (ESSA). The Education of Homeless Children and Youth program at SCDE oversees the federal McKinney-Vento Education for Homeless Children and Youth program. The program provides training, technical assistance, and monitoring, as well as competitive federal funding to support school district McKinney-Vento programs. South Carolina school districts identified 14,360 McKinney-Vento Students during the 2015–16 academic year.

The McKinney-Vento Program is designed to address the problems that homeless children and youth face in enrolling, attending, and succeeding in school. Under this program, the SCDE must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youth.

Homeless children and youth must have access to the educational and other services that they need to enable them to meet the same challenging State student academic achievement standards to which all students are held. In addition, homeless students may not be separated from the mainstream school environment based solely on the fact that they are experiencing homelessness.

Every school district is required to have a trained, local homeless education liaison to identify and assist families with enrolling and fully participating in school.

### **Who is homeless?**

The Federal McKinney-Vento Homeless Assistance Act defines children and youth who lack a fixed, regular, and adequate nighttime residence as homeless. This includes children and youths who:

- share the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as “doubled-up”);
- live in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
- live in emergency or transitional shelters;
- are abandoned in hospitals;
- have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
- live in cars, parks, public spaces, abandoned buildings, substandard housing (e.g., housing that lacks any one of the fundamental utilities, does not have working a kitchen or plumbing, is overcrowded, or infested), bus or train stations, or similar settings; and
- Migratory children who qualify as homeless because they are living in circumstances described above.
- Unaccompanied youth who qualify as homeless because they are living in circumstances described above.

Students whose living situations meet this definition have educational rights and are eligible to receive services under the McKinney-Vento Act.

## **Coping with Disaster and Traumatic Events**

When a disaster or traumatic event occurs, such as a natural disaster or violent act, whether accidental or intentional, it can be stressful for people of all ages. Children tend to react to disaster and traumatic events based on their past experiences and what they know of the current situation. Children with disabilities may require extra support from an adult to help them cope with disaster or traumatic events.

**There are things that adults can do to help children with disabilities cope better with a disaster or traumatic event.**

### **What Can You Do?**

The following tips will help reduce stress before, during, and after a disaster or traumatic event.

#### **Before**

- As with all children, those with disabilities need to know that they are going to be safe and that they can find a safe place in an emergency.
- Review safety plans before a disaster or emergency happens. Having a plan will increase the child's confidence and help him or her feel under control. For example, a plan should include needed medications or assistance devices.

#### **During**

- Stay calm and reassure the child.
- Talk to children about what is happening in a way that they can understand. Keep it simple and consider the child's age and type of disability. For example, it may be hard to know how much information a child with autism is learning through television and conversations. For these children, it is important for adults to look for cues that may provide information on their feelings and fears.

#### **After**

- Provide children with opportunities to talk about what they went through or what they think about it. Encourage them to share concerns and ask questions.
- Children who have serious emotional and behavioral problems are at high risk for severe stress after a disaster or traumatic event. In many cases, it may help to maintain as much of a normal routine and environment as possible.
- It is difficult to predict how some children will respond to disasters and traumatic events. Because parents, teachers, and other adults see children in different situations, it is essential that they work together to share information about how the child is coping after a traumatic event.

Additional information on this topic can be found at:

**The National Child Trauma Stress Network: [www.ncth.org](http://www.ncth.org)**



# Section 1

## ADVOCACY

### Section 1, Part B – School Advocacy

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## Education Acronyms

Provided by the SC Dept. of Education

APR – Annual Performance Report  
AT – Assistive Technology  
BIP – Behavior Intervention Plan  
BNSC – BabyNet Service Coordinator  
CASE – Council of Administrators of Special Education  
CDEP – Child Development Education Program  
CEC – Council for Exceptional Children  
CFR – Code of Federal Regulations  
CIFR – Center for Individuals with Disabilities Education Act Fiscal Reporting  
CPRC – Community Parent Resource Center  
DAP – Developmentally Appropriate Practice  
DEC – Division of Early Childhood (subgroup of CEC)  
ECO – Early Childhood Outcomes  
ECPC – Early Childhood Personnel Center  
EI – Early Interventionist  
ELA – English Language Arts  
ELOF – Early Learning Outcomes Framework (Head Start)  
ESSA – Every Student Succeeds Act  
ESY – Extended School Year services  
FACE – Family and Community Engagement  
FAPE – Free Appropriate Public Education  
FBA- Functional Behavior Assessment  
FGM – Finance and Grants Management Team  
FFY – Federal Fiscal Year  
FIEP – Facilitated Individualized Education Program  
HS – Head Start  
ICC – Interagency Coordinating Council  
IDC – Individuals with Disabilities Education Act Data Center  
IDEA – Individuals with Disabilities Education Act  
IEE – Independent Education Evaluation  
IEP – Individualized Education Program  
IHE – Institutions of Higher Education  
ISP – Individualized Service Plan  
IFSP – Individual and Family Service Plan  
LEA – Local Education Agency  
LRE – Least Restrictive Environment  
M – Meets Requirements  
MIECHV – Maternal Infant Early Childhood Home Visitation  
MOA – Memorandum of Agreement

MOE – Maintenance of Effort  
 MTSS – Multi-Tiered System of Supports  
 NA – Needs Assistance  
 NAEP – National Assessment of Educational Progress  
 NASDSE – National Association of State Directors of Special Education  
 NCSI – National Center for Systemic Improvement  
 NCSC – National Center and State Collaborative  
 NDLA – New Directors Leadership Academy  
 NI - Needs Intervention  
 NSI – Needs Substantial Intervention  
 O&A – Oversight and Assistance Team (SC Dept. of Education)  
 OELL – Office of Early Learning and Literacy  
 OGC – Office of General Counsel  
 OSEP – Office of Special Education Programs (US Dept. of Education)  
 OSERS – Office of Special Education and Rehabilitative Services (US Dept. of Education)  
 OSES – Office of Special Education Services (SC Dept. of Education)  
 PBIS – Positive Behavior Interventions and Supports  
 P&I – Programs and Initiatives Team (SC Dept. of Education)  
 PTI – Parent Training and Information Center  
 PWN – Prior Written Notice  
 R2S – Read to Succeed  
 RDA – Results Driven Accountability  
 RTI – Response to Intervention  
 RtP – Research to Practice  
 SC-Alt – South Carolina Alternate Assessment  
 SCASA – South Carolina Association of School Administrators  
 SBE – State Board of Education  
 SCASP - South Carolina Association of School Psychologists  
 SC CREATE – South Carolina Centers for Re-Education and Advancement of Teachers in Special Education and Related Services Personnel  
 SCPI – South Carolina Partnerships for Inclusion  
 SCSDb – South Carolina School for the Deaf and the Blind  
 SEA – State Education Agency  
 SiMR – State-identified Measureable Result  
 SLICE – South Carolina Longitudinal Information Center for Education  
 SOP – State Operated Program  
 SPP – State Performance Plan  
 SSIP – State Systemic Improvement Plan  
 SWD – Students with disabilities  
 TA – Technical Assistance  
 TASC – Transition Alliance of South Carolina  
 UDL – Universal Design for Learning

## **Ideas for Effective Parent/School Communication**

Advocates often hear from parents when they encounter certain statements or situations at school meetings that they find uncomfortable or uncertain. These tips are suggestions and techniques provided by the PACER Center to help parents address some of those concerns, as well as improve communication with school staff. You may already use some of these approaches while others may be new ideas to consider:

- If school staff presents a new idea that you may be interested in, you may want to ask, "What will it take to make that happen?"
- If a school IEP team member expresses something that you think may be an opinion, you may want to ask, "Is that an opinion or do you have data I can see to support it?"
- If you are uncertain about something in your child's school day, you may want to ask, "What does this look like in Johnnie's day?"
- If a school IEP team member says, "Your son refuses to \_\_\_\_," you may want to ask, "Is that something he can't or doesn't know how to do rather than refuses to do?"
- If a school staff member says, "We don't have the money to do that," you may say, "I understand that the school district has financial concerns. However, we are here to talk about what my child needs for a free, appropriate public education." Or you might say, "Please put that in writing for me."
- If you are trying something new, you may want to ask, "How will we know that it is working?" and "How will data on success be collected?"
- If you want input from all team members, you may want to ask, "What is your professional opinion?"
- If an important agreement, decision, or promise is made, ask to have it put into writing.
- If you are bringing a problem to the IEP team that needs solving, try to clearly present the problem and then brainstorm solutions with the team.
- If a school staff member says, "We don't know (the answer to a particular question, concern, problem, or issue)" without offering a way to find the answer, you may want to ask, "Who can we invite to the meeting to help find the answer?"
- Ask a question once and then listen for the answer.
- Keep the main thing the main thing. Too many details may only distract from your priorities.
- When action is required, always ask who will be responsible for seeing that it is done.
- Thank the members of the IEP team or specific teachers whenever possible and appropriate.

*Recommendations from The PACER Center, Champions for Children with Disabilities ([www.pacer.org](http://www.pacer.org))*

## **9 Steps to a Better Relationship with Your Child's Teacher**

1. Keep an on-going list of things you want to discuss with the teacher.
2. When appropriate, praise the teacher for specific things you feel good about. For example, "Ms. Brown, thank you for spending extra time with Johnny to work on behavior. We really see results."

3. If you have a problem, discuss the specific things that bother you as they relate to your child. Do not generalize. In other words, do not say "You are not teaching my child, this is a wasted year." Instead, say "The math program doesn't seem to be working for Johnny. Is there a way we can change it to better meet his needs?"
4. Approach the teacher to discuss concerns in a positive, non-threatening way.
5. Keep the focus on your child, not the teacher's shortcomings.
6. Offer assistance in the classroom when possible. Decide with the teacher if this involvement is appropriate for your child.
7. Offer your time and talents. When possible volunteer as a room parent, help with field trips, etc.
8. When you make requests or suggestions, illustrate very specifically to the teacher how your suggestions can be implemented. Provide information on Research Based Practice. Follow-up your requests with a letter of thanks.
9. Attend all IEP meetings and conferences.

### **Here are a few more Recommendations for Effective Communication.**

- Learn to disagree without being disagreeable. Be kind and courteous to everyone. It's all right to be assertive, but not aggressive, abusive, or abrasive.
- When someone says something with which you disagree, try not to be judgmental.
- Maintain eye contact when greeting people, and shake their hands.
- Remember that civility is a sign of strength, not weakness.
- Speak softly. (People tune out loud, angry voices.)
- Saving face is important. Give your opponent the opportunity to withdraw.
- Your attitude is more important than your aptitude.
- Mutual respect is the key to avoiding conflict.
- Give the other person a chance to be heard without interrupting.

## **Communicating with Your Child's School through Letter Writing & Email**

Throughout your child's school years, there is always a need to communicate with the school's teachers, administrators, and others concerned with your child's education. There are also times when the school needs to communicate with you. Some of this communication is informal, such as phone calls, comments in your child's notebook, a chat when picking your child up from school or at a school function. Other forms of communication are more formal and need to be written down.

Letters and Email provide both you and the school with a record of ideas, concerns, and suggestions. Putting your thoughts on paper gives you the opportunity to take as long as you need to:

- state your concerns,
- think over what you've written,
- make changes, and
- have someone else read over the letter and make suggestions.

Letters/Emails also give people the opportunity to go over what's been suggested or discussed. A lot of confusion and misunderstanding can be avoided by writing down thoughts and ideas.

However, writing letters is a skill. Each letter you write will differ according to the situation, the person to whom you are writing, and the issues you are discussing. Put all your requests in writing, even if it's not required by your school district. A letter or email avoids confusion and provides everyone with a record of your request. Always, always, always keep a copy of each letter or Email you send. It's useful to have a folder just to store copies of these letters or emails.

### ***How long will it take to get an answer to my letter or email?***

Some special education guidelines give the amount of time a school has to respond to a parent's request, some don't. The IDEA says that schools must respond in a "timely manner" or within a "reasonable" period of time. Some states and districts actually define this period by a certain number of days. To find out what is true in your area, check your state and local regulations.

If you have not heard from the school within 10 working days of sending your letter or Email, phone the office to make sure the school received your communication. Ask when you can expect an answer. If you have asked for a meeting or other services that require coordinating with several other people, it may take some time to do this. However, it is reasonable for the school to let you know that your request is being worked on.

If you need a letter or Email answered in less than ten working days (for instance, if you are moving or have other urgent reasons), let the school know that you have sent—or are delivering—a letter and need a response as soon as possible (or by a specific date). That way, the staff can try to get you a quick response.

### ***To whom do I send my letter or Email?***

Many letters/Emails will go to your child's teacher. You will send others to the school principal. In some instances, the letter may need to go to the local Director of Special

Education or other administrator. If uncertain, call the person's office to make sure of the spelling of his or her name and the correct mailing address.

Some school districts handle special education requests at the local school level. Other districts assign this job to different administrative people who don't work right in your child's school building. If you are not sure to whom to send your letter, or cannot get good information on whom to write, you can always send your letter to the principal. If the principal is not the one directly responsible for answering your request, he or she still is responsible for giving your request to the right person.

Also, send a copy of your letter/Email to your child's teacher, so that he or she will be aware of what is going on and know of your concerns.

### ***In general, what do I say in my letter or Email?***

When writing any business letter, it is important to keep it short and to the point. First, start by asking yourself the following questions and state the answers in your letter:

- Why am I writing?
- What are my specific concerns?
- What are my questions?
- What would I like the person to do about this situation?
- What sort of response do I want: a letter, a meeting, a phone call, or something else?

Written correspondence avoids confusion and provides everyone with a record of your request. Each correspondence should include the following basic information:

- Put the date on your letter.
- Give your child's full name and the name of your child's main teacher or current class placement.
- Say what you want, rather than what you don't want. Keep it simple.
- Give your address and a daytime phone number where you can be reached.
- Always end your letter with a "thank you."

### ***What are some other tips to keep in mind?***

You want to make a good impression so that the person reading your letter will understand your request and say "yes." Remember, this person may not know you, your child, or your child's situation. Keep the tone of your letter pleasant and businesslike. Give the facts without letting anger, frustration, blame, or other negative emotions creep in. Some tips:

- After you write your first draft, put the correspondence aside for a day or two. Then look at it again and revise it with fresh eyes.
- Read your letter/Email as though you are the person receiving it. Is your request clear?

Have you included the important facts? Does your letter/Email ramble on and on? Is it likely to offend, or is the tone businesslike?

- Have someone else read your letter/Email for you. Is your reason for writing clear? Can the reader tell what you are asking for? Would the reader say "yes" if he or she received it? Can it be improved?
- Use spell check and grammar check on the computer. Or ask someone reliable to edit your letter/Email before you send it.
- Keep a copy for your records.

For samples of various types of letters visit: <http://www.parentcenterhub.org/letterwriting/>

## **Confidentiality and Access to Student Records**

IDEA and other federal laws protect the confidentiality of your child's education records. These safeguards address the following three aspects:

- the use of personally identifiable information;
- who may have access to your child's records; and
- the rights of parents to inspect their child's education records and request that these be amended to correct information that is misleading or inaccurate, or that violates the child's privacy or other rights.

### **Personally Identifiable Information**

Personally identifiable information refers to information that includes:

- the name of the child, parent, or other family member;
- the child's address;
- a personal number (such as the social security number or a student number); or
- a list of personal characteristics or other information that would permit the child's identification with reasonable certainty.

With some exceptions, you (as a parent) must give your consent before the school system may disclose your child's personally identifiable information. These exceptions are specified by policies in your state in keeping with the regulations at §99.31 of FERPA, the Family Educational Rights and Privacy Act. IDEA's confidentiality regulations refer directly to FERPA. You have the right to know the policies used in your state regarding the collection, storage, disclosure to third parties, and destruction of your child's personally identifiable information. You should be able to obtain this information (on your state's policies) from the director of special education in your school district or from the State Department of Education.

### **What is FERPA?**

The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student"). The FERPA statute is found at 20 U.S.C. § 1232g and the FERPA regulations are found at 34 CFR Part 99.

### **Access to Your Child's Records**

Access to the educational records of their children is often a concern of parents. In keeping with the requirements of FERPA, only certain individuals, in addition to yourself as the parent, may have access to your child's records. These individuals may include, for example, teachers or administrators of the school or state who have a legitimate interest in the records. The school or other participating agency is obligated to keep a record of all interested parties who have accessed your child's educational records that are collected, maintained, or used under Part B of IDEA (with the exception of parents and authorized employees of the agency). This record must include the name of the person who had access to the child's records, the date, and the purpose for which the person was authorized to use the records.

## **Parents' Right to Inspect Their Child's Records**

IDEA guarantees you, as parents, the right to inspect and review any educational record of your child that the school system (or other participating agency) collects, maintains, or uses with respect to the identification, evaluation, and educational placement of your child, and the provision of FAPE (a free appropriate public education) to your child.

Here are the specifics of IDEA's regulations.

### ***Parent Rights:***

- Parents can inspect and review educational records with respect to their child's evaluation, identification, and placement; and the provision of FAPE. [§300.501(a)]
- Parents can request explanations and interpretations of the records. [§300.613(b)(1)]
- Parents can request copies of the records if not receiving copies would effectively prevent the parents from exercising their right to inspect and review those records. [§300.613(b)(2)]
- Parents can request that their representative be given access to inspect and review the records. [§300.613(b)(3)]

### ***Schools' Rights and Responsibilities:***

- Schools must comply with a parent's request to inspect and review records without unnecessary delay before any meeting—regarding an IEP, a hearing or resolution session, and in no case more than 45 days after the request has been made. [§300.613(a)]
- Schools must respond to reasonable requests for explanations and interpretations of the records. [§300.613(b)(1)]
- Schools can charge a fee for copies of records made for parents, if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. [§300.617(a)]
- Schools may not charge a fee for searching for, or retrieving, a child's records for parents. [§300.617(b)]

## **Parents' Right to Ask that the Records Be Amended**

If parents believe that the information contained in their child's records is inaccurate or misleading or that the information there violates the privacy or other rights of their child, they may ask the school system that maintains the information to amend it. The agency must decide, within a reasonable amount of time, if it is going to comply with the parents' request or not. If the agency decides to refuse the request, it must inform the parents of that decision and indicate their right to ask for a due process hearing on the matter.

If you, as a parent, decide to dispute the school system's decision in a due process hearing, you have the right to present evidence that demonstrates why you think the information in your child's records should be amended. You also have the right (at your own expense) to be assisted or represented by one or more individuals selected by you, including an attorney. The hearing must be conducted by an individual who has no direct interest in its result.

After the hearing, the educational agency must issue its determination in writing within a reasonable amount of time. That determination must be based solely on the evidence presented in the hearing and must include a summary of the evidence and the reasons for the determination. If the result of the hearing is favorable to you, the school system must amend



your child's records and inform you in writing that it has done so. On the other hand, if the result of the hearing is that the information about your child is *not* inaccurate or misleading, or does *not* violate your child's privacy or other rights, then the school system must inform you, as parents, that you have the right to add a statement to your child's records commenting on the information that has been under dispute and presenting the reasons you do not agree with it. The district must attach your statement to the records and maintain it there as long as the agency maintains the records. If your child's records (or the part that's under dispute) is disclosed by the agency to any other person, your statement must also be disclosed to that person.

IDEA adds another provision regarding educational records and the inclusion of discipline information in them. The state can require the school system to include in a child's records a statement of any disciplinary action (current or past) taken against the child. This statement must be transmitted to the same extent that disciplinary information would be included in, and transmitted with, the school records of children *without* disabilities. [§300.576(a)] The statement may include:

- a description of the child's conduct that gave rise to the disciplinary action;
- a description of the disciplinary action that was taken; and
- any other information that is pertinent to the safety of the child and others involved with the child.

If the state adopts such a policy, and the child moves from one school to another, the transmission of any of the child's records must include the current IEP of the child and any statement of current or past disciplinary action taken against the child.

**FERPA's regulations are available online. Find them at:**  
**<http://www2.ed.gov/policy/gen/reg/ferpa/index.html>**

## **Student Attendance - South Carolina § 43-274.**

(Statutory Authority: S.C. Code Ann. Sections 59-5-65 (2004) and 59-65-90 (2004))

### **I. Lawful and Unlawful Absences**

School districts must adopt policies to define and list lawful and unlawful absences.

(A) Lawful absences include but are not limited to:

- (1) absences caused by a student's own illness and whose attendance in school would endanger his or her health or the health of others,
- (2) absences due to an illness or death in the student's immediate family,
- (3) absences due to a recognized religious holiday of the student's faith, and
- (4) absences due to activities that are approved in advance by the principal.

(B) Unlawful absences include but are not limited to:

- (1) absences of a student without the knowledge of his or her parents, or
- (2) absences of a student without acceptable cause with the knowledge of his or her parents.

(C) Suspension is not to be counted as an unlawful absence for truancy purposes.

### **II. Truancy**

The State Board of Education recognizes that truancy is primarily an educational issue and that all reasonable, educationally sound, corrective actions should be undertaken by the school district prior to resorting to the juvenile justice system.

#### **(A) Truant**

A child ages 6 to 17 years meets the definition of a truant when the child has three consecutive unlawful absences or a total of five unlawful absences.

#### **(B) Habitual Truant**

A "habitual" truant is a child age 12 to 17 years who fails to comply with the intervention plan developed by the school, the child, and the parent(s) or guardian(s) and who accumulates two or more additional unlawful absences. This child may need court intervention and an initial truancy petition may be filed. The written intervention plan, and documentation of non-compliance, must be attached to the truancy petition asking for court intervention.

#### **(C) Chronic Truant**

A "chronic" truant is a child ages 12 to 17 years who has been through the school intervention process, has reached the level of a "habitual" truant, has been referred to Family Court and placed on an order to attend school, and continues to accumulate unlawful absences. Should other community alternatives and referrals fail to remedy the attendance problem, the "chronic" truant may be referred to the Family Court for violation of a previous court order. All school intervention plans existing to this point for this child and family must accompany the Contempt of Court petition as well as a written recommendation from the school to the court on action the court should take.

### **III. Intervention Plans**

(A) Each district must develop a policy relating to requirements for intervention. The district plan for improving students' attendance must be in accordance with any applicable statutes.

(B) Once a child is determined to be truant as defined in Section II(A), school officials must make every reasonable effort to meet with the parent(s) or guardian(s) to identify the reasons for the student's continued absence. These efforts should include telephone calls and home visits, both during and after normal business hours, as well as written messages and e-mails. School officials must develop a written "intervention plan" to address the student's continued absence in conjunction with the student and parent(s) or guardian(s).

(C) The intervention plan must include but is not limited to

- (1) Designation of a person to lead the intervention team. The team leader may be someone from another agency.
- (2) Reasons for the unlawful absences.
- (3) Actions to be taken by the parent(s) or guardian(s) and student to resolve the causes of the unlawful absences.
- (4) Documentation of referrals to appropriate service providers and, if available, alternative school and community-based programs.
- (5) Actions to be taken by intervention team members.
- (6) Actions to be taken in the event unlawful absences continue.
- (7) Signature of the parent(s) or guardian(s) or evidence that attempts were made to involve the parents(s) or guardian(s).
- (8) Documentation of involvement of team members.
- (9) Guidelines for making revisions to the plan.

(D) School officials may utilize a team intervention approach. Team members may include representatives from social services, community mental health, substance abuse and prevention, and other persons the district deems appropriate to formulate the written intervention plans.

#### **IV. Referrals and Judicial Intervention**

At no time should a child ages 6 to 17 years be referred to the Family Court to be placed on an order to attend school prior to the written intervention planning being completed with the parent(s) or guardian(s) by the school. A consent order must not be used as an intervention plan from any local school or school district. Should the parent(s) or guardian(s) refuse to cooperate with the intervention planning to remedy the attendance problem, the school district has the authority to refer the student to Family Court in accordance with S.C. Code Ann. Section 59-65-50 (1990), and a report shall be filed against the parent(s) or guardian(s) with the Department of Social Services in compliance with S.C. Code Ann. Section 20-7-490 (2)(c)(Supp. 2002).

(A) Petition for a School Attendance Order

If the intervention plan is not successful and further inquiry by school officials fails to cause the truant student and/or parent(s) or guardian(s) to comply with the written intervention plan or if the student and/or parent(s) or guardian(s) refuses to participate in intervention and the student accumulates two or more additional unlawful absences, the student is considered an "habitual" truant. Each referral must include a copy of the plan and specify any corrective action regarding the student and/or the parent(s) or guardian(s) that the district recommends that the court adopt as well as any other available programs or alternatives identified by the

school district. The intervention plan must be attached to the petition to the Family Court and served on the student and the parent(s) or guardian(s).

**(B) Petition for Contempt of Court**

Once a school attendance order has been issued by the Family Court and the student continues to accumulate unlawful absences, the student is considered to be a "chronic" truant and school officials may refer the case back to Family Court. The school and district must exhaust all reasonable alternatives prior to petitioning the Family Court to hold the student and/or the parent(s) or guardian(s) in contempt of court. Any petition for contempt of court must include a written report indicating the corrective actions that were attempted by the school district and what graduated sanctions or alternatives to incarceration are available to the court in the community. The school district must include in the written report its recommendation to the court should the student and/or parent(s) or guardian(s) be found in contempt of court.

**V. Coordination with the South Carolina Department of Juvenile Justice**

Each school district should coordinate with the local office of the South Carolina Department of Juvenile Justice to establish a system of graduated sanctions and alternatives to incarceration in truancy cases.

**VI. Transfer of Plans**

If a student transfers to another public school in South Carolina, intervention plans shall be forwarded to the receiving school. School officials will contact the parent(s) or guardian(s) and local team members to review the plan and revise as appropriate. Court ordered plans may be amended through application to the court.

**VII. Approval of Absences in Excess of Ten Days and Approval of Credit**

**(A) Approval or Disapproval of Absences**

The district board of trustees, or its designee, shall approve or disapprove any student's absence in excess of ten days, whether lawful, unlawful, or a combination thereof, for students in grades K-12.

For the purpose of awarding credit for the year, school districts must approve or disapprove absences in excess of ten days regardless as to whether those absences are lawful, unlawful, or a combination of the two.

**(B) High School Credit**

In order to receive one Carnegie unit of credit, a student must be in attendance at least 120 hours, per unit, regardless of the number of days missed. Students whose absences are approved should be allowed to make up any work missed in order to satisfy the 120-hour requirement. Local school boards should develop policies governing student absences giving appropriate consideration to unique situations that may arise within their districts when students do not meet the minimum attendance requirements.

Therefore, districts should allow students, whose excessive absences are approved in part 1 of this section, to make-up work missed to satisfy the 120-hours requirement.

Examples of make-up work may include

- (1) after-school and/or weekend make-up programs that address both time and academic requirements of the course(s), or
- (2) extended-year programs that address both time and academic requirements of the course(s).

All make-up time and work must be completed within thirty days from the last day of the course(s). The district board of trustees or its designee may extend the time for student's completion of the requirements due to extenuating circumstances as prescribed by State Board of Education Guidelines.

### **VIII. Reporting Requirements**

The State Department of Education will develop and implement a standard reporting system for the adequate collection and reporting of truancy rates on a school-by-school basis.

### **IX. Guidelines**

Additional information relating to the implementation of this regulation will be contained in South Carolina Department of Education Guidelines. The South Carolina Department of Education will review and update these guidelines as needed.

## **Parents' Right to Know Requirement**

(Applies to ALL Schools)

The local school district must disseminate a blanket statement that any parent can request information about any teacher of their child. Under federal law, parents have the right to know:

- whether a teacher has met state qualification and licensing criteria for the grade levels and subject areas in which the teacher provides instruction;
- whether a teacher is teaching under emergency or other provisional status through which state qualification or licensing criteria have been waived;
- the baccalaureate degree major of a teacher and any other graduate certification or degree held by the teacher, and the field of discipline of the certification or degree;

Teacher qualifications can be accessed at Educator Qualification Search.

**<http://ed.sc.gov/policy/federal-education-programs/esea-title-ii-part-a1/parents-right-to-know-requirement/educator-qualification-search/>**

(This site does not provide all teacher information to which the parent is entitled)

### **Parent Notification of Teacher's Non-Highly Qualified Status**

In addition to the information that parents may request, a school that receives Title I funds must provide each individual parent a timely notice that the parent's child has been assigned, or has been taught for four or more consecutive weeks by, a teacher who is not highly qualified.

The notice and information provided to parents must be in an understandable and uniform format and, to the extent practicable, provided in a language that the parents can understand. This applies to all teachers teaching core academic subjects in a Title I school, regardless if the school has a school wide or targeted assistance program.

**For more information visit:**

**<http://ed.sc.gov/policy/federal-education-programs/esea-title-ii-part-a1/parents-right-to-know-requirement/>**

**<https://www2.ed.gov/policy/elsec/leg/esea02/pg2.html>**

# **Administrative and Professional Personnel Qualifications, Duties and Workloads – Class Size – Teacher Ratio**

South Carolina Department of Education - Administrators' Guide Regulations and Statutes  
Title of Regulation: Regulation No.: R 43-205  
Effective Date: 05/25/07

## **Applicable Excerpts**

### **B. Professional Personnel Workload**

#### **1. Regular Education Teachers**

(a) The average student-teacher ratio in any school must not exceed 28:1 based on the average daily enrollment. The total number of teachers must include all regular, special-area, and resource teachers whose students are counted in the regular enrollment.

(b) Each district must maintain an average student-teacher ratio of 21:1 based on the average daily enrollment in reading and mathematics classes in grades one through three.

(c) Class sizes must not exceed the following student-teacher ratios:

Grade Level Maximum Student-Teacher Ratio:

Prekindergarten 20:1;

Grades K-3 30:1;

Grades 4–5, English language arts and mathematics 30:1;

Grades 4–5, all other subjects 35:1

(d) Paraprofessionals may be counted in computing the student-teacher ratio at the rate of .5 per paraprofessional if they work under the supervision of a teacher and make up no more than 10 percent of the total staff. *Excluded from the computation are the following:*

- (1) teachers of self-contained special education classes, prekindergarten and kindergarten classes, principals, assistant principals, library media specialists, and guidance counselors; and
- (2) students in self-contained special education classes, prekindergarten classes, or kindergarten classes.

#### **2. Guidance Counselors and Specialists in Art, Music, and Physical Education**

(a) Schools having any combination of grades one through five must employ the full-time equivalent (FTE) of a school guidance counselor and specialists in art, music, and physical education (PE) in the following ratios for each area: Average Daily Minimum Allotted Time Enrollment FTE Daily: 800 or more 1.0-300 minutes; 640–799 .8-240 minutes; 480–639 .6-180 minutes 320–479 .4 120 minutes Less than 320 .2 60 minutes

(b) Music teachers may teach a maximum of 40 students per class period. The total teaching load must not exceed 240 students per day. Exceptions: When band, chorus, and orchestra require rehearsals of their entire enrollment, any number is acceptable if adequate space is available.

(c) PE teachers may teach a maximum of 40 students per class period. The total teaching load must not exceed 240 students per day. If PE and health are taught on alternate days by the same teacher to the same class, the 40-student maximum and 240-student totals are also permitted for health. When health is taught as a separate subject, the teaching load is a maximum of 35 students per period and a total of 150 students per day.

### **3. Classroom Teachers**

- (a) The maximum daily teaching load for teachers of academic classes is 150 students. No class may exceed 35 students in enrollment.
- (b) A teacher must not be permitted to teach more than 1,500 minutes per week.
- (c) A teacher must not be assigned classes requiring more than four preparations per day.
- (d) A maximum of 40 students per class with a total teaching load of 240 students per day is permitted for music and PE teachers. If PE and health are taught on alternate days by the same teacher to the same class, the 40-student maximum and 240-student total are also permitted for health. When health is taught as a separate subject, the maximum teaching load is 35 students per class and a total of 150 students per day. Exception: When band, chorus, and orchestra require rehearsals of the entire enrollment, any number is acceptable if adequate space is available.
- (e) When a teacher's daily schedule includes a combination of academic and nonacademic subjects, the maximum daily teaching load must be calculated on the basis of 30 students per academic class and 40 students per music or PE class. (Example: 3 classes of math with 30 students each = 90 + 2 classes of PE with 40 students each = 80. The teaching load totals 170 students. The teacher is not overloaded but does teach the maximum allowable.)
- (f) In calculating teaching load, the number of students supervised in study hall by a regular teacher must be divided by 4 (example: 60 divided by 4 = 15). Study hall students must not be placed in an instructional class.

Grades 6 - 8

- (a) The teaching load must not exceed 150 students daily. No class may exceed 35 students in enrollment.

#### **Grade Level Maximum Student-Teacher Ratio**

Grade 6, English language arts and mathematics 30:1 Grade 6, all other subjects 35:1 Grades 7-8 35:1

- (b) A maximum of 40 students per class with a total teaching load of 240 students per day is permitted for music and PE teachers. When health is taught as a separate subject, the teaching load is a maximum of 35 students per class and a total of 150 students per day. Exceptions: When band, chorus, and orchestra require rehearsals of the entire enrollment, any number is acceptable if adequate space is available.

### **4. Special Education Teachers**

- (a) The teaching load for teachers of self-contained special education classes must not exceed the following student-teacher ratios:

#### **Maximum Ratio Based on Average Area Daily Enrollment**

- Mental Disabilities (mild) 15:1
- Emotional Disabilities 12:1
- Learning Disabilities 15:1
- Mental Disabilities (moderate and severe) 12:1
- Orthopedically Impaired 12:1
- Visually Impaired 10:1
- Deaf and Hard of Hearing 10:1



(b) Cross-categorical self-contained classes must not exceed the following student-teacher ratios:

Maximum Ratio Based on Average Area Daily Enrollment: Cross categorical self-contained classes must comply with the ratio (noted above) of self-contained classrooms with the notable exception: When four or more students identified as emotionally disabled or orthopedically impaired are enrolled in a cross-categorical class, a full-time teaching assistant must be employed.

(c) The maximum teaching load required for resource teachers and itinerant teachers for students with disabilities based on the average daily enrollment is as follows:

Area Maximum Teaching Load

Mental Disabilities (mild) 33 students;  
Emotional Disabilities 33 students;  
Learning Disabilities 33 students;  
Mental Disabilities (moderate and severe) and  
Orthopedically Impaired 20 students;  
Visually Impaired 15 students;  
Deaf and Hard of Hearing 15 students

(d) When resource teachers and/or itinerant teachers serve students with differing disabilities, the maximum teaching load must be determined by the majority of the students in enrollment in an area of disability.

(e) The maximum caseload for speech language therapists must not exceed 60 students.

**IV. Grades Nine through Twelve**

**B. Professional Personnel Workload**

**1. Guidance Counselors**

(a) Schools with fewer than 600 students must provide the services of a guidance counselor in the following ratios:

Enrollment Minimum Allotted Time Daily

Up to 200 100 minutes 201 to 300 150 minutes 301 to 400 300 minutes 401 to 500 250 minutes 501 to 600 300 minutes

(b) Schools with enrollments of 501 or more must employ one full-time certified counselor. Schools with more than 600 students must provide guidance services at the ratio of 50 minutes for each additional 51 to 100 students to the extent that the total school enrollment reflects a minimum of 50 minutes of guidance services for every 100 students.

(c) A career specialist may be employed to provide career guidance services.

(d) By the 2011–12 school year, the student-to-guidance personnel ratio will be reduced to 300 to 1 as funds become available.

*The information provided here may be subject to change based on recommendations to the state board of education and the SC legislature.*

## **Support Personnel/Paraprofessional Personnel Positions, Qualifications and Duties. South Carolina Code 43-209.**

(Statutory Authority: S.C. Code Ann. Section 59-5-60 (1990) and 20 U.S.C. Section 6301 et seq. (2002))

### **A. Support personnel positions for school district superintendents and school principals**

1. Secretarial services shall be provided.
2. Custodial services shall be provided.

### **B. Paraprofessional personnel positions**

1. Each teacher of trainable, orthopedically, emotionally, or visually disabled pupils in a self-contained classroom model shall have a paraprofessional full time, provided that the class has a minimum membership of four pupils.
2. Each teacher of a kindergarten unit shall have a paraprofessional full time.

### **C. Paraprofessional Personnel Qualifications and Duties**

1. Paraprofessionals helping with classroom instruction or programs shall meet the following requirements:

- a. All instructional paraprofessionals must be at least 18 years of age.
- b. All instructional paraprofessionals must have at least a high school diploma or state equivalency certificate.
- c. Instructional paraprofessionals who work in a Title I school or a Title I targeted assistance program and who were hired after January 8, 2002, must either
  - (1) hold a two-year associate's degree from an accredited institution, or
  - (2) have completed two years (60 semester hours) of college coursework from an accredited institution, or
  - (3) have passed a state-approved examination of content knowledge and pedagogy.
- d. Instructional paraprofessionals who work in a Title I school or a Title I targeted assistance program and who were hired before January 8, 2002, must meet the requirements listed in C.I.c. by January 8, 2006.
- e. All instructional paraprofessionals must work under the direct supervision of a certified teacher.
- f. All instructional paraprofessionals must participate in preservice and inservice training programs for instructional paraprofessionals.

2. The State Department of Education will maintain an electronic registry of instructional paraprofessionals that indicates whether the instructional paraprofessional has met the requirements listed in C.I.c.

## Special Education Inclusion

Inclusion remains a controversial concept in education because it relates to educational and social values, as well as to our sense of individual worth. Any discussion about inclusion should address several important questions:

- Do we value all children equally?
- What do we mean by “inclusion”?
- Are there some children for whom “inclusion” is inappropriate?

There are advocates on both sides of the issue. James Kauffman of the University of Virginia views inclusion as a policy driven by an unrealistic expectation that money will be saved. Furthermore, he argues that trying to force all students into the inclusion mold is just as coercive and discriminatory as trying to force all students into the mold of a special education class or residential institution.

On the other side are those who believe that all students belong in the regular education classroom, and that “good” teachers are those who can meet the needs of all the students, regardless of what those needs may be.

Between the two extremes are large groups of educators and parents who are confused by the concept itself. They wonder whether inclusion is legally required and wonder what is best for children. They also question what it is that schools and school personnel must do to meet the needs of children with disabilities.

While recognizing that there are no simple answers, this paper attempts to give an overview of the concept of inclusion and offers a set of recommendations that can help to ensure that we meet the needs of all students.

### Definitions

In order to discuss the concept of inclusion, it is first necessary to have a common vocabulary. Research Bulletin Number 11, 1993, from Phi Delta Kappa’s Center for Evaluation, Development, and Research provides a useful set of definitions. The following have been edited for clarity.

#### Mainstreaming

Generally, mainstreaming has been used to refer to the selective placement of special education students in one or more “regular” education classes. Proponents of mainstreaming generally assume that a student must “earn” his or her opportunity to be placed in regular classes by demonstrating an ability to “keep up” with the work assigned by the regular classroom teacher. This concept is closely linked to traditional forms of special education service delivery.

#### Inclusion

Inclusion is a term which expresses commitment to educate each child, to the maximum extent appropriate, in the school and classroom he or she would otherwise attend. It involves bringing the support services to the child (rather than moving the child to the services) and requires only that the child will benefit from being in the class (rather than having to keep up with the other students). Proponents of inclusion generally favor newer forms of education service delivery.

## **Full Inclusion**

Full inclusion means that all students, regardless of handicapping condition or severity, will be in a regular classroom/program full time. All services must be taken to the child in that setting.

In addition to problems related to definition, it also should be understood that there often is a philosophical or conceptual distinction made between mainstreaming and inclusion. Those who support the idea of mainstreaming believe that a child with disabilities first belongs in the special education environment and that the child must earn his/her way into the regular education environment.

In contrast, those who support inclusion believe that the child always should begin in the regular environment and be removed only when appropriate services cannot be provided in the regular classroom.

### **Does Federal Law Require Inclusion?**

Two federal laws govern education of children with disabilities. Neither requires inclusion, but both require that a significant effort be made to find an inclusive placement.

## **IDEA**

The Individuals with Disabilities Education Act (IDEA), as amended in 2004, does not require inclusion. Instead, the law requires that children with disabilities be educated in the "least restrictive environment appropriate" to meet their "unique needs." And the IDEA contemplates that the "least restrictive environment" analysis will begin with placement in the regular education classroom.

However, IDEA recognizes that it is not appropriate to place all children in the regular education classroom. Therefore, the law requires school districts to have a "continuum of placements" available, extending from the regular education classroom to residential settings, in order to accommodate the needs of all children with disabilities. Using the continuum concept makes it more likely that each child would be placed appropriately in an environment that is specifically suited to meet his/her needs. The law intends that the degree of "inclusion" be driven by the student's needs as determined by the IEP team, not by the district's convenience or the parents' wishes.

In developing the Individual Education Program (IEP) for a child with disabilities, the IDEA requires the IEP team to consider placement in the regular education classroom as the starting point in determining the appropriate placement for the child. If the IEP team determines that the "least restrictive environment" appropriate for a particular child is not the regular education classroom for all or part of the IEP, the IEP team must include an explanation in the IEP as to why the regular education classroom is not appropriate.

The purpose of these requirements is to carry out the intent of the IDEA, which is to educate as many students with disabilities as possible in the regular education classroom, while still meeting their unique, individual needs. Robert T. Stafford, the Republican Senator from Vermont and one of the bill's primary sponsors, has argued that the legislation is essential if we are to allow children with special needs to live ordinary lives (Arnold and Dodge, 1994).

## **Section 504 of the Rehabilitation Act of 1973**

Section 504 requires that a recipient of federal funds provide for the education of each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person.

A recipient is required to place a handicapped child in the regular educational environment unless it is demonstrated by the recipient that the education in the regular environment with the use of supplementary aides and services cannot be achieved satisfactorily.

Because the categories of disabilities covered by the IDEA have expanded during the past two reauthorizations in 1997 and 2004, Section 504 is less frequently used to obtain access to public education for students with disabilities.

### **Court decisions provide guidelines governing placement under IDEA**

Even after several reauthorizations of IDEA, most recently in 2004, federal law leaves several questions unanswered, including three significant ones:

- How far must schools go?
- How important is potential academic achievement/social growth in making placement decisions?
- What are the rights of the other children?

Guidelines established by the following federal court decisions provide school districts with some measure of what is expected of them in determining the appropriate placement for children with disabilities. Please note that each court has a separate jurisdiction and that the decision may not apply to all locations. However, these cases have been cited by courts throughout the country in cases involving challenges to placement of students in the least restrictive environment.

#### **Greer vs. Rome City School District (11th Circuit Court, 1992)**

In this case, the court decided in favor of parents who objected to the placement of their daughter in a self-contained special education classroom. Specifically, the court said: "Before the school district may conclude that a handicapped child should be educated outside of the regular classroom it must consider whether supplemental aids and services would permit satisfactory education in the regular classroom."

The district had considered only three options for the child:

- The regular education classroom with no supplementary aids and services;
- The regular classroom with some speech therapy only;
- The self-contained special education classroom.

The district argued that the costs of providing services in the classroom would be too high. However, the court said that the district cannot refuse to serve a child because of added cost.

On the other hand, the court also said that a district cannot be required to provide a child his/her own full-time teacher. As in many decisions of this type, no clear determination is made about when costs move from reasonable to excessive. The major message in this case is that all options must be considered before removing a child from the regular classroom.

#### **Sacramento City Unified School District vs. Holland (9th Circuit Court, 1994)**

In this case, the circuit court upheld the decision of the lower court in finding for the Holland family. The parents in this case challenged the district's decision to place their

daughter half-time in a special education classroom and half-time in a regular education classroom. The parents wanted their daughter in the regular classroom full-time.

A number of issues were addressed in this decision. The court considered a 1989 case in Texas, (*Daniel R.R.*), which found that regular education placement is appropriate if a disabled child can receive a satisfactory education, even if it is not the best academic setting for the child. Non-academic benefits must also be considered.

In upholding the lower court decision, the 9th Circuit Court established a four-part balancing test to determine whether a school district is complying with IDEA.

The four factors were as follows:

- The educational benefits of placing the child in a full-time regular education program;
- The non-academic benefits of such a placement;
- The effect the child would have on the teacher and other students in the regular classroom;
- The costs associated with this placement.

As a result of applying these factors, the court found in favor of including the child.

**Oberti vs. Board of Education of the Borough of Clementon School District (3rd Circuit Court, 1993)**

In finding for the parents in *Oberti*, the court ruled in favor of a placement that was more inclusive than that provided by a self-contained placement. Specifically, the court ruled that three factors must be considered:

- The court should consider whether the district made reasonable efforts to accommodate the child in regular education. The school must “consider the whole range of supplemental aids and services . . .”
- The court should compare the educational benefits the child would receive in regular education (with supplemental aids and services) contrasted with the benefits in a special education classroom.
- The court should consider the effect the inclusion of the child with disabilities might have on the education of other children in the regular education classroom.

If, after considering these factors, the court determines that the child cannot be educated satisfactorily in a regular classroom, the court must consider whether the schools have included the child in school programs to the maximum extent appropriate.

**Poolaw vs. Parker Unified School District (9th Circuit Court, 1995)**

In this case, the court ruled in favor of the district’s offer of a residential placement contrary to the wishes of the family that their child be educated in a regular education classroom. The court stated that the child’s previous and current district placements had adequately explored the effectiveness of regular education placement with supplemental aids and services. In doing so, the district found that the benefits of regular education placement were minimal and that the child’s educational needs could be met appropriately only by the residential placement offered by the district.

**School District of Wisconsin Dells v. Z. S. (7 th Circuit Court, 2002)**

The court held that the District’s decision to provide a home bound education program for a student with autism did not violate IDEA. From kindergarten through fourth grade, Z. S. had a history of kicking and biting people, tearing his clothes and breaking furniture. At age ten,

he was placed in a residential facility where he did well. The following school year, attempts were made to return him to the public school setting, but he again was violent, disruptive, and truant. He was placed in a specialized school, but was removed after less than a month. Finally, the District determined (after a month without providing services) that it would educate the student at his home. Although the child's guardian sued the district because she wanted him to attend the public school, the court held that given the child's history of unmanageable, violent behavior, the district reasonably concluded that there was no basis for believing that he could function successfully in a regular school environment.

There are other court decisions in favor of more restrictive placements, including a 1991 decision in the 8th Circuit Court of Appeals that approved a centralized program for a wheelchair-bound student with spina bifida. In this instance, the court decided that school authorities did not have to modify the neighborhood school for wheelchairs when an accessible program was available elsewhere in the school district.

### **Conclusion**

Courts will carefully examine the facts in individual cases to determine whether school districts have offered an appropriate placement out of a continuum of placements available for every child with disabilities who is enrolled in the district. Courts will examine IEP team processes to ensure that placements are based on the individual needs of each child.

### **Recommendations**

When considering a move from traditional/regular special educational programming to a more inclusive approach, it is important that the entire school community be involved in a thoughtful, carefully researched transition. Dramatic top-down directives will polarize parents and teachers and will create environments that are hostile to any change.

As is true in other areas of school restructuring, change must be based on research and broadly shared beliefs and philosophies. The following recommendations can help districts or buildings in designing a positive transition to a more inclusive environment:

- A continuum of placements, supports and services should be made available for all students, but always assume that every student's first placement is in regular education.
- All placement decisions should be based on a well-developed IEP with an emphasis on the needs of the child, her/his peers and the reasonable provision of services.
- Top-down mandated full inclusion is inappropriate. Neither federal nor state law require full inclusion.
- Before any new programs are developed, the building staff must agree on a clearly articulated philosophy of education (an education ethic). Teachers and support staff must be fully involved in the decision-making, planning and evaluation processes for individual students and building-wide programs.
- Extensive staff development must be made available as a part of every teacher's and paraprofessional's workday. Areas of emphasis include:
  - Emphasis on higher-order thinking skills
  - Integrated curricula
  - Interdisciplinary teaching
  - Multicultural curricula
  - Life-centered curricula.

- Work toward unifying the special education and regular education systems. For instance, separate evaluators and evaluation systems are counterproductive. There should be one system.
- Ensure that sufficient licensed practitioners are employed to address the social, emotional, and cognitive needs of all students. In inclusive settings, reduced class sizes and/or increased numbers of teachers in the classroom are necessary.
- Appeal processes must be developed that allow teachers to challenge the implementation of IEP's and placements that they determine to be inappropriate for a child.
- Involve parents and students as partners in the decision-making process.
- When developing programs, consider multiple teaching/learning approaches like team teaching, co-teaching, peer partners, cooperative learning, heterogeneous grouping, study team planning, parallel teaching, station teaching, etc.

### **Conclusion**

It is critical that any district or building considering more inclusive practices take the time necessary to plan effectively. Attention to special education students and staff alone is only half a strategy. Planning should involve all stakeholders in researching, discussing and examining the entire educational program. Real inclusion involves restructuring of a school's entire program and requires constant assessment of practices and results. More comprehensive research must be done as inclusion becomes more widespread. Constant reflection is necessary if we ever hope to be able to make clear determinations about which specific strategies will help children to become happy, contributing citizens.

To read about the research and resource related to this article from the Wisconsin Education Association Council visit: <http://weac.org/articles/specialedinc/>

### **NEA Policy Statement on Appropriate Inclusion**

The National Education Association (NEA) is committed to equal educational opportunity, the highest quality education, and a safe learning environment for all students. The Association supports and encourages appropriate inclusion. Appropriate inclusion is characterized by practices and programs which provide for the following on a sustained basis.

- A full continuum of placement options and services within each option. Placement and services must be determined for each student by a team that includes all stakeholders and must be specified in the Individualized Education Program (IEP).
- Appropriate professional development, as part of normal work activity, of all educators and support staff associated with such programs. Appropriate training must also be provided for administrators, parents, and other stakeholders.
- Adequate time, as part of the normal school day, to engage in coordinated and collaborative planning on behalf of all students.
- Class sizes that are responsive to student needs.
- Staff and technical assistance that is specifically appropriate to student and teacher needs.

Inclusion practices and programs which lack these fundamental characteristics are inappropriate and must end.



## Components of Inclusive Education

There's a difference between "real" inclusion...and just being present.

### Key "Necessary" Components of "Inclusive Education"

- Students are in their home schools, general education classes. Where the students would be if they did not have disabilities

### Appropriate Supports and Services

- Based on individual's and needs.
- Supports follow the students, the students don't go somewhere to get them

### "On-going" planning for success

- Obstacles are issues waiting for solutions
- "Teams" are proactive, addressing needs before problems arise
- Inclusion is a process, not an event
- All team members actively seek out information and resources
- All team members have a shared vision of what success looks like for each individual student
- Classroom, building and district decisions and planning reflect the needs of students with disabilities

### Active Participation

- Exclusion can happen in a general education environments
- All activities are designed to be accessible for all students

### All students have a sense of belonging

- All students are valued
- Social goals are integrated within class activities for all students
- Adults model and facilitate inclusion and interactions

### Achievement of IEP Goals

- Goals are dependent on individual and worked on within general curriculum

### Natural proportions

- Same proportion of students with disabilities are in classes as are in the general population
- Students with disabilities are not grouped
- All classes practice inclusion, none are referred to as "inclusion classes"

### Classes get ready for students

- Students do not have to get "ready" to be included
- There are no prerequisites for inclusion
- Staff are trained based on students' needs

### Collaboration and Team Planning

- General and special education staff have ownership of students with disabilities
- All team members collaborate and communicate frequently

Diversity is valued throughout all environments, activities and events

- Sensitivity and awareness are interwoven throughout
- Universal design and curriculum are utilized first
- People 1st language is promoted and used in all environments
- All students get what they need based on individuals, not labels
- All students count in assessments and evaluations

Written by Colleen F. Tomko  
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## **Benefits of Inclusive Education**

The benefits of inclusive education are numerous for both students with and without disabilities.

### **Benefits of Inclusion for Students with Disabilities**

- Friendships
- Increased social initiations, relationships and networks
- Peer role models for academic, social and behavior skills
- Increased achievement of IEP goals
- Greater access to general curriculum
- Enhanced skill acquisition and generalization
- Increased inclusion in future environments
- Greater opportunities for interactions
- Higher expectations
- Increased school staff collaboration
- Increased parent participation
- Families are more integrated into community

### **Benefits of Inclusion for Students without Disabilities**

- Meaningful friendships
- Increased appreciation and acceptance of individual differences
- Increased understanding and acceptance of diversity
- Respect for all people
- Prepares all students for adult life in an inclusive society
- Opportunities to master activities by practicing and teaching others
- Greater academic outcomes
- All students needs are better met, greater resources for everyone
- 

There is not any research that shows any negative effects from inclusion done appropriately with the necessary supports and services for students to actively participate and achieve IEP goals.

**Access more information on inclusion at: <http://www.kidstogether.org/>**

## Transition Checklist

The following is a checklist of transition activities that you and your son or daughter may wish to consider when preparing transition plans with the IEP team. Your student's skills and interests will determine which items on the checklist are relevant. Use this checklist to ask yourself whether or not these transition issues should be addressed at IEP transition meetings. The checklist can also help identify who should be part of the IEP transition team. Responsibility for carrying out the specific transition activities should be determined at the IEP transition meetings.

### **Four to Five Years Before Leaving the School District**

- Identify personal learning styles and the necessary accommodations to be a successful learner and worker.
- Identify career interests and skills, complete interest and career inventories and identify additional education or training requirements.
- Explore options for post-secondary education and admission criteria.
- Identify interests and options for future living arrangements, including supports.
- Learn to communicate effectively your interests, preferences, and needs.
- Be able to explain your disability and the accommodations you need.
- Learn and practice informed decision making skills.
- Investigate assistive technology tools that can increase community involvement and employment opportunities.
- Broaden your experiences with community activities and expand your friendships.
- Pursue and use local transportation options outside of family.
- Investigate money management and identify necessary skills.
- Acquire identification card and the ability to communicate personal information.
- Identify and begin learning skills necessary for independent living.
- Learn and practice personal health care.

### **Two to Three Years Before Leaving the School District**

- Identify community support services and programs (Vocational Rehabilitation, County Services, Centers for Independent Living, etc.)
- Invite adult service providers, peers, and others to the IEP transition meeting.
- Match career interests and skills with vocational course work and community work experiences.
- Gather more information on post-secondary programs and the support services offered; and make arrangements for accommodations to take college entrance exams.
- Identify health care providers and become informed about sexuality and family planning issues.
- Determine the need for financial support (Supplemental Security Income, state financial supplemental programs, Medicare).
- Learn and practice appropriate interpersonal, communication, and social skills for different settings (employment, school, recreation, with peers, etc.).
- Explore legal status with regards to decision making prior to age of majority.
- Begin a resume and update it as needed.

- Practice independent living skills, e.g., budgeting, shopping, cooking, and housekeeping.
- Identify needed personal assistant services, and if appropriate, learn to direct and manage these services.

### **One Year Before Leaving the School District**

- Apply for financial support programs. (Supplemental Social Security Income, Independent Living Services, Vocational Rehabilitation, and Personal Assistant Services).
- Identify the post-secondary school you plan to attend and arrange for accommodations.
- Practice effective communication by developing interview skills, asking for help, and identifying necessary accommodations at post-secondary and work environments.
- Specify desired job and obtain paid employment with supports as needed.
- Take responsibility for arriving on time to work, appointments, and social activities.
- Assume responsibility for health care needs (making appointments, filling and taking prescriptions etc.).
- Register to vote and for selective service (if a male).

Source: *National Transition Network Parent Brief - Winter 1996*

## **High School Diploma Program Requirements**

In June 1997, the South Carolina General Assembly increased from twenty to twenty-four the number of units required for a student to earn a state high school diploma. What follows here are descriptions of the different types of high school diploma program documents that can be awarded and the requirements that a student must meet in order to qualify for and receive each particular type of document.

### **State High School Diploma**

- For a public school student to receive a state high school diploma, the student must complete a minimum of twenty-four units of credit as prescribed.
- The prescribed unit requirements for a state high school diploma are as follows: Language Arts, four; Math, four; Physical Education or JROTC (Junior Reserve Officer Training Corps), one; U.S. history, one; Economics one-half; American government, one-half; other Social Studies, one; Science, three; Computer Science, one; Foreign language or Career and Technology Education, one; and electives seven. Note: for an adult education student, the one unit of Physical Education is not required; eight elective units are acceptable.
- No student shall apply to the twenty-four units required for the state high school diploma more than six units of credit earned in summer school, and/or through approved correspondence courses, and/or adult education programs. The State Board of Education accepts high school credit for courses completed in approved adult education programs if the following requirements are met: (1) the student has spent a minimum of one hundred twenty hours in class time in that course, and (2) the teacher is properly certified to teach the course.

### **Academic Honors Award**

- For a student to receive an Academic Achievement Honors Award, the student must (1) complete twenty-four units of credit as prescribed; (2) meet the standard on all subtests of the Exit Examination; (3) receive a minimum grade of "B" for each semester course in grades 9-12 through the seventh semester; and (4) achieve either a score of 710 on the SAT verbal or a score of 690 on the SAT math, or an ACT score of 30 on English or 33 on mathematics - OR - (1) Each student shall have completed twenty-four units of high school credit; (2) be eligible for graduation with a state high school diploma; (3) have a combined score of 1400 on the SAT verbal and math sections, or an ACT composite score of 31.
- Of the twenty-four units earned, eighteen units must be college preparatory coursework, four units in additional electives, and two units in one or more of the following: English, Science, Social Studies or Mathematics.
- College preparatory coursework includes: English [English I or above] (four units); Mathematics (Algebra I or above) (four units); Laboratory Science (three units); Social Studies [United States or South Carolina studies, Economics/Government, and one unit of Global Studies/World History, Global Studies/World Geography, or Western Civilization] (three units); Computer Science (one unit); Physical Education (one unit); and foreign language (two units).

### **State High School Certificate**

- For a student to receive a state high school certificate, the student must complete a minimum of twenty-four units of credit as prescribed.
- The prescribed unit requirements for a state high school diploma are as follows: Language Arts, four; Math, four; Physical Education or JROTC (Junior Reserve Officer Training Corps), one; U.S. History, one; Economics one-half; American Government, one-half; other Social Studies, one; Science, three; Computer Science, one; foreign language or Career and Technology Education, one; and electives, seven.

## **Uniform High School Diplomas - Senate Bill S462**

On May 19, 2017 Governor McMaster signed Senate Bill S462 – “Uniform High School Diplomas” into law. This Bill amends high school diploma options in South Carolina for some students, offering an alternative to a Certificate of Attendance. Bill S462 reads:

An act to amend section 59-39-100, as amended, code of laws of South Carolina, 1976, relating to the uniform diploma for graduates of accredited high schools, so as to provide personalized pathways for students to earn the diploma and to provide related course of study-based endorsements students may earn, to revise the coursework students entering ninth grade during the 2018-2019 school year must earn for graduation, to provide this revised coursework requirement must support the profile of the graduate, to provide for a uniform employability credential available for certain students with disabilities as an alternative to diploma pathways, and to provide the state department of education shall monitor numbers of diplomas and employability credentials earned by students and biannually report such numbers to the state board of education and the general assembly.

Be it enacted by the General Assembly of the State of South Carolina: Diploma requirements revised, alternate credential created, reporting

SECTION 1. Section 59-39-100 of the 1976 Code, as last amended by Act 49 of 2005, is further amended to read:

"Section 59-39-100. (A) Diplomas issued to graduates of accredited high schools within this State must be uniform in every respect and particularly as to color, size, lettering, and marking. In accordance with Section 59-59-10, et seq., districts and schools shall provide students with personalized pathways for earning the uniform diploma, and students may earn endorsements based upon their course of study, which may be represented by seals added to the student's uniform diploma. The State Board of Education shall promulgate regulations establishing these pathways and endorsements.

(B) Beginning with students entering the ninth grade in School Year 1997-1998, the number of units required for a high school diploma was increased to twenty-four units. To support the Profile of the Graduate, for students entering the ninth grade beginning with the 2018-2019 School Year, the twenty-four units required are as prescribed in this section and in regulation by the State Board of Education.

(1) Students will continue to be required to earn the units of credit as prescribed in regulation and, when applicable, be offered national industry certifications or credentials.

(2) Coursework must be aligned with a student's personalized diploma pathway. The State Board of Education shall promulgate regulations that outline the process and procedures for approval of courses to personalize pathways based on students' postsecondary plans and include an annually updated course activity coding manual listing approved courses. The individualized graduation planning process must plan each student's personalized pathway based on his postsecondary plans.

(C) The State Board of Education, through the Department of Education and in collaboration with the Vocational Rehabilitation Department, the Department of Employment and Workforce, businesses, and stakeholders shall develop criteria for a uniform state-recognized employability credential that is aligned to the program of study for students with a disability whose Individualized Education Program (IEP) team determines, and agrees in writing, that a diploma pathway would not provide a free appropriate public education. The State Board of Education, in conjunction with the department, shall develop a rubric and guidelines to identify and assess the employability skills of the students, based on appropriate standards established. The credentials must be uniform in size, shape, and design.

(D) The department shall monitor the number of diplomas and employability credentials earned by students and shall report to the State Board of Education and the General Assembly biannually by February 15, beginning in 2020.

(E) Nothing in this section prohibits local school boards of trustees from awarding recognition to students who complete additional units and credits beyond those required by this section."

#### **Time effective**

SECTION 2. This act takes effect with students entering ninth grade beginning with the 2018-2019 School Year.

Ratified the 15th day of May, 2017. --- Approved the 19th day of May, 2017.

## What Does the Transfer of Rights Mean for Parents, Youth with Disabilities, and Schools?

In accordance with South Carolina policies, your rights as a parent may transfer to your son or daughter at age of majority (18 years old). When your child reaches 17 (1 year prior to reaching the age of majority) the school must let you and your young person know about any upcoming transfer of rights. If your rights transfer to your son or daughter, he or she will have new responsibilities. These include but aren't limited to:

- Participating in individualized education program (IEP) meetings (Your child *must* be invited to the IEP meeting starting at age 16, but it's a good idea to start earlier. And many states do!)
- Deciding who is invited to the IEP meeting (e.g., parents, adult service providers, people who know about and understand your son or daughter's disability)
- Making decisions about what IEP and post-school goals to include in the plan
- Giving signed consent for re-evaluation and changes in placement
- Deciding whether or not to continue his or her education
- Requesting mediation or other ways to resolve disputes

### Concerns about Competency: IDEA's Special Rule

IDEA includes a "special rule" about transfer of parental rights when students with disabilities reach the age of majority. The special rule relates to young people:

- who do not have the ability to provide informed consent to their educational programs, but
- who have not been determined by a court to be "incompetent."

In such cases, states may adopt policies that allow parents to continue representing their son or daughter, even after the age of majority is reached. Parents would continue to represent their young person during the entire time the student is eligible for services under Part B of IDEA. *Please refer to information on the SC "Consent Act" included in this Manual.*

### What about Guardianship and Other Options?

Letting children grow up and take charge of their lives is a challenge for many, many parents. It's hard to stand back, watch, and let go. When a young person has a disability that seriously affects decision-making, the challenge of "letting go" is that much greater.

#### Options?

For some parents, the question of assuming guardianship of their son or daughter will arise. There are other options to be considered as well, such as conservatorship or having an educational advocate. If these possibilities have crossed your mind, you'll need to find out more—much more—before taking action.

#### Guardianship as a legal matter

Securing guardianship of your son or daughter is a legal matter that has consequences for both parents and offspring. By its very nature, guardianship is quite restrictive—for example, under guardianship, the person is typically considered "incompetent." He or she is usually stripped of the authority to make decisions that is granted to adults.

These are important responsibilities. Is your son or daughter "ready" to take charge of his or her education? What about planning for life after high school? Many parents would probably answer, no, not yet! There is so much to learn still!

### **The bottom line**

The truth of the matter is that age of majority happens whether your son or daughter is “ready” or not. And it happens whether *you*, as the parent, are ready or not! That’s why it’s a good idea to:

- Take advantage of your child’s growing years to build skills needed in the future.
- Connect with your state’s Parent Center and disability-related community agencies to learn about webinars or workshops they offer related to transition planning.
- Foster a team approach that involves your son or daughter.
- Lay a solid foundation through discussions, guided support and decision-making, respect, and opportunities for your son or daughter to learn the basic skills that an adult needs.

### **Suggestions to consider**

If you feel you need to learn more about future care-taking options for your son or daughter, here are a few suggestions to get started:

- Learn how your state defines guardianship. What guardianship options exist, and what are the laws that govern them?
- Find out the differences between guardianship, conservatorship, and having an educational advocate. What would each mean for you and for your son or daughter?
- Determine the best way to provide support to your son or daughter. What is the *least* restrictive way to provide your young person with the support he or she needs to make decisions?
- Determine the level of support needed for your son or daughter. How much support does your son/daughter need to make sound decisions and choices? Does he or she need support, for example, in identifying *when* to make a decision? In exploring options? In coping with the consequences of choices? What *types* of supports does he or she need?
- Consider the “informal” supports your son or daughter already has (e.g., a network of family or friends). Are these enough to support him or her in decision-making, or will more supports be needed?

The time to explore options for supporting your son or daughter in the future is while you are still the one responsible for making decisions about his or her education, safety, and well-being. That way, you have time and opportunity on your side. You can support your son or daughter’s growth and learning, build his or her capacity to make good decisions, and cultivate the team approach we mentioned earlier in this tip sheet.

### **To Learn More about the Pros and Cons of Guardianship:**

#### **National Guardianship Association**

<http://www.guardianship.org/index.htm>

#### **An Overview of Guardianship**

<http://www.caregiverslibrary.org/caregivers-resources/grp-legal-matters/hsgpr-power-of-attorney-guardianship/an-overview-of-guardianship-article.aspx>

### **Definitions:**

*Note: The following definitions contain the common elements of each term from various sources. However, specifics will vary from state to state. Therefore, it is recommended that*



*you refer to your state's specific definition for each term for a complete understanding of the legal processes that will guide your choices. Terms are presented in alphabetical order.*

**Age of Majority:** This is the age that a state sets for a minor to become an adult and assume legal responsibility for himself/herself and all decisions that accompany that (e.g., financial, medical, educational). In most states, this is age 18.

**Guardianship:** Guardianship is “a court-ordered arrangement in which one person is given the legal authority to make decisions on behalf of another person whom a court has deemed to be ‘incapacitated.’” A guardian can be removed or replaced via a petition to the court. Guardianship can come in many forms and can apply to several areas, as shown below.

### **Types of Guardianship**

***Ad Litem:*** A guardian ad litem is arranged for a designated time period for a designated purpose (e.g., settling a lawsuit).

***Emergency/Temporary:*** Emergency or temporary guardianship is arranged in situations where immediate action is necessary to protect the ward in some manner. Ninety days is a common limit to how long an emergency/temporary guardianship can be in effect.

***Full/General/Plenary:*** Full guardianship transfers legal authority for all aspects of a ward's life to the guardian. This includes, but is not limited to, making decisions concerning the ward's “living arrangements, education, social activities, medical care, right to marry and association with others.”

***Limited:*** Limited guardianship is an arrangement in which a guardian is given legal rights to make decision only in certain areas of a ward's life (e.g., health care).

***Testamentary:*** Testamentary guardianship is an arrangement in which a current guardian designates a successor guardian for a ward in a will. Upon the original guardian passing away, the successor guardian assumes the legal responsibility for the ward.

***Incapacitation/Incompetency:*** An incapacitated or incompetent person is someone who the courts determine is unable to make “informed decisions” about his or her personal care or the care of his or her affairs due to a mental illness, physical illness, disability, or other condition. These decisions can include decisions about the person's finances, residence, education, vocational programs, behavioral programs, medical or dental care, or legal matters. The level of incapacitation is a threshold issue that determines what level of guardianship is granted.

***Ward |*** The term “ward” refers to the individual who is under guardianship as a result of being deemed incapacitated or incompetent by the courts.

### **Some basic facts about guardianship, assessment, and a guardian's rights and responsibilities**

Guardianship is a relationship between a competent adult, agency, or institution and a ward. The ward is a person over the age of 18 with a disability that causes incompetency.

Guardianship is meant to ensure the well-being of the ward by allowing a competent individual to make decisions for the ward who is not capable of doing so.

Individuals who fit the legal definition of mental incapacity may suffer from:

- A severe mental illness
- An acquired brain injury
- An intellectual disability
- Conditions associated with old age
- Conditions related to a stroke
- Chronic intoxication
- Dementia

Yet these conditions are not sufficient to classify the person as mentally incapacitated. Instead this judgment is made with regard to the person's ability to make an informed decision, and takes into consideration any harm or risk that the person may experience due to an inability to provide for or manage his or her personal affairs.

### **Avoiding Guardianship**

Because guardianship is a legal relationship, the court recognizes the guardian's right to make certain decisions for the ward in his or her best interest. By recognizing these rights as the guardian's, the court takes them away from the ward. For this reason, guardianship is only recommended when other alternatives have proven to be ineffective. Before considering guardianship, look into less restrictive ways to help your loved one make decisions, including conservatorships and power of attorney contracts.

If your loved one is capable of making informed decisions, he or she can avoid a possible guardianship situation by establishing:

- A living trust in which the trustee can manage assets and no guardian of the estate is needed
- A durable health care power of attorney
- A durable power of attorney in which the designated can manage assets

*Note: "Regular" or "non-durable" powers of attorney or health care powers of attorney don't rule out the potential of future guardianship, so make sure that any documents your loved one signs are "durable."*

### **Assessing Your Loved One**

By asking yourself the following four questions, you can informally assess your loved one's decisional capacity:

1. Does your loved one understand the circumstances surrounding a decision, and why a decision is called for?
2. Does your loved one understand the options available in making the decision?
3. Does your loved one understand the consequences of choosing certain options?
4. If your loved one understands the above, can he or she identify the appropriate person(s) to inform about the decision?

For a slightly more formal analysis of your loved one's mental capacity, review the official definition of mental incapacity given by the Guardianship and Administration Act of 1993: *The inability of a person to look after his or her own health, safety, or welfare or to manage his or her own affairs, as a result of (a) any damage to, or illness, disorder, imperfect or*

*delayed development, impairment or deterioration, of the brain or mind; or (b) any physical illness or condition that renders the person unable to communicate his or her intentions or wishes in any manner whatsoever.*

Because many states base their definition of mental incapacity on this law, it works as an informal definition, but you should check with an attorney for the specific rules governing guardianship in loved one's state.

## **Responsibilities**

If the court finds a ward to be mentally incapacitated, a guardian is appointed to what is known as an "involuntary guardianship." Guardians also can be appointed for individuals who voluntarily elect to have another individual manage their affairs, which is known as "voluntary guardianship." Regardless, guardianships can be quite restrictive due to annual accountings, bonds, a large amount of court involvement, and regulations on how the ward's money can be spent and invested. For this reason, all alternates to guardianship should first be considered—except in cases where the ward has no trusted family members or friends. Because guardianship is so restrictive, the process offers these individuals a more secure way of appointing someone to help make their decisions.

Guardianship can be appointed for only the individual or for the individual and the individual's estate. The guardian can manage the entire estate (plenary guardianship) or specific responsibilities of the ward (limited guardianship). Ultimately, the guardian's role depends on the ward's level of incapacity and the specific laws that govern guardianship activities and proceedings in his or her state.

Generally, a guardian makes decisions related to the ward's medical treatment, living situation, property, and/or income. A guardian's rights and responsibilities may include:

- Accessing the ward's confidential records and/or papers
- Admitting the ward to a hospital or institution
- Arranging and consenting to travel plans
- Making living arrangements for the ward
- Making decisions regarding the ward's education\Gifting the ward's money or property to others
- Initiating, defending, or settling lawsuits
- Lending or borrowing money
- Making a will for the ward
- Managing or possessing the ward's property or income
- Paying or collecting debts
- Refusing or consenting to medical procedures

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## South Carolina 43-166. Student and School Safety

### A. School Safety Assessment

1. The State Department of Education shall develop a Model Safe Schools Checklist designed to assess schools' safety strengths and weaknesses. The checklist must include items addressing the following topics:

- the existence of a comprehensive safety plan;
- communication of discipline policies and procedures;
- intra-agency and interagency emergency planning;
- recording of disruptive incidents;
- training of staff and students;
- assessment of buildings and grounds;
- procedures for handling visitors;
- assignment of personnel in emergencies;
- emergency communication and management procedures; and
- transportation rules and accident procedures.

2. The State Department of Education shall submit the checklist to the State Board of Education for approval prior to dissemination to the school districts. The checklist may be revised on an annual basis by the State Board of Education in compliance with relevant provisions of the Safe Schools Act of 1990.

3. Prior to September 30 of each school year, the State Department of Education shall disseminate a copy of the model safe schools checklist to every public school district in the state.

4. School districts shall be advised by the Department of Education of the requirement to use a safe schools checklist in compliance with Section 59-5-65, S.C. Code of Laws, 1976. This safety assessment should be part of the comprehensive needs assessment conducted for school improvement purposes in compliance with Section 59-20-60(4)(d), S.C. Code of Laws, 1976. In particular, a safe schools check list should be utilized in determining "school climate" needs, one of the six indicators of school effectiveness.

In 2016, Superintendent Molly Spearman sent a memorandum to all South Carolina schools which included this language: "Proviso 1A.46 (SDE-EIA: Aid to Districts Draw Down) states, in part, that "in order to draw down funds appropriated in Part 1A, Section 1, VIII.A.1, Aid to Districts, school districts, Palmetto Unified District and the Department of Juvenile Justice must work with local law enforcement agencies, and when necessary, state law enforcement agencies in order to ensure that the district has an updated school safety plan in place. The safety plan must include: safety directives in the classroom, a safe student and staff exit strategy, and necessary safety staff. Notice of completion of the updated plan must be submitted to the Department of Education no later than September 1, of the current fiscal year." Superintendent Spearman's memorandum can be found at:

**<http://ed.sc.gov/newsroom/school-district-memoranda-archive/model-safe-school-checklist-notice-of-completion1/model-safe-school-checklist-notice-of-completion-memo/>**

*The expectation is that every school should have a Model Safe School Checklist in place.*

## School Resource Officers

A school resource officer (SRO), by federal definition, is a career law enforcement officer with sworn authority who is deployed in community-oriented policing and assigned to work in collaboration with schools and community-based organizations to fulfill specific duties. Examples of appropriate duties included in the federal definition of an SRO are:

- educating students in crime and illegal drug use prevention and safety;
- developing or expanding community justice initiatives for students; and
- training students in conflict resolution, restorative justice, and crime and illegal drug use awareness.

Three main roles of an SRO emerge from this list, which the National Association of School Resource Officers summarizes as:

- educator (i.e., guest lecturer),
- informal counselor/mentor, and
- law enforcement officer.

### SROs and Students with Disabilities

The School Resource Officer (SRO) contributes to the maintenance of a safe and secure learning environment. The daily presence of the SRO may serve to prevent many incidents – particularly when the officer has successfully invested in a relationship of mutual trust and respect with students and school personnel. Still, enforcing criminal law on the school campus may include apprehending, subduing, and arresting students – including those with disabilities. SROs, like all law enforcement officers, must exercise their authority in context and with discretion.

Some overlap exists between the training and mindset of SROs and educators, but the distinct characteristics of trained police officers may be particularly evident when there is a behavioral escalation by a student with special needs. When a student's behavior suddenly becomes potentially dangerous to self or others, trained educators may choose to use de-escalation and physical intervention techniques (restraint or seclusion). The techniques used by school staff should focus on safety and on assisting the acting-out student in regaining physical and emotional control. Training for law enforcement personnel usually includes training in these approaches; while some law enforcement procedures may be similar to those employed by school staff, others may differ. For example, SRO training may focus on more aggressive techniques designed to attain security and physical control in a violent crisis.

Law enforcement officials have the responsibility to exercise their authority when a student, including a student with a disability, is found violating a criminal law or ordinance. SRO's have the authority and the responsibility to protect the safety and welfare of the school. However, SROs like all law enforcement officers must exercise discretion in deciding what action to take.

School staff should use caution when requesting that law enforcement personnel become involved in an event requiring de-escalation and physical intervention. Schools are urged to develop and disseminate administrative guidance for determining when to involve the SRO in a behavioral emergency. Clearly articulated guidance will serve staff, the SRO, and

students well. The student's Individualized Education Program (IEP) may modify the general guidance, making ongoing communication among staff and the SRO critical. When possible, it may be appropriate to include the SRO in de-escalation and physical intervention training as it is being provided to school staff, just as it is helpful for the officer to regularly educate staff about the SRO's function, skill sets, and responsibilities. All members of the learning community should know what to expect from each other in an emergency in order to provide appropriate intervention and support to the student in behavioral crisis.

### **South Carolina & SRO**

In South Carolina the current statute defines an SRO as "someone who has completed the basic course of instruction for School Resource Officers as provided or recognized by the National Association of School Resource Officers (NASRO) or the South Carolina Criminal Justice Academy (SCCJA)..." The SCCJA and NASRO (to include South Carolina Association of School Resource Officers) should agree on what constitutes a "basic course of instruction".

Included in the March 2016 "South Carolina Safe Schools Taskforce Report" were a series of recommendations made by the State Board of Education regarding SROs. The first recommendation was that SC adopt the federal definition of SRO. Secondly, they made recommendation regarding SRO training requirements to the SCCJA that they should consider separating its SRO course back into 2 components, Basic and Advanced in order to allow more officers to achieve the statutory requirement. Also, they recommended that professional organizations such as the South Carolina Sheriff's Association and the South Carolina Law Enforcement Officers Association should be encouraged to aid, promote and host training opportunities. The South Carolina Department of Education (SCDE) recommends the following to be included in the training of SROs: classroom management, positive intervention, cultural diversity, de-escalation, and Crisis Prevention and Intervention (CPI) training. Further, prior to the beginning of each school year, SROs and school administrators should develop and/or review the Memorandum of Understanding between the SRO and school administrators.

The Taskforce suggested that the SCDE provide access to best practice, evidence based interventions for students, teachers, administrators, and SROs. The SCDE shall offer an overview of new discipline regulations along with positive intervention and frameworks to incoming principals during their initial training. The SCDE recommends that teachers and principals receive comprehensive training on the progressive behavior plan. The taskforce recommends that the "best practice" is for schools to contract with school resource officers as defined by state statute. The information provided below on school resource officers (SRO) comes from that report. To review the full report, visit: <http://scsba.org/wp-content/uploads/2016/08/2016-schoollaw-presentation-taksforce-richardson.pdf>

### **STATE BOARD OF EDUCATION - CHAPTER 43**

Statutory Authority: 1976 Code Sections 59-5-60 (SBE General Powers), 59-5-65, 59-7-12, and 16-17-420

43-210. School Resource Officers

I. Expectations for School Resource Officers in South Carolina Public Schools

School campuses are learning environments where public education students are

prepared for success in college and/or careers as South Carolina graduates. School resource officers are necessary to provide law enforcement and police services to assist in providing a safe, learning environment. School resource officers should act in accordance with police department policies and procedures to enforce federal and state laws and county and municipal ordinances as well as district policies.

## II. Resource Officers Defined

A school resource officer is a sworn law enforcement official pursuant to the requirements of any jurisdiction of South Carolina who has completed the basic course of instruction as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy and who is assigned to one or more school districts within this State to have as a primary duty the responsibility to act as a law enforcement officer, advisor, and teacher for that district.

A school resource officer has statewide jurisdiction to arrest persons committing crimes in connection with a school activity or school-sponsored event.

## III. Role of the School Resource Officer

### A. Law Enforcement Officer

As sworn law enforcement, school resource officers have a major role in campus security. School resource officers should not only be called to respond to criminal incidents, but also to assist in emergency crisis planning and building security as well as training school personnel on handling crisis situation. It is important for school administrators to establish and maintain close partnerships with school resource officers, as they are valuable resources for providing a safe school environment.

### B. Law-Related Educator

Teachers and staff should utilize school resource officers within the classroom to help design and present law-related topics regarding the role of law enforcement in our society.

### C. Community Liaison

School administrators should encourage school resource officers' visibility within the school community as well as attendance and participation at school functions. This will help to build working relationships with school personnel, students, and parents.

### D. Positive Role Model

School resource officers should be positive role models and may be used to promote the profession of law enforcement as a career choice for students. School administrators should support positive interactions between school resource officers and students on school campuses.

## IV. Procedures

### A. Student Behavior

As law enforcement, the school resource officers should only be called when a student's behavior has exceeded the level of disruptive conduct as determined by school administration, based on district policy, or the student is engaging or has engaged in criminal conduct (see Regulation 43-279 for levels of disruptive and criminal conduct). A school resource officer should be the first line of contact for local law enforcement to ensure that the matter is resolved expeditiously to decrease significant interruption to the

learning process.

**B. General provision for visitors, employees, and unauthorized persons.**

Students deserve school environments that are safe and conducive to learning. Visitors and employees will not disrupt the learning environment or school activity inappropriately or unlawfully.

State law mandates that it is unlawful to willfully or unnecessarily interfere with or disturb school, loiter about a school, or act in an obnoxious manner while at a school. The school resource officer should be called immediately to handle a disturbance or emergency regarding a visitor or employee that disrupts the learning environment or school activity.

**V. Memorandum of Understanding**

Prior to placing a school resource officer at a school or in a school district, a memorandum of understanding must be executed between the school district, individual schools, local law enforcement agency, school administration, and the school resource officer should be clearly defined in the memorandum of understanding. The role of the school resource officer as law enforcement must clearly be defined pursuant to state law in the agreement.

**Following is the Dear Colleague/Key Policy Letter signed by the Education Secretary**

September 8, 2016

Dear Colleagues:

I know that many of you, like me, have become increasingly concerned about school-based law-enforcement officers' involvement in the administration of school discipline in many of our Nation's schools. While these officers—commonly known as school resource officers (SROs)—can help provide a positive and safe learning environment and build trust between students and law enforcement officials in some situations, I am concerned about the potential for violations of students' civil rights and unnecessary citations or arrests of students in schools, all of which can lead to the unnecessary and harmful introduction of children and young adults into a school-to-prison pipeline. As education leaders, you can empower schools, educators, and staff with the skills and capacity to avoid relying on SROs in the first place, and also eliminate SRO-related school discipline policies and practices that may harm young people and needlessly contribute to their involvement with the juvenile and criminal justice systems.

In accordance with the specific needs of each school and district, the role of law enforcement in school learning environments should be determined by local educational officials in consultation with local law enforcement agencies, school leaders, educators, families, students, and community and civil rights stakeholders. This requires education leaders to engage in a deliberate process resulting in thoughtful decisions about whether and when to use SROs. Where SROs are used, education leaders and local law enforcement agencies should work together to understand local needs and reexamine policies and practices to ensure the proper role of law enforcement within a community's schools.

School districts that choose to use SROs should incorporate them responsibly into school learning environments and ensure that they have no role in administering school discipline. State and local leaders should consider setting policy and passing legislation



designed to help SROs minimize citations and arrests of students and use diversion programs and other alternatives to arrest, detainment, or the use of force. With appropriate training, support, and community engagement, SROs can bolster a school's capacity to ensure safety and promote learning among all students. Indeed, students and their families have the right to expect that all school-based personnel coming into contact with students are professionals trained to exercise appropriate judgment and to do so in a nondiscriminatory fashion.

To further these ends, I am pleased to announce the release of a new resource created by the U.S. Departments of Education (ED) and Justice (DOJ)—the Safe, School-based Enforcement through Collaboration, Understanding, and Respect (SECURE) Rubrics—to assist States and districts in improving SRO-related policy and practice. This new resource can help education and law enforcement agencies that use SROs to review and, if necessary, revise SRO-related policies in alignment with common-sense action steps that can lead to improved school safety and better outcomes for students while safeguarding their civil rights. The SECURE Rubrics are premised on the notion that partnerships between school districts, law enforcement agencies, and juvenile justice entities should be formalized through locally developed memoranda of understanding (MOUs) among these parties. Additionally, the SECURE Rubrics can support school safety and other SRO-related policies and practices that are informed by educators, families, students, and community and civil rights stakeholders; are updated regularly; and explicitly articulate that SROs should ensure safety and security *but should not* administer discipline in schools.<sup>1 1</sup>

I encourage those school districts that choose to place SROs in schools to make good use of the SECURE Rubrics, and all other available resources.<sup>1 2</sup> to create or strengthen partnerships between school districts, law enforcement, and juvenile justice entities. Strong partnerships can enable SROs to improve safety, while keeping students out of the criminal justice system. Our partners at DOJ are also releasing a letter for law enforcement leaders to highlight these resources. You can find the letter at <http://cops.usdoj.gov/supportingsafeschools> and may wish to share it with your local law enforcement partners.

In order to eliminate overreliance on SROs in schools, school staff and administrators should be well trained to address behavioral issues through a variety of corrective, non-punitive interventions, including restorative justice programs and mental health supports.<sup>1 3</sup> As many States and districts are already demonstrating and as ED and DOJ have recognized through the Supportive School Discipline Initiative, any approach to improving school safety, security, and discipline should also focus on creating a positive school climate.<sup>1 4</sup> that helps students thrive, including employing a multi-tiered behavioral support framework such as Positive Behavioral Interventions and Supports.<sup>1 5</sup> These strategies can prevent and resolve students' behavioral issues without relying on SROs while reducing unnecessary detentions, suspensions, expulsions, citations, and arrests in schools. Further, any consequences for negative student behaviors should be nondiscriminatory, fair, and age-appropriate.

As educators, we are bound by a sacred trust to safeguard the well-being, safety, and extraordinary potential of the children and youth within the communities we serve. In order to fulfill this trust, it is incumbent upon us to abolish the use of unnecessary school discipline practices that could deny students the opportunity to mature into capable, healthy, and responsible adults. We should also work with intention to build credible and sustainable systems, structures, and partnerships that provide safe, supportive learning environments

that lift up students and nurture them when they do well *and* when they make mistakes. While there should be effective responses to a student's willful misbehavior, the focus should be on prevention and positive interventions—not reflexively removing students from regular academic instruction or unnecessarily escalating situations by calling SROs into classrooms to enforce discipline. We should condone no other approach.

Thank you for your leadership and action to ensure appropriate supports for SROs and educators, and safe and positive learning environments for all students.

Sincerely, John B. King, Jr.

### *Footnotes*

1. Resources on strengthening partnerships are available at ED's [Youth for Youth](#).
2. States, districts, and schools may access free resources to help improve school environments at ED's technical assistance centers, including the [National Center for Safe Supportive Learning Environments](#) and the [National Technical Assistance Center for Neglected or Delinquent Children and Youth](#).
3. Many of these approaches have been promoted through the Administration's [Supportive School Discipline Initiative](#).
4. Under section 725(1) of the McKinney-Vento Act, the terms “For more information on positive school climate, consult “Quick guide on Making School Climate Improvements.” U.S. Department of Education, Office of Safe and Healthy Students. Washington, DC (2016). This document is available free of charge at <http://safesupportivelearning.ed.gov/SCIRP/Quick-Guide>. Additional information and resources on improving school discipline can be found at <http://www2.ed.gov/policy/gen/guid/school-discipline/index.html>.
5. For more information and resources on Positive Behavioral Interventions and Supports, please visit ED's Technical Assistance Center on Positive Behavioral Interventions and Supports at <http://www.pbis.org/>.

# **Minimum Standards of Student Conduct and Disciplinary Enforcement South Carolina § 43-279.**

## *I. Expectations for Student Conduct in South Carolina Public Schools*

Students in the public schools of South Carolina enjoy the same basic rights of United States citizenship as do other United States citizens. The rights of students are supported by the responsibility to insure that the rights of others are respected. This regulation is adopted with the intent to better assure that the opportunity to enjoy the benefits of public education is available to all those attending the public schools of the state of South Carolina.

## *II. Previously Adopted School District Discipline Policies*

This regulation is established as a uniform system of minimum disciplinary enforcement for the school districts of South Carolina. School districts, which previously have adopted discipline policies that are consistent with and contain the elements included in this regulation, may retain their local policies as adopted.

## *III. Levels of Student Misconduct*

A. The levels of student misconduct considered in this regulation are arranged by degrees of seriousness. The levels are arranged from the least serious to the most serious.

B. Three levels of student misconduct are identified: disorderly conduct, disruptive conduct, and criminal conduct. The levels are defined in this regulation.

C. This regulation includes a listing of possible sanctions for the three levels of student misconduct. As the levels increase in seriousness, the severity of possible disciplinary sanctions increases.

D. Suggested sanctions within the Level I misconduct category range from verbal reprimand to in-school suspension. Level II misconduct includes sanctions ranging from temporary removal from class to expulsion, while Level III misconduct includes sanctions ranging from out-of-school suspension to appropriate action within the criminal justice system.

E. A local school board, in its discretion, may authorize more stringent standards than those contained in this regulation.

## *IV. Minimum Standards*

### *A. Disorderly Conduct--Level I*

1. Disorderly conduct is defined as those activities engaged in by student(s) which tend to impede orderly classroom procedures or instructional activities, orderly operation of the school, or the frequency or seriousness of which disturb the classroom or school. The provisions of this regulation apply not only to within-school activities, but also to student conduct on school bus transportation vehicles, and other school sponsored activities.

2. Acts of disorderly conduct may include, but are not limited to:

- a. Classroom tardiness;
- b. Cheating on examinations or classroom assignments;
- c. Lying;
- d. Acting in a manner so as to interfere with the instructional process;
- e. Abusive language between or among students;
- f. Failure to complete assignments or carry out directions;

- g. Use of forged notes or excuses;
  - h. Cutting class;
  - i. School tardiness;
  - j. Truancy;
  - k. Other disorderly acts as determined by local school authorities.
3. The basic enforcement procedures to be followed in instances of disorderly conduct are:
- a. Upon observation or notification and verification of an offense, the staff member should take immediate action to rectify the misconduct. The staff member should apply an appropriate sanction, and should maintain a record of the misconduct and the sanction.
  - b. If, either in the opinion of the staff member or according to local school board policy, a certain misconduct is not immediately rectifiable, the problem should be referred to the appropriate administrator for action specified by local school board policy.
  - c. The administrator should meet with the reporting staff member, and, if necessary, the student and the parent or guardian, and should effect the appropriate disciplinary action.
  - d. A complete record of the procedures should be maintained.
4. Possible sanctions to be applied in cases of disorderly conduct may include, but are not limited to:
- a. Verbal reprimand;
  - b. Withdrawal of privileges;
  - c. Demerits;
  - d. Detention;
  - e. Corporal punishment;
  - f. In-school suspension;
  - g. Other sanctions as approved by local school authorities.

## B. Disruptive Conduct--Level II

1. Disruptive conduct is defined as those activities engaged in by student(s) which are directed against persons or property, and the consequences of which tend to endanger the health or safety of oneself or others in the school. Some instances of disruptive conduct may overlap certain criminal offenses, justifying both administrative sanctions and court proceedings. Disorderly conduct (Level I) may be reclassified as disruptive conduct (Level II) if it occurs three or more times. The provisions of this regulation apply not only to within school activities, but also to student conduct on school bus transportation vehicles, and other school sponsored activities.
2. Acts of disruptive conduct may include, but are not limited to:
- a. Use of an intoxicant;
  - b. Fighting;
  - c. Vandalism (minor);
  - d. Stealing;
  - e. Threats against others;
  - f. Trespass;
  - g. Abusive language to staff;
  - h. Refusal to obey school personnel or agents (such as volunteer aides or chaperones) whose responsibilities include supervision of students;

- i. Possession or use of unauthorized substances, as defined by law or local school board policy;
  - j. Illegally occupying or blocking in any way school property with the intent to deprive others of its use;
  - k. Unlawful assembly;
  - l. Disrupting lawful assembly;
  - m. Other acts as determined by local school authorities.
3. The basic enforcement procedures to be followed in instances of disruptive conduct are:
- a. Upon observation or notification and verification of an offense, the administrator should investigate the circumstances of the misconduct and should confer with staff on the extent of the consequences.
  - b. The administrator should notify the parent or guardian of the student's misconduct and related proceedings. The administrator should meet with the student and, if necessary, the parent or guardian, confer with them about the student's misconduct, and effect the appropriate disciplinary action.
  - c. A complete record of the procedures should be maintained.
4. Possible sanctions to be applied in cases of disruptive conduct may include, but are not limited to:
- a. Temporary removal from class;
  - b. Alternative education program;
  - c. In-school suspension;
  - d. Out-of-school suspension;
  - e. Transfer;
  - f. Referral to outside agency;
  - g. Expulsion;
  - h. Restitution of property and damages, where appropriate, should be sought by local school authorities;
  - i. Other sanctions as approved by local school authorities.

### C. Criminal Conduct--Level III

1. Criminal conduct is defined as those activities engaged in by student(s) which result in violence to oneself or another's person or property or which pose a direct and serious threat to the safety of oneself or others in the school. These activities usually require administrative actions which result in the immediate removal of the student from the school, the intervention of law enforcement authorities, and/or action by the local school board. The provisions of this regulation apply not only to within-school activities, but also to student conduct on school bus transportation vehicles, and other school sponsored activities.

2. Acts of criminal conduct may include, but are not limited to:

- a. Assault and battery;
- b. Extortion;
- c. Bomb threat;
- d. Possession, use, or transfer of dangerous weapons;
- e. Sexual offenses;
- f. Vandalism (major);
- g. Theft, possession, or sale of stolen property;
- h. Arson;

- i. Furnishing or selling unauthorized substances, as defined by local school board policy;
  - j. Furnishing, selling, or possession of controlled substances (drugs, narcotics, or poisons).
3. The basic enforcement procedures to be followed in instances of criminal conduct are:
- a. Upon observation or notification and verification of an offense, the administrator should confer with the staff involved, should effect the appropriate disciplinary action, and, if appropriate, should meet with the student.
  - b. If warranted, the student should be removed immediately from the school environment. A parent or guardian should be notified as soon as possible.
  - c. If appropriate, school officials should contact law enforcement authorities.
  - d. Established due process procedures shall be followed when applicable.
  - e. A complete record of the procedures should be maintained.
4. Possible sanctions to be applied in cases of criminal conduct may include, but are not limited to:
- a. Out-of-school suspension;
  - b. Assignment to alternative schools;
  - c. Expulsion;
  - d. Restitution of property and damages, where appropriate, should be sought by local school authorities;
  - e. Other sanctions as approved by local school authorities.

#### D. Extenuating, Mitigating or Aggravating Circumstances

A local school board may confer upon the appropriate administrator the authority to consider extenuating, mitigating or aggravating circumstances which may exist in a particular case of misconduct. Such circumstances should be considered in determining the most appropriate sanction to be used.

### *V. Discipline of Handicapped Students*

#### A. Disciplinary Process

Handicapped students are not exempt from school disciplinary processes, nor are they entitled to remain in a particular educational program when their conduct substantially impairs the education of other children in the program. However, the public schools are required by federal and state law and regulations to meet the individual educational needs of handicapped children to the extent that current educational expertise permits.

#### B. Program Prescriptions

A handicapped student's Staffing Committee may prescribe or prohibit specified disciplinary measures for an individual student by including appropriate provisions in the student's individual education plan. The student's handicapping condition must be taken into consideration when deciding whether or not a particular form of discipline is to be utilized. Administrative authorities should observe any such provisions contained in a handicapped student's individual education plan, except that a Staffing Committee may not prohibit the initiation of proceedings for suspension or expulsion which are conducted in accordance with this regulation.

#### C. Suspensions

A handicapped student may be suspended, unless a suspension is prohibited by the student's individual education plan. At the end of the suspension, the student should, if appropriate, be returned to the same educational placement. School districts may remove immediately, for a short period of time, a handicapped student who is endangering himself or others.

#### D. Expulsions

Expulsion of a handicapped student is equivalent to a change in educational placement and therefore requires special procedures. Before a handicapped student may be expelled, a multi-disciplinary team must determine whether or not there is a connection between the handicapping condition and the misconduct. If there is a connection or causal relationship between the handicapping condition and the misconduct, then expulsion resulting in cessation of educational services for that student would be unallowable.

Handicapped students who have been expelled under the regulations of the State Board of Education shall continue to receive a free and appropriate education as set forth in such student's Individual Education Program. The term handicapped as used herein means handicapped students as defined in P.L. 94-142, as amended.

#### E. Immediate Removal

Nothing contained in this regulation shall be construed as limiting an administrative authority's ability to remove a handicapped student from school immediately under emergency conditions.

### *VI. Other Areas of Student Conduct Which May Be Regulated by Local School Board Policy*

A. Other areas of student conduct which are subject to regulation by local school boards include, but are not limited to:

1. School attendance;
2. Use of and access to public school property;
3. Student dress and personal appearance;
4. Use of tobacco in the public schools;
5. Speech and assembly within the public schools;
6. Publications produced and/or distributed in the public schools;
7. The existence, scope and conditions of availability of student privileges, including extracurricular activities and rules governing participation;
8. Other activities not in conflict with existing state statutes or regulations.

B. Other areas of student conduct may be regulated within legal limits by local school boards as they deem appropriate to local conditions. The term "legal limits" signifies the requirements of the federal and state constitutions and governing statutes, standards and regulations, the fundamental common-law requirement that rules of student conduct be reasonable exercises of the school's authority in pursuance of legitimate educational and related functions, and special limitations arising from constitutional guarantees.

#### **59-63-230. Notices of suspensions; conferences with parents or guardian.**

*When a pupil is suspended from a class or a school, the administrator shall notify, in writing, the parents or legal guardian of the pupil, giving the reason for such suspension and setting a time and place when the administrator shall be available for a conference with the parents or guardian. The conference shall be set within three days of the date of the suspension. After the conference the parents or legal guardian may appeal the suspension to the board of trustees or to its authorized agent.*

**Regarding the “Disturbing Schools” Law  
Amending with S 131 as follows:**

The COMMITTEE on JUDICIARY proposed the following amendment (JUD0131.004):

SECTION 1. Section 16-17-420 of the 1976 Code is amended to read:

“Section 16-17-420.

(A) It is unlawful for a person who is not a student to willfully interfere with, disrupt, or disturb the normal operations of a school or college in this State by:

- (1) entering upon school or college grounds or property without the permission of the principal or president in charge;
- (2) loitering upon or about school or college grounds or property, after notice is given to vacate the grounds or property and after having reasonable opportunity to vacate;
- (3) initiating a physical assault on, or fighting with, another person on school or college grounds or property;
- (4) being loud or boisterous on school or college grounds or property after instruction by school or college personnel to refrain from the conduct;
- (5) threatening physical harm to a student or a school or college employee while on school or college grounds or property; or
- (6) threatening the use of deadly force on school or college property or involving school or college grounds or property when the person has the present ability, or is reasonably believed to have the present ability, to carry out the threat.

(B) For the purpose of this subsection, ‘person who is not a student’ means a person who:

- (1) is not enrolled in the school or college that the person interferes with, disrupts, or disturbs as described by subsection (A); or
- (2) is suspended from or expelled from the school or college, has left school property, and returns while under suspension or expulsion to the school or college and causes the interference, disruption, or disturbance as described by subsection (A).

(C) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned for not more than one year, or both.

SECTION 2. Article 7, Chapter 17, Title 16 of the 1976 Code is amended by adding:

“Section 16-17-425.

(A) It is unlawful for a student of a school or college in this State to refuse or fail to leave school or college grounds or property after that student has received notice by a school or college administrator that the student has been suspended from school. The notice may be given verbally or in writing. The suspended student shall not be charged with a violation of this section if the student complies with a directive to report to the school administrative offices, or to another office or area designated by the school personnel, and cooperates with school personnel to arrange for transportation from the school. Where practicable, school administrators should comply with this subsection before calling for law enforcement intervention.

(B) For the purpose of this section ‘student’ means a person who is enrolled in the school or college where the refusal or failure to leave occurs. This definition does not include a



person who has left school property due to a previous suspension or expulsion and returns without permission during the term of his suspension or expulsion.

(C) A person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars, or imprisoned for not more than 30 days, or both.

(D) Nothing in this section, including requests or demands by school personnel, shall limit or impair the authority of the law enforcement officer to make the determination of whether or not the actions of the student constitute sufficient probable cause for an arrest.

(E) The provisions of this section do not apply to school-sponsored athletic events.

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

---XX--- /

Renumber sections to conform.  
Amend title to conform.

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Bill timeline:

Introduced in the Senate on January 10, 2017

Introduced in the House on April 18, 2017

Last Amended on April 5, 2017

Currently residing in the House Committee on **Judiciary**

**PLEASE NOTE: At the time this article was published the Bill had not been signed by the Governor. It remains in committee for 2017-18 cycle.**

## Bullying and What to Do About It

Although it's always been around, bullying should never be accepted as normal behavior. Bullying, teasing, and harassment should not be considered normal rites of passage or "kids just being kids". The effects of bullying can be serious, including depression, low self-esteem, health problems, and even suicide. The feelings experienced by victims of bullying are painful and lasting. Bullies, if not stopped, can progress to more serious, antisocial behavior. Recent incidents of school violence show that bullying can have tragic consequences for individuals, families, schools, and entire communities.

### Recognize It (for what it is)

Bullying doesn't just happen to the smallest kid in the class. Children who bully others target those who seem to be less powerful or not as strong. Children who bully others also often target children who seem "different". Children with disabilities are sometimes more likely to be bullied than children without disabilities.

Bullying is unwanted, aggressive behavior that involves a real or perceived imbalance of power. The aggressive behavior is repeated, or has the potential to be repeated, over time. A child is targeted by one or more youths with repeated negative actions over a period of time. These are intentional attempts to cause discomfort or injury and can include name calling, making faces, obscene gesturing, malicious teasing, threats, rumors, physical hitting, kicking, pushing, and choking. More subtle is simply excluding a child from the group. Generally, bullying occurs when there's an imbalance of power favoring the bully. Victims usually feel they don't have the strength to defend themselves. Make no mistake, bullying is a form of violence that shouldn't be tolerated.

### Types of Bullying

- **Physical:** Physical bullying involves hurting a person's body or possessions. Physical bullying includes: hitting/kicking/pinching, spitting, tripping/pushing, taking or breaking someone's things, and making mean or rude hand gestures
- **Verbal:** Verbal bullying is saying or writing mean things. Verbal bullying includes: teasing, name-calling, inappropriate sexual comments, taunting, and threatening to cause harm.
- **Social:** Social bullying, sometimes referred to as relational bullying, involves hurting someone's reputation or relationships. Social bullying includes: leaving someone out on purpose, telling other children not to be friends with someone, spreading rumors about someone, or embarrassing someone in public.

Verbal and social bullying also can come in the form of electronic aggression (e.g.: cyberbullying using the Internet or cell phones). It can include threatening, embarrassing, or insulting emails, texts, and social media posts.

### What Can We Do?

Parents, school staff, and other caring adults can help prevent bullying. They can do the following:

- Start early. Parent and child talks are critical. Teach kids to respect others before they start school and continue to talk about this topic on an ongoing basis. Even small acts of teasing should be stopped in their tracks. Don't fail to correct this kind of behavior due to a child's young age. This is exactly when to stop it.

- Teach children what to do. Children do not always know when they are bullied. They might feel bad, but don't know how to talk about it. Children with disabilities that affect how they think, learn, or interact with others might need a very detailed explanation about how to recognize bullying when it happens to themselves or others.
- Children might not always know when they are bullying another child. Children whose disabilities impact their thinking, learning, or social skills might need extra help learning how to express themselves with respect to others.
- Encourage your children to express their feelings clearly, say no when they feel uncomfortable or pressured, stand up for themselves without fighting, and walk away in dangerous situations. Bullies are less likely to intimidate children who are confident and resourceful. Children need assistance in learning what to do to protect themselves from bullying and to help others who are being bullied. They might need:
  - Very specific instructions that are tailored to them, particularly if they have disabilities that affect how they think, learn, or interact with others.
  - To be encouraged to always reach out to a trusted adult.
  - To learn to recognize and avoid situations where bullying occurs.
- Stop bullying when you see it. Adults who remain silent when children are bullying others give permission to the behavior and thereby encourage it.
- Tell your children to take action when they see bullying behavior. Tell them to speak out against the bully and inform a teacher if the behavior doesn't stop. Bullying continues only when we allow it to.
- Communicate clear policies and consequences. Bullying is less likely in schools where adults are involved and firm about stopping bullying behaviors. Send out a clear message at your school that bullying will have negative consequences.

### **Take Steps to Stop It**

If you're a parent concerned about bullying, it's important to recognize the signs that a child is a bully, as well as the signs of one who is being victimized. This is especially true if your child has a disability, a condition which makes kids more vulnerable to bullying. Being alert and observant is critical, since victims are often reluctant to report bullying. Many victims don't report it to their parents or teachers because they're embarrassed or humiliated by the bullying. They may assume that adults will accuse them of tattling or will tell them to deal with it themselves. Some victims believe there is nothing adults can do to get the bully to stop. Naturally, bullies don't discuss their misdeeds with their parents or teachers. If their bullying behavior is reported and their parents confront them, bullies usually deny their involvement.

### **The Victim: Signs and Symptoms**

A child who is a victim of bullying may display one or more of the following behaviors at home:

- Comes home from school with clothing that's torn or in disarray, or with damaged books.
- Has bruises, cuts, and scratches, but can't give a logical explanation for how he got them.
- Appears afraid or reluctant to go to school in the morning, complaining repeatedly of headaches or stomach pains.

- Chooses an "illogical" route for going to and from school.
- Has bad dreams or cries in his sleep.
- Loses interest in school work, and his grades suffer. If your child normally struggles in school because of a disability and is teased school may become unbearable for him/her.
- Appears sad or depressed, or shows unexpected mood shifts, irritability, and sudden outbursts of temper.
- Requests money from you to meet the bully's demands and might even resort to stealing money from you or other family members.
- Seems socially isolated, with few, if any, real friends; is rarely invited to parties or to the homes of other kids. His fear of rejection may lead him to shun others.

### **What can parents of the victim do?**

If you know or suspect your child is being bullied, but his school hasn't communicated with you about the situation, you should contact your child's teacher(s) and principal right away. Keep in mind that your primary goal should be to get the school's cooperation to get the bullying to stop. Knowing your own child is being victimized can evoke strong feelings, but you'll get much more cooperation from school personnel if you can stick to the facts without becoming overly emotional. While you may want assurance that *everyone* involved is punished severely, try to focus on putting an end to the bullying!

*If your child is a victim of bullying, try helping him with the following strategies:*

### **Your Attitude and Actions**

- Listen carefully to your child's reports of being bullied. Be sympathetic and take the problem seriously. Be careful not to overreact or under-react.
- Do not blame the victim. When a child finally works up the courage to report bullying, it isn't appropriate to criticize him for causing it or not handling the situation correctly. (For example, don't ask, "Well, what did you do to bring it on?")
- Realize that for a child who is being bullied, home is his refuge. Expect him to have some difficult times in dealing with victimization. Get professional help if you think your child needs it.
- Encourage your child to keep talking to you. Spend extra time with him. Provide constant support and encouragement, and tell him that you love him often!

### **Teaching Your Child Safety Strategies**

- Remember that hitting back is not a choice at school and shouldn't be encouraged. In a school with a "zero tolerance policy" for physical aggression, encouraging your child to hit back may just get him expelled.
- Encourage your child to walk away and tell an adult if he feels someone is about to hurt him.
- Talk about safe ways to act in situations that might be dangerous. For example, identify a "safe house" or store or where he can find sanctuary if pursued by bullies. Encourage him to walk with an adult or older child. Give him/her a telephone number of an available adult to call if he's afraid and needs help dealing with a bullying situation.

- Teach your child how to report bullying incidents to adults in an effective way. Adults are less likely to discount a child's report as "tattling" if the report includes:
  - What is being done to him that makes him fearful or uncomfortable
  - Who is doing it
  - What he has done to try to resolve the problem or to get the bully to quit!
  - A clear explanation of what he needs from the adult (or what he wants the adult to do) to get the bully to quit.
- Brainstorm and practice strategies with your child to avoid further victimization.

### **When should the victim's parents contact school authorities?**

If the bullying occurs at school, then the main responsibility for achieving this goal lies with the school officials. It's important, however, that the parents of the victim collaborate with the school to implement an agreed-upon plan for solving the problem. If your child has been the victim of bullying at school, here are some suggestions for reporting the problem to school authorities:

- After talking to your child, but before contacting school personnel, write down the details of the bullying situations reported to you by your child. Note the dates and the names of the kids involved. Try to view the situation objectively and determine how serious it is.
- Your child may resist your involvement if he fears retaliation by the bully. If so, explain to your child that most bullying situations require adult intervention to resolve the problem. Let him know exactly who you plan to talk to.
- Contact school personnel for assistance in ending the bullying. First share the problem with your child's teacher(s), and work together to decide how to approach the problem. If the teacher isn't able to get the bullying under control, go to the principal and make a formal request in writing that he get the bullying to stop.
- Do not contact the bully or the bully's family directly.
- Keep an ongoing log of the dates of any further bullying incidents and the actions you take to help your child deal with the bullying. Inform the school of ongoing bullying incidents.

### **The Bully: Signs and Symptoms**

A youngster who is bullying other kids may display one or more of the following behaviors at home:

- Has a strong need to dominate and subdue others; asserts himself with power and threats to get his own way.
- Intimidates his siblings or kids in the neighborhood.
- Brags about his actual or imagined superiority *over* other kids.
- Is hot-tempered, easily angered, impulsive, and has low frustration tolerance. Has difficulty conforming to rules and tolerating adversities and delays. A child's disability could explain some of these behaviors; if so, it's important to work with doctors and teachers to address and manage such behaviors.
- Cheating
- Oppositional, defiant, and aggressive behavior toward adults, including teachers

and parents.

- Antisocial or criminal behavior (such as stealing or vandalism), often at a relatively early age. He may hang out with the "wrong crowd."

### **What can the parents of the bully do?**

Parents of bullies should understand that children who aggressively bully peers are at increased risk for engaging in antisocial or criminal behavior in the future. It is therefore important to try to help bullies change their negative attitudes and behavior toward others.

### **Your Attitude and Actions**

- Take the problem seriously. Resist a tendency to deny the problem or to discount the seriousness of it. Avoid denial thinking such as "Boys will be boys," or "Bullying is just a natural part of growing up."
- Listen carefully and check out the facts. Do not believe everything your child tells you. Children who bully are good at manipulating adults and can be very artful at weaving a story that makes them look innocent.
- The school or the victim's parents may be documenting reports of your child's bullying behaviors. It doesn't serve your child well to deny his involvement if there is evidence to the contrary. Check out the dates and the activities and determine if there is a pattern in his bullying behavior.
- Explore the reasons for your child's negative behavior. Get professional help if necessary for your child and/or your family.

### **Holding the Bully Accountable**

- Resist the tendency to blame yourself. Hold your child responsible for his own choices.
- Make it clear to your child that you take bullying seriously, and that you will not tolerate such behavior in the future. Make it clear that you expect all bullying activities to stop immediately.
- The issue of bullying should be monitored for some time through questioning your child and regularly contacting the school to determine if his bullying behavior has stopped.

### **Helping a Bully Change Behavior**

- Develop a clear and simple system of family rules. Offer frequent praise and reinforcement. Use non-hostile, negative consequences for violations of rule-following behavior. Consistently enforce the rules. Appropriate consequences for bullying might include the loss of privileges (e.g., television or computer game time).
- Follow through with appropriate consequences for your child's misbehavior. Do not use physical punishment, as doing so will only reinforce your child's mistaken belief that it's acceptable to bully those who are weaker to get what one wants. If both you and the school are consistent in applying negative consequences for bullying, the chances he will change his behavior are considerably increased.
- Spend more time with your child and monitor his activities closely. Find out who his friends are, where they spend their leisure time, and what activities they usually

engage in. Is your child in "bad company"? If so, limit his exposure to the negative peer group and provide opportunities to become involved with more pro-social peers.

- Build on your child's talents and strengths, and help him develop less aggressive and more empathetic reaction patterns.
- Reward your child for positive, caring actions and for peaceful problem solving.

### **What can — and should — parents expect the school to do?**

Whether your child is a bully, victim, or bystander, you should expect the following from his school:

- School administrators, teachers, and staff should take bullying problems seriously. The school should investigate the situation and let you know what steps they're taking to help stop the bullying.
- Written school policies and rules against bullying, harassment, and intimidation should be in place — and be enforced.
- Teachers and administrators should speak to the bully and his parents. They should also tell him what the consequences will be if he doesn't stop bullying others. If the bullying continues, the school should enforce the pre-determined consequences immediately.
- Teachers and administrators should increase adult supervision in the areas of the school campus where bullying incidents are most likely to occur.
- School personnel should be well-informed about the children who are being victimized by bullies so they can monitor and provide support to the victims as needed. They should also communicate often with the victims' parents to tell them how the situation is being handled at school.

Finally, be aware that bullying prevention programs in schools are often a very effective way to stop bullying.

### **Nurturing your child's self-esteem**

- Educate your child about bullying and bullies. Help him put the problem in perspective and not take it personally.
- Teach your child how to walk in a confident manner.
- If needed, help him pay particular attention to personal grooming and social skills.
- Identify and encourage your child's talents and positive attributes; doing so may help him better assert himself among his peers.
- Encourage your child to make new friends. A new environment can provide a "new chance" for a victimized student, as he won't be subjected to the negative stereotype other classmates have of him. Encourage him to make contact with calm and friendly students in his school. Such action may require some assistance on your part, or perhaps a school mental health professional, to develop the child's skills at initiating contact and maintaining a friendship relationship. This is especially true if your child's learning problems make his social interactions difficult. Be sure to provide ongoing support and encouragement, because your child, due to earlier failures, will tend to give up in the face of even slight adversities.
- Encourage your child to participate in physical training or sports, even if he's

reluctant. Physical exercise can result in better physical coordination and less body anxiety, which, in turn, is likely to increase self-confidence and improve peer relationships.

### **Protect Your Child's Legal Rights**

Your child has the right not to be harassed by peers, school personnel, or other adults. Disability harassment is discrimination that violates section 504 of the Individuals with Disabilities Education Act (IDEA) and its regulations. Titles II and III of the Americans with Disabilities Act also address harassment.

Find out more information about federal laws related to bullying on StopBullying.gov: <https://www.stopbullying.gov/what-is-bullying/index.html>

### **Other resources:**

You can find more helpful information about bullying at the following websites:

- PACER'S National Bullying Prevention Center: <http://www.pacer.org/bullying/>
- The Bully Project: <http://www.thebullyproject.com/>
- Stomp Out Bullying: <http://www.stompoutbullying.org/>
- Olweus Bully Prevention Program: <http://olweus.sites.clemson.edu/>

For more information on how to help children cope with school-related issues, contact your local mental health association or the National Mental Health Association at (800) 969-NMHA (6642), or [www.nmha.org](http://www.nmha.org).

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## **State of South Carolina General Assembly 'Safe School Climate Act' to Prevent School Harassment, Intimidation, or Bullying**

Approved the 12th day of June, 2006

### **Findings**

#### **Section 1.**

(A) The General Assembly finds that:

- (1) A safe and civil environment in school is necessary for students to learn and achieve high academic standards.
- (2) Harassment, intimidation, and bullying, like other disruptive or violent behaviors, are conducts that disrupt both a student's ability to learn and a school's ability to educate its students in a safe environment.
- (3) Since students learn by example, school administrators, faculty, staff, and volunteers should be commended for demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation, or bullying.

(B) The purpose of this act is to protect the health and welfare of, and improve the learning environment for South Carolina school children.

### **Safe School Climate Act**



Section 2. Chapter 63, Title 59 of the 1976 Code is amended by adding: Section 59-63-110. This article may be cited as the 'Safe School Climate Act'. Section 59-63-120. As used in this article:

(1) "Harassment, intimidation, or bullying" means a gesture, an electronic communication, or a written, verbal, physical or sexual act that is reasonably perceived to have the effect of:

- (a) harming a student physically or emotionally or damaging a student's property, or placing a student in reasonable fear of personal harm or property damage; or
- (b) insulting or demeaning a student or group of students causing substantial disruption in, or substantial interference with, the orderly operation of the school.

(2) 'School' means in a classroom, on school premises, on a school bus or other school-related vehicle, at an official school bus stop, at a school-sponsored activity or event whether or not it is held on school premises, or at another program or function where the school is responsible for the child.

Section 59-63-130.

(A) A person may not engage in:

- (1) harassment, intimidation, or bullying; or
- (2) reprisal, retaliation, or false accusation against a victim, witness, or one with reliable information about an act of harassment, intimidation, or bullying.

(B) A school employee, student, or volunteer who witnesses, or has reliable information that a student has been subject to harassment, intimidation, or bullying shall report the incident to the appropriate school official.

Section 59-63-140.

(A) Before January 1, 2007, each local school district shall adopt a policy prohibiting harassment, intimidation, or bullying at school. The school district shall involve parents and guardians, school employees, volunteers, students, administrators, and community representatives in the process of creating the policy.

(B) The policy must include, but not be limited to, the following components:

- (1) a statement prohibiting harassment, intimidation, or bullying of a student;
- (2) a definition of harassment, intimidation, or bullying no less inclusive than the definition in Section 59-63-120;
- (3) a description of appropriate student behavior;
- (4) consequences and appropriate remedial actions for persons committing acts of harassment, intimidation, or bullying, and for persons engaging in reprisal or retaliation;
- (5) procedures for reporting acts of harassment, intimidation, or bullying, to include a provision for reporting anonymously. However, formal disciplinary action must not be taken solely on the basis of an anonymous report. The procedures must identify the appropriate school personnel responsible for taking the report and investigating the complaint;
- (6) procedures for prompt investigation of reports of serious violations and complaints;
- (7) a statement that prohibits reprisal or retaliation against a person who reports an act of harassment, intimidation, or bullying;
- (8) consequences and appropriate remedial action for persons found to have falsely accused another;

- (9) a process for discussing the district's harassment, intimidation, or bullying policy with students; and
- (10) a statement of how the policy is to be publicized, including notice that the policy applies to participation in school-sponsored functions.

(C) To assist local school districts in developing policies for the prevention of harassment, intimidation, or bullying, the State Board of Education shall develop model policies applicable to grades kindergarten through twelve. Additionally, the State Board of Education shall develop teacher preparation program standards on the identification and prevention of bullying. The model policies and standards must be developed no later than September 1, 2006.

(D) The local school board shall ensure that the school district's policy developed pursuant to this article is included in the school district's publication of the comprehensive rules, procedures, and standards of conduct for schools and in the student's handbook.

(E) Information regarding a local school district policy against harassment, intimidation, or bullying must be incorporated into a school's employee training program. Training also should be provided to school volunteers who have significant contact with students.

(F) Schools and school districts are encouraged to establish bullying prevention programs and other initiatives involving school staff, students, administrators, volunteers, parents, law enforcement, and community members.

#### Section 59-63-150.

(A) This article must not be interpreted to prevent a victim from seeking redress pursuant to another available civil or criminal law. This section does not create or alter tort liability.

(B) A school employee or volunteer who promptly reports an incident of harassment, intimidation, or bullying to the appropriate school official designated by the local school district's policy, and who makes this report in compliance with the procedures in the district's policy, is immune from a cause of action for damages arising from failure to remedy the reported incident."

## **Seven Steps to Prevent Wandering at Your Child's School**

**1. If your child has a tendency to wander, it is critical to address wandering issues in his or her Individualized Education Program (IEP).**

If there is a history of wandering incidents, it's important to call a meeting with school staff, administrators, and your child's IEP team to make them aware of these past situations, as well as educate them on the autism wandering issue in general. If something changes or an incident occurs, you as a parent have the right to amend the IEP and adjust the particular items, at any time.

**2. Write a letter requesting that you always be informed, immediately and in writing, of any wandering incident on or off the campus.**

If your child requires 1-on-1 supervision, be sure to make this extremely clear to school staff – and clearly documented in the IEP – and emphasize that under no circumstances should your child be left alone at any time.

**3. Carefully document all wandering-related incidents.**

Sharing this information with the staff at your child's school will help prepare them if such an incident occurs at school. For example, where has your child been found in the past? What are his or her fascinations or obsessions? Where would he/she most likely be drawn to near campus?

**4. Try to eliminate all possible triggers that have led to wandering in the past.**

For example, if your child is drawn to water, be sure that all pools, lakes, etc. in the area of the school are blocked off so that there is no chance your child will be able to access them.

**5. Ask what the school's policies are on wandering prevention.**

Understand any and all security measures used by the school. If you think something is missing (i.e. a barrier you find necessary that may not be in place), be sure to voice your concerns. Speaking up is often required to ensure your child's safety. A note from your child's doctor noting these incidents could help provide sound reasoning for strong security measures.

**6. Introduce your child to all security staff.**

Provide the security team with more information about your child, such as how to calm him or her down, whether or not he or she responds well to touch, sound, etc. All security should be aware of your child's tendency to wander so they take extra note of the importance of keeping an eye on your child. Click [here](#) for an Elopement Alert Form to fill out with specific information about your child for all first responders including school security.

**7. In addition to including all wandering-related information, be sure that your child's IEP also includes safety skills and wandering-prevention measures.**

Include these skills in your child's therapy programs if you are able to do so.

## Understanding and Preparing for the SAT and ACT

The SAT and ACT are standardized assessments used for national college admissions examinations as part of most college admissions requirements. You should always check the college admissions requirements of your colleges of interest. For more information including test dates, costs, and fee waiver eligibility requirements, please visit the respective websites listed below. Students and families can also contact the School Counseling office for more information.

### *SAT*

The SAT is an aptitude test that measures reasoning abilities. The test takes approximately 3 hours 45 minutes and includes 3 sections: Critical Reading, Math, and Writing. Each section is worth 800 points and test takers earn 1 point for every correct answer but are penalized  $\frac{1}{4}$  point for every incorrect answer. Colleges typically take the highest score earned from each section and so it is suggested for students to take this test more than once. Many colleges continue to only consider the Critical Reading and Math sections as part of their admissions decisions. However, some colleges are also considering the Writing section. The PSAT (Preliminary SAT) is administered to students in October in efforts to familiarize students with the test content and format Juniors who take the PSAT will also be considered for the National Merit Scholarship Competition and possibly other scholarship and early college admissions opportunities. Although students can take the SAT at any point it is offered, students typically begin taking the SAT in early-Spring of their Junior year. Students are responsible for registering for the SAT and may find more information through [www.collegeboard.org](http://www.collegeboard.org).

### *ACT*

The ACT is an academic achievement test designed to measure academic content knowledge. The test takes approximately 3 hours 30 minutes and includes 4 sections: English, Math, Reading, and Science. There is an optional Writing section which takes approximately 30 minutes to complete. Some colleges require or recommend students to take the Writing section and so it is important to know college admissions criteria. Each section is worth 36 points and is averaged into a Composite score. For every correct answer, test takers earn 1 point. There is no penalty for guessing. Most colleges do not take the highest score of each section, but do consider the highest Composite score earned from all test dates taken. It is encouraged for students to take the ACT more than once. The PLAN (Preliminary ACT) is administered to 10th grade students in the Fall and is designed to expose students to the test content and format. There is also a college readiness scale and career awareness component that is part of the PLAN. Although students can take the ACT at any point it is offered, students typically begin taking the ACT in Spring of their Junior year. Students are responsible for registering for the ACT and may find more information through [www.act.org](http://www.act.org).

### *College Board and ACT Accommodations*

Students and families seeking accommodations for any College Board or ACT assessments must request the accommodation packet or form directly from the College Board or ACT. School Counselors are not responsible for seeking accommodations for any student; however, the counselor may provide a telephone number for SAT or a print out of the ACT form.

## Know Your Rights in Charter Schools

On December 28, 2016, the Office for Civil Rights (OCR) and the Office of Special Education and Rehabilitative Services (OSERS) at U.S. Department of Education released a set of guidance resources on the rights of students with disabilities in public charter schools under Section 504 and the Individuals with Disabilities Education Act (IDEA). The set of resources includes:

- a jointly-issued Dear Colleague Letter,
- several question-and-answer documents, and
- a *Know Your Rights* fact sheet.

These documents (described further below) provide information about how to provide equal opportunity in compliance with Section 504 in key areas such as:

- charter school recruitment,
- application,
- admission,
- enrollment and disenrollment,
- accessibility of facilities and programs, and
- nonacademic and extracurricular activities.

### **The Section 504 Charter guidance:**

- Explains that charter school students with disabilities (and those seeking to attend) have the same rights under Section 504 and Title II of the ADA as other public school students with disabilities.
- Details the Section 504 right to nondiscrimination in recruitment, application, and admission to charter schools.
- Clarifies that during the admission process a charter school generally may not ask a prospective student if he or she has a disability.
- Reminds charter schools, other entities, and parents that charter school students with disabilities have the right to a free appropriate public education (FAPE) under Section 504.

The 41-page Section 504 Charter guidance is available online in a PDF format (570 kb) at: <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf>

### **The IDEA Charter guidance:**

- Emphasizes that children with disabilities who attend charter schools and their parents retain all rights and protections under Part B of IDEA (such as FAPE) just as they would at other public schools.
- Provides that under IDEA a charter school may not unilaterally limit the services that must be provided a particular student with a disability.
- Reminds schools that the least restrictive environment provisions require that, to the maximum extent appropriate, students with disabilities attending public schools, including public charter schools, be educated with students who are nondisabled.
- Clarifies that students with disabilities attending charter schools retain all IDEA rights and protections included in the IDEA discipline procedures.

The 32-page IDEA Charter guidance is available online in a PDF format (562 kb), at: <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/faq-idea-charter-school.pdf>

### **Know Your Rights Fact Sheet**

In addition to the above documents, the Department also released a *Know Your Rights* document designed for parents to provide a brief overview of the rights of public charter school students with disabilities and the legal obligations of charter schools under Section 504 and the IDEA. The 3-page fact sheet is available online in a PDF format (92 kb) at: <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-charter-school.pdf>

### **Additional Resources:**

The U.S. Department of Education has issued the following documents that address these rights in more detail.

Joint OCR-OSERS Dear Colleague Letter, Dec. 28, 2016,  
<http://www.ed.gov/ocr/letters/colleague-201612-504-charter-school.pdf>;

Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under Section 504 of the Rehabilitation Act of 1973, Dec. 28, 2016,  
<http://www.ed.gov/ocr/docs/dcl-faq-201612-504-charter-school.pdf>;

Frequently Asked Questions about the Rights of Students with Disabilities in Public Charter Schools under the Individuals with Disabilities Education Act, Dec. 28, 2016,  
<http://www.ed.gov/policy/speced/guid/idea/memosdcltrs/faq-idea-charter-school.pdf>.

If you want to learn more about your rights, or if you believe that your school is violating Federal law, you may contact the U.S. Department of Education, Office for Civil Rights, at (800) 421-3481, (800) 877-8339 (TDD), or [ocr@ed.gov](mailto:ocr@ed.gov). You may also file a complaint online at [www.ed.gov/ocr/complaintintro.html](http://www.ed.gov/ocr/complaintintro.html). If you have questions regarding IDEA, please send them to the Office of Special Education and Rehabilitative Services by email at [ideacharterschools@ed.gov](mailto:ideacharterschools@ed.gov) or by phone at 202-245-7468, (800)-877-8339 (TDD).

### **Additional Note**

The documents are responsive to the U.S. Government Accountability Office's 2012 report (in PDF, 937 kb) *Charter Schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities*, which included the recommendation that the Department issue updated guidance on the obligations of charter schools.

## SC Education Credit for Exceptional Needs Children's Fund

The South Carolina Educational Credit for Exceptional Needs Children is a tax-credit scholarship program enacted in 2013 and launched in 2014. The program provides tax credits of up to 100 percent of donations made to Scholarship Funding Organizations (SFOs). SFOs give private school scholarships to students with special needs.

Through tuition tax credits and scholarship, Exceptional SC helps students with special needs attend credentialed private schools.

### Proving Student Eligibility

To be eligible for the scholarship or tuition tax credit from Exceptional SC, students must be residents of South Carolina, be eligible to attend a public school, and have **one** of the documents listed below to prove eligibility. The eligibility/reevaluation determination date on the document must be within the past three years.

- **Independent Medical Professional Form:** Certain third party medical professionals can designate a child as eligible for a grant. *Please note: For the 2016-17 application year, Exceptional SC will accept medical professional forms previously accepted by SFOs as long as the eligibility determination date is within the past three years.*
- **Multi-Disciplinary Team Report (MDTR):** Issued by a public school district. Provide the full document, including the signature page.
- **Individualized Education Plan (IEP):** Issued by a public school district.
- **Individualized Service Plan (ISP):** Issued by a public school district.
- **Eligibility Determination Letter:** Issued in the IDEA mandated Child Find program.
- **Other Letter or Document from a South Carolina public school district.**

Families should keep that proof of student eligibility and tuition receipts, as they would other important tax documents.

### Scholarships

Scholarships are payment made by Exceptional SC to eligible schools on behalf of exceptional needs students. The scholarships can cover tuition, transportation and textbook costs up to \$11,000. Schools must be approved annually by The Education Oversight Committee to participate in this program.

Funding for scholarships comes from donations to Exceptional SC. Individual and corporate donors are eligible for South Carolina income tax credits for their donation to Exceptional SC.

### To apply for this scholarship:

Go to the ExceptionalSC website ([www.ExceptionalSC.org](http://www.ExceptionalSC.org)). At the bottom of the page is the "Apply" link. This leads to the TAD portal which will ask for student and school information. If you need assistance with the application, you can contact TADS support at [support@tads.com](mailto:support@tads.com). If you have other questions, contact [administrator@exceptionalsc.org](mailto:administrator@exceptionalsc.org).

# Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools

Revised April 2011

The Office of Special Education and Rehabilitative Services (OSERS) issues this Q&A document to provide State educational agencies (SEAs), local educational agencies (LEAs), parents, advocacy organizations, and other interested parties with information regarding the requirements for serving children with disabilities placed by their parents in private schools. This Q&A document represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

The IDEA and its implementing regulations contain a number of significant changes for parentally placed private school children with disabilities. Section 612(a)(10)(A) of the IDEA and 34 CFR §§300.130 through 300.144 now require that the LEA, after timely and meaningful consultation with private school representatives, conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located within the LEA regardless of where those students live. These requirements make clear that the obligation to spend a proportionate amount of IDEA Part B funds to provide services to children with disabilities enrolled by their parents in private schools now refers to children enrolled by their parents in private elementary schools and secondary schools "in the school district served by a local educational agency." Other key changes relate to the consultation process, calculation of the proportionate share, and standards applicable to personnel providing equitable services.

This Q&A document supersedes the Department's guidance, entitled Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools issued in March 2006 and January 2007 and includes additional topics that have arisen as the field has implemented the regulations. Some of the new questions reflect recent policy letters that have been issued, while others address common questions that OSEP receives. New topics include:

- Location of Services and Transportation—addressing how an LEA determines where equitable services are provided and whether transportation is required.
- Property, Equipment, and Supplies—addressing whether Part B funds for equitable services may be used to place equipment and supplies in a private school or be used for repairs, minor remodeling, or construction of private school facilities.
- Out-of-State Children with Disabilities—addressing the responsibility for determining and paying for services provided to out-of-State parentally placed private school children with disabilities.
- Home-Schooled Children with Disabilities—addressing child find and services for children with disabilities who are home-schooled.
- Children in For-Profit Private Schools—addressing whether children enrolled in a for-profit private school are counted in determining the proportionate share and whether they are eligible to receive equitable services.

In addition to these new topics, questions have been added to address the consultation process, response to intervention (RTI), the process for developing a services plan, the difference between a services plan and an individualized education program (IEP), child find, and child count.



Generally, the questions, and corresponding answers, presented in this Q&A document required interpretation of the IDEA and its implementing regulations and the answers are not simply a restatement of the statutory or regulatory requirements. The responses presented in this document generally are informal guidance representing the interpretation of the Department of the applicable statutory or regulatory requirements in the context of the specific facts presented and are not legally binding. The Q&As in this document are not intended to be a replacement for careful study of the IDEA and its implementing regulations.

**Question: What is consultation?**

Answer: As used in the regulations, consultation is a mandatory process that involves discussions between the LEA, private school representatives, and representatives of parents of parentally placed private school children with disabilities on key issues relating to the equitable participation of eligible private school children with disabilities in Federally funded special education and related services. (See more on the provision of equitable services in Parts C and D of these questions and answers.) Each LEA (or, if appropriate, an SEA) must consult, in a timely and meaningful way, with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for parentally placed private school children. Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered by the LEA before the LEA makes any decision that has an impact on services to parentally placed private school children with disabilities. Timeliness is critical to effective consultation and requires collaboration between the LEA and private school officials in developing a timeline and selecting dates for consultation. Successful consultation establishes positive and productive working relationships that make planning easier and ensure that the services provided meet the needs of eligible parentally placed private school children with disabilities.

A unilateral offer of services by an LEA with no opportunity for discussion is not adequate consultation, as such an offer does not meet the basic requirements of the consultation process. Only after discussing key issues relating to the provision of special education and related services with all representatives may the LEA make its final decisions with respect to the services to be provided to eligible private school children with disabilities.

**Question: What must the consultation process include?**

Answer: Apart from specifying certain topics that must be addressed during consultation, the regulations offer LEAs and private schools a great deal of flexibility in conducting the consultation process. However, in accordance with 34 CFR §300.134, discussion between public school and private school officials must address--

- The child find process and how parentally placed private school children suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process;
- The determination of the proportionate share of Federal funds available to serve parentally placed private school children with disabilities, including the determination of how the proportionate share of those funds was calculated;
- How the consultation process among representatives of the agency, the private schools, and the parents of parentally placed private school children will take place, including how the process will operate throughout the school year to ensure that

parentally placed private school children with disabilities identified through the child find process can meaningfully participate in special education and related services:

- How, where, and by whom special education and related services will be provided, including a discussion of types of services--including direct services and alternate service-delivery mechanisms, as well as how the services will be apportioned if funds are insufficient to serve all children--and how and when decisions regarding services will be made; and
- How, if the LEA representatives disagree with the views of the private school officials on the provision of services or the types of services whether provided directly or through a contract, the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to adopt the recommendations of the private school officials.

**Question: What records on consultation must an LEA maintain?**

Answer: When timely and meaningful consultation has occurred, the LEA must maintain documentation that the consultation has occurred, including a written affirmation signed by the representatives of the participating private schools, as required by 34 CFR §300.135. Some have asked if signing an attendance sheet at a meeting is all that is needed to document adequately that timely and meaningful consultation has occurred. Though these attendance sheets provide an accounting of who has attended meetings, the sheets themselves do not provide evidence that ongoing consultation has occurred. Therefore, the written affirmation signed by the representatives of the participating private schools should reflect that those officials have indeed participated in timely and meaningful consultation that has continued throughout the school year. If the representatives do not provide the affirmation within a reasonable period of time, the LEA must forward the documentation of the consultation process to the SEA.

**Question: Which LEA is responsible for conducting child find for parentally placed private school children?**

Answer: Under 34 CFR §300.131, the LEA where the private school is located is responsible for conducting child find for parentally placed private school children. The child find requirements for parentally placed children make clear that the LEA, after timely and meaningful consultation with private school representatives, must conduct a thorough and complete child find process to determine the number of parentally placed children with disabilities attending private schools located in the LEA. (Under the prior provisions of the IDEA, the responsibility to conduct child find for parentally placed private school children rested with the LEA in which the children resided.)

**Question: What are the LEA's responsibilities for identifying children with disabilities placed by their parents in private schools?**

Answer: Under 34 CFR §300.131, the LEA is responsible for locating, identifying, and evaluating all children with disabilities who are enrolled by their parents in private, including religious, elementary schools, as defined in 34 CFR §300.13, and secondary schools, as defined in 34 CFR §300.36, located in the LEA. The LEA, in conducting child find for parentally placed private school children with disabilities, must undertake activities similar to activities undertaken for the agency's public school children. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA. The LEA where the private elementary or secondary school is located

has a number of options as to how it meets its child find responsibilities. For example, the LEA may assume the responsibility itself, contract with another public agency (including the public agency where the child resides), or make other arrangements by contracting with a third party to conduct child find activities.

Child find is an ongoing process. Therefore, if a child who enters a private school without having been previously identified as a child with a disability is suspected of having a disability during the school year, the LEA where the private school is located is responsible for ensuring such a child is identified, located, and evaluated. In addition, it is possible that a child who was previously evaluated and determined not eligible for special education and related services by another LEA, may in fact be determined eligible for special education and related services at a later time through the child find process conducted by the LEA where the private school is located.

**Question: May an LEA require a private school to implement a response to intervention (RTI) process before evaluating parentally placed private school children?**

Answer: No. The IDEA and its implementing regulations in 34 CFR §§300.301–300.311 establish requirements with which LEAs must comply when conducting an initial evaluation to determine if a child qualifies as a child with a disability under Part B; these requirements do not apply to private schools. IDEA requires States to adopt criteria for determining whether a child has a specific learning disability, as defined in 34 CFR §300.8(c)(10), and these criteria must permit, among other things, the use of a process based on the child's response to scientific, research-based intervention (known as RTI). 34 CFR §300.307(a)(2). Thus, although IDEA permits the use of RTI in evaluating children suspected of having learning disabilities, it does not require LEAs to use RTI. Even if a State's criteria permit LEAs to use RTI in evaluating children suspected of having learning disabilities, IDEA does not require an LEA to use RTI for parentally placed children attending private schools located in its jurisdiction. It would be inconsistent with the IDEA evaluation provisions in 34 CFR §§ 300.301-300.311 for an LEA to delay the initial evaluation because a private school has not implemented an RTI process with a child suspected of having learning disabilities and has not reported the results of that process to the LEA.

**Question: Is it possible for a parent to request evaluations from the LEA where the private school is located as well as the district where the child resides?**

Answer: The Department recognizes that there could be times when parents request that their parentally placed child be evaluated by different LEAs if the child is attending a private school that is not in the LEA in which the child resides. For example, because most States generally assign the responsibility for making FAPE available to the LEA in which the child's parents reside, and because that could be an LEA that is different from the LEA in which the child's private school is located, parents could ask two different LEAs to evaluate their child for different purposes at the same time. The Department, however, does not encourage this practice.

Note that a new requirement in 34 CFR §300.622(b)(3) requires parental consent for the release of information between LEAs about parentally placed private school children. Therefore, as a practical matter, one LEA may not know that a parent also requested an evaluation from another LEA. However, the Department does not believe that the child's best interests would be served if parents request evaluations of their child by the resident LEA and the LEA where the private school is located, even though these evaluations are

conducted for different purposes. Subjecting a child to repeated testing by separate LEAs in close proximity of time may not be the most effective or desirable way to ensure that the evaluations are meaningful measures of whether a child has a disability, or of obtaining an appropriate assessment of the child's educational needs. Although the Department discourages parents from requesting evaluations from two LEAs, if the parent chooses to request evaluations from the LEA responsible for providing the child FAPE and from another LEA that is responsible for considering the child for the provision of equitable services, both LEAs are required to conduct an evaluation.

**Question: Does the LEA where the private school is located have an obligation to make an offer of a free appropriate public education (FAPE)?**

Answer: The LEA where a child attends private school is responsible for ensuring equitable participation. If a parentally placed private school child also resides in that LEA, then the LEA would be responsible for making FAPE available to the child, unless the parent makes clear his or her intent to keep the child enrolled in the private elementary or secondary school located in the LEA. If a parentally placed private school child resides in a different LEA, the district in which the private elementary or secondary school is located is not responsible for making FAPE available to that child, but the LEA of the child's residence would be responsible for making FAPE available to that child.

If a determination is made through the child find process by the LEA where the private school is located that a child needs special education and related services and a parent makes clear his or her intent to keep the child enrolled in the private elementary or secondary school located in another LEA, the LEA where the child resides is not required to make FAPE available to the child. However, if the parents choose to accept the offer of FAPE and enroll the child in a public school, then the LEA where the child resides is obligated to make FAPE available to the child.

**Question: Why is it important to identify the number of parentally placed private school children with disabilities located in the LEA where the private school is located?**

Answer: An accurate count of the number of eligible private school children with disabilities enrolled by their parents in private schools located in the LEA is needed to calculate the proportionate share of Part B funds that the LEA must expend annually for services for parentally placed private school children with disabilities.

**Question: What specific child count information must the LEA maintain and report to the SEA?**

Answer: The regulations in 34 CFR §300.132(c) require the LEA to maintain in its records and provide to the SEA the number of parentally placed private school children evaluated, the number of parentally placed private school children determined to be children with disabilities under Part B of the IDEA, and the number of children who are provided equitable services.

**Question: What are the LEA's responsibilities for reevaluations of parentally placed children?**

Answer: The LEA where the private elementary school or secondary school is located is responsible for conducting reevaluations of children with disabilities enrolled by their parents in the private elementary schools and secondary schools located in the LEA. Under 34 CFR §300.303, an LEA must ensure that a reevaluation of each child with a disability is

conducted if (1) the LEA determines that the child's educational or related services needs, in light of the child's academic achievement and functional performance, warrant a reevaluation; or (2) the child's parent or teacher requests a reevaluation. A reevaluation may occur not more than once a year, unless the parent and LEA agree otherwise; and must occur at least once every three years, unless the parent and LEA agree that a reevaluation is unnecessary.

**Question: What is the difference between child find under 34 CFR §§300.111 and 300.131?**

Answer: The child find provision in 34 CFR §300.111 addresses the responsibility of a State to conduct child find for all children with disabilities residing in the State, including children with disabilities attending private schools. It ensures that all children with disabilities residing in the State are identified, located, and evaluated. Section 300.111, which applies to States, is much broader in scope than §300.131.

The child find provision in 34 CFR §300.131 addresses the responsibility of the LEA where the private school is located to conduct child find for all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the LEA. This provision addresses which children enrolled in private elementary schools and secondary schools by their parents are eligible to receive services under the IDEA.

**Question: May amounts expended for child find, including individual evaluations, be deducted from the required amount of Federal funds to be expended on services for parentally placed private school children with disabilities?**

Answer: No. There is a distinction under the IDEA between the obligation to conduct child find activities, including individual evaluations, for parentally placed private school children with disabilities, and the obligation to use an amount of funds equal to a proportionate amount of an LEA's subgrant to provide special education and related services to parentally placed private school children with disabilities. The obligation to conduct child find, including individual evaluations, exists independently from the obligation to provide equitable services. The costs of child find activities, such as evaluations, may not be considered in determining whether the LEA has spent an appropriate amount on providing special education and related services to parentally placed private school children with disabilities. See 34 CFR §300.131(d).

**Question: In conducting the individual evaluations of children suspected of having disabilities who are enrolled in private schools by their parents, may an LEA exclude children suspected of having certain disabilities, such as those with specific learning disabilities?**

Answer: No. The LEA where private elementary schools and secondary schools are located must identify and evaluate all children enrolled in those schools who are suspected of having a disability as defined under 34 CFR §300.8. LEAs may not exclude children suspected of having certain disabilities, such as those with specific learning disabilities, from their child find activities. The Department recommends that LEAs consult with officials from private elementary schools and secondary schools on how best to implement the State's evaluation criteria for identifying children with specific learning disabilities enrolled in private schools by their parents.

**Question: If the LEA where the private elementary or secondary school is located conducts an individual evaluation on a child and the parents disagree with the evaluation and wish to have an independent educational evaluation (IEE) conducted, to which LEA must the parents bring their request--the LEA where the private school is located, or the LEA where the child resides?**

Answer: Parents would request an IEE from the LEA that conducted the evaluation with which the parents disagree.

**Question: What is the definition of the term “equitable services”?**

Answer: Equitable services are services provided to parentally placed private school children with disabilities in accordance with the provisions in the IDEA and its implementing regulations in 34 CFR §§300.130 through 300.144.

Under the IDEA, LEAs have an obligation to provide parentally placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B funds that the LEA has determined, after consultation, to make available to its population of parentally placed private school children with disabilities. The amount of Part B funds available for these services is based on the proportionate share calculation, which is discussed in the Expenditures section of this document,

The consultation process is important to ensure the provision of equitable services. How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities is determined during the consultation process. See 34 CFR §300.134(d).

Equitable services for a parentally placed private school child with a disability must be provided in accordance with a services plan. A services plan must describe the specific special education and related services that will be provided to a parentally placed private school child with disabilities designated to receive services. See 34 CFR §300.138(b). The regulations in 34 CFR §300.137(a) explicitly provide that children with disabilities enrolled by their parents in private schools do not have an individual right to receive some or all of the special education and related services they would receive if enrolled in the public schools.

**Question: Who provides equitable services to parentally placed private school children with disabilities?**

Answer: The regulations in 34 CFR §300.138(c) clarify that equitable services must be provided by employees of a public agency; or through contract by the public agency with an individual, association, agency, organization, or other entity. An LEA may use Part B funds to make public school personnel available in non-public facilities to the extent necessary to provide equitable services for private school children with disabilities and if those services are not normally provided by the private school. See 34 CFR §300.142(a). An LEA may use Part B funds to pay for the services of an employee of a private school to provide equitable services if the employee performs the services outside of his or her regular hours of duty and the employee performs the services under public supervision and control. See 34 CFR §300.142(b).

**Question: What is the process for making decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities?**

Answer: Timely and meaningful consultation must occur before any decisions are made that will affect the participation of parentally placed children in Part B programs. Thus, decisions about services may not be made in advance or in the absence of timely and meaningful consultation. After timely and meaningful consultation has occurred with private schools representatives and representatives of parents of parentally placed private school children with disabilities, the LEA is responsible for making final decisions about all aspects of the services to be provided to parentally placed private school children with disabilities. See 34 CFR §300.137(b).

If the LEA disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the LEA must provide to the private school officials a written explanation of the reasons why the LEA chose not to accept the recommendations of the private school officials. See 34 CFR §300.134(e).

**Question: Are there any particular kinds of services or specified amounts of services that must be provided to parentally placed private school children with disabilities under Part B of the IDEA?**

Answer: No. Decisions about which services and the amounts of services children with disabilities enrolled by their parents in private schools will receive are made during the consultation process and are based on the needs of the children designated to receive services. These children have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school. See 34 CFR §300.137(a).

**Question: May an LEA provide services to parentally placed private school children that are in addition to the services provided pursuant to the Federal equitable participation requirements and that are covered by the Federal proportionate share?**

Answer: Yes. The IDEA does not prohibit a State or LEA from using additional State or local funds to provide special education or related services to parentally placed private school children with disabilities that are in addition to the services required in 34 CFR §§300.130 through 300.144, consistent with State law or local policy. Additionally, as long as the LEA meets all the other requirements of the IDEA, including providing FAPE to children with disabilities, it is permissible for the LEA to spend more than the minimum amount of Part B funds on providing services to children with disabilities placed by their parents in private schools.

**Question: Must the proportionate amount of Part B funds be used only for direct services to parentally placed private school children with disabilities? Is it permissible to use funds for this population on other services, such as consultative services, materials, equipment, or training?**

Answer: Under 34 CFR §300.133(a), each LEA must spend a proportionate amount of Part B funds on providing special education and related services (including direct services) to parentally placed private school children with disabilities. The regulations specify that the LEA makes the final decisions about the services to be provided to eligible parentally placed private school children with disabilities, based in part on input provided through the consultation process by appropriate private school representatives and representatives of parents of parentally placed private school children with disabilities. See 34 CFR §300.137(b)(2). These decisions cannot be made in advance of or in the absence of timely

and meaningful consultation with private school representatives and with representatives of parents of parentally placed private school children with disabilities.

IDEA does not require an LEA to spend the proportionate share only for direct services. Rather, through the consultation process described in 34 CFR §300.134, a determination must be made about how the available amount of funds will be utilized so that the parentally placed private school children with disabilities designated to receive services can benefit from the services offered. Depending on the discussions during the consultation process, local circumstances, and the amount of funds available to expend on services for this population of children, an LEA could determine, after timely and meaningful consultation, that it will provide its population of parentally placed private school children with disabilities with indirect services. See 34 CFR §300.134(d)(1). These services could include consultative services, equipment, or materials for eligible parentally placed children with disabilities or training for private school teachers and other private school personnel. Under 34 CFR §300.138(c)(2), special education and related services provided to parentally placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

**Question: How often must a services plan be updated?**

Answer: The IDEA and its implementing regulations do not specify how often a services plan must be updated. As provided in 34 CFR §300.138(b)(2)(ii), a services plan must, to the extent appropriate, be developed, reviewed, and revised in accordance with the individualized education program (IEP) requirements in 34 CFR §§300.321 through 300.324. The regulations in 34 CFR §300.324(b)(1) require that a child's IEP be reviewed periodically and not less than annually, to determine whether the annual goals for the child are being achieved, and to be revised as appropriate. As such, the Department suggests that a services plan be reviewed periodically, not less than annually, to determine whether the annual goals for the child are being achieved and to be revised as appropriate.

**Question: Does the parent of a parentally placed private school child have the opportunity to participate in the development of a services plan?**

Answer: Yes. As provided in 34 CFR §300.138(b)(2)(ii), a services plan must, to the extent appropriate, be developed, reviewed, and revised in accordance with the requirements in 34 CFR §§300.321 through 300.324. Therefore, to the extent appropriate, the meeting to develop a services plan should be conducted in accordance with 34 CFR §300.321. Under 34 CFR §300.321(a)(1), the parents of the child are required participants. Given the emphasis on parent involvement in the IDEA, the Department believes that parents should have the opportunity to participate in meetings to review and develop the services plan for their child.

**Question: What is the difference between an individualized education program (IEP) and a services plan?**

Answer: Children with disabilities enrolled in public schools or who are publicly placed in private schools are entitled to a FAPE and must receive the full range of services under Part B of the IDEA. These services are determined by the child's IEP team and are necessary to meet the child's individual needs and provide FAPE. The IEPs for these children generally will be more comprehensive than services plans developed for parentally placed private school children with disabilities who are designated to receive services. This is because parentally placed children do not have an individual entitlement to any or all of the services



that the children would receive if enrolled in a public school. Further, a services plan should reflect only the services offered to a parentally placed private school child with a disability designated to receive services. In addition, a services plan is required to meet the IEP content requirements described in section 614(d) of the IDEA, or, when appropriate, for children aged three through five, the Individualized Family Service Plan (IFSP) requirements described in section 636(d) of the IDEA, to the extent appropriate, and only in relation to the services that are to be provided.

**Question: What is the process for developing a services plan for a parentally placed private school child with a disability?**

Answer: The LEA must initiate and conduct meetings to develop, review, and revise a services plan for a parentally placed private school child with a disability designated to receive services. The LEA must ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA must use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. See 34 CFR §300.137(c). The services plan must, to the extent appropriate, be developed, reviewed, and revised consistent with 34 CFR §§300.321 through 300.324. See 34 CFR §300.138(b)(2)(ii).

**Question: Section 300.139(a) of the Part B regulations states that services to parentally placed private school children with disabilities may be provided on the premises of private, including religious, schools to the extent consistent with law. How is “to the extent consistent with law” determined?**

Answer: The phrase “to the extent consistent with law” is in section 612(a)(10)(A)(i)(III) of the IDEA. The Department interprets this to mean that the provision of services on the premises of a private school must take place in a manner that would not violate the Establishment Clause of the First Amendment of the U.S. Constitution and would not be inconsistent with applicable State constitutions or laws. The Department generally believes that, unless there is a compelling rationale for these services to be provided off-site, LEAs should provide services on-site, at the child’s private school, so as not to unduly disrupt the child’s educational experience.

**Question: How does an LEA determine the location where services will be provided to parentally placed private school children with disabilities?**

Answer: The location of services is one of the subjects that must be discussed during the consultation process among LEA officials, private school representatives, and representatives of parents of parentally placed private school children with disabilities. See 34 CFR §300.134(d). Under 34 CFR §300.137(b), after the consultation process and giving due consideration to the views of the private school officials, the LEA makes the final decision. See 34 CFR §300.137(b).

**Question: Must an LEA provide transportation in order for a child to benefit from or participate in the services provided under the private school provisions?**

Answer: The regulations in 34 CFR §300.139(b) require that if necessary for the child to benefit from or participate in the services provided under the private school provisions, an LEA must provide a parentally placed private school child with a disability transportation from the child’s school or the child’s home to a site other than the private school; and from the service site to the private school, or to the child’s home, depending on the timing of the services. The IDEA does not require LEAs to provide transportation from the child’s home

to the private school. The LEA may include the cost of the transportation in calculating whether it has spent the proportionate share of Federal Part B funds on providing services to parentally placed private school children with disabilities as required by 34 CFR §300.133.

**Question: Do the Highly Qualified Teacher (HQT) provisions in IDEA apply to private school teachers?**

Answer: No. The HQT provisions do not apply to special education teachers hired by private elementary and secondary schools, including private school teachers hired or contracted by LEAs to provide equitable services to parentally placed private school children with disabilities under 34 CFR §300.138.

**Question: If an LEA sends a special education teacher (employed by the LEA) to a private school to provide special education and related services to a child, must that teacher meet the HQT requirements in IDEA?**

Answer: Yes. Any public elementary or secondary school teacher must meet the HQT requirements.

**Question: May States exceed the IDEA's requirements and require teachers in private schools to hold certain credentials or certifications?**

Answer: The regulations in 34 CFR §§300.18(h) and 300.138(a) make clear that the IDEA does not require that private school teachers meet the same highly qualified teacher requirements as teachers who are employed by public agencies. The IDEA is silent regarding additional credentials or certifications that a State may require under State law. Therefore, States may exceed the IDEA requirements and require teachers in private schools to hold certain credentials or certifications if consistent with State law. If a State establishes requirements that exceed those required by Part B of the IDEA or the Federal regulations, the State is required by 34 CFR §300.199(a)(2) to identify in writing to the LEAs located in the State and to the Secretary of the U.S. Department of Education (Secretary) that such rule, regulation, or policy is a State imposed requirement that is not required by Part B of the IDEA or the Federal regulations.

**Question: May an LEA expend more than the proportionate share of Part B funds on children with disabilities placed by their parents in private schools?**

Answer: Yes. As referenced in Question D-3, nothing in the IDEA prohibits an LEA from expending more than the proportionate share. Each LEA is required to spend a minimum amount of its subgrant under Part B of the IDEA for children with disabilities placed by their parents in private schools. As long as the LEA meets all the other requirements of the IDEA, including providing FAPE to children with disabilities, it is permissible for an LEA to spend more than the minimum amount of Part B funds on providing services to children with disabilities placed by their parents in private schools. In addition, as provided in 34 CFR §300.133(d), State and local funds may be used to supplement, but not supplant, the LEA's proportionate share of Federal funds required to be expended on children with disabilities placed by their parents in private schools.

**Question: How can the public find out the amount an LEA must expend to meet its proportionate share of Part B funds?**

Answer: This information should be readily available from the LEA or SEA. As required by 34 CFR §300.134(b), the consultation process must include a determination of the

proportionate share of Federal funds available to serve parentally placed private school children with disabilities, including how the proportionate share of funds is calculated.

**Question: May an LEA include administrative costs to meet the requirement to spend a proportionate share of Part B funds on children with disabilities placed by their parents in private schools?**

Answer: No. As stated in 34 CFR §300.133(a), each LEA is required to spend a proportionate share of Federal Part B funds on providing special education and related services to children with disabilities who are enrolled by their parents in private elementary schools and secondary schools in order for the LEA to meet its responsibility for providing equitable services. We interpret the reference to “special education and related services” to mean that administrative costs could not be included in the amount each LEA must spend to meet this requirement. Thus, an LEA may not expend the proportionate share of Federal Part B funds on administrative costs.

**Question: May an LEA use Part B funds that are required to be expended on equitable services to make payments directly to a private school?**

Answer: No. Part B funds for equitable services may not be paid directly to a private school. Under 34 CFR §300.144(a), a public agency must control and administer the funds used to provide special education and related services to parentally placed private school children with disabilities. Under 34 CFR §300.141, an LEA may not use Part B funds to finance the existing level of instruction in a private school, and such funds may not be used for meeting the needs of a private school or the general needs of the students enrolled in the private school. The LEA must use the proportionate share of Federal Part B funds to meet the special education and related services needs of parentally placed private school children with disabilities.

**Question: May a public agency place equipment and supplies for equitable services in a private school?**

Answer: Yes. The public agency may place equipment and supplies in a private school, but only for the period of time needed to meet the equitable participation requirements for the Part B program. The public agency must ensure that equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility. The public agency must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes or if removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes. See 34 CFR §300.144(b), (c), and (d).

**Question: May Part B funds for equitable services be used for repairs, minor remodeling, or construction of private school facilities?**

Answer: No. Part B funds for equitable services may not be used for repairs, minor remodeling, or construction of private school facilities. See 34 CFR §300.144(e).

**Question: Must the LEA where the private elementary and secondary schools are located conduct child find activities for parentally placed private school children who reside outside the State?**

Answer: The child find provision in 34 CFR §300.131(f) makes clear that the LEA where the private elementary and secondary schools are located is responsible for conducting child find, including individual evaluations, of all parentally placed private school children

suspected of having a disability enrolled in private elementary and secondary schools located in the LEA, regardless of where those children reside. This includes all children from other States who may be attending private elementary schools and secondary schools located in the LEA.

**Question: Who is responsible for determining and paying for services provided to out-of-State parentally placed private school children with disabilities?**

Answer: The LEA where the private school is located, in consultation with private school officials and representatives of parents of parentally placed private school children with disabilities, is responsible for determining and paying for the services to be provided to out-of-State parentally placed private school children with disabilities attending private elementary and secondary schools located in that LEA. Under 34 CFR §300.131(f), these out-of-State children must be included in the group of parentally placed children with disabilities whose needs are considered in determining which parentally placed private school children with disabilities will be served and the types and amounts of services to be provided.

**Question: May an LEA require another LEA to pay for the services of a parentally placed private school child with a disability from another State?**

Answer: No. Section 300.133(a) of the regulations clarifies that the LEA where a private school is located is responsible for spending a proportionate amount of its subgrant under Part B of the IDEA on special education and related services for children enrolled by their parents in private elementary and secondary schools located in the LEA. There is no exception for out-of-State children with disabilities attending a private school located in the LEA. Therefore, out-of-State children with disabilities must be included in the group of parentally placed children with disabilities whose needs are considered in determining which parentally placed private school children with disabilities will be served and the types and amounts of services to be provided. Another LEA may not be charged for child find and equitable services even if the child with a disability resides in another State.

Nothing in the IDEA precludes an LEA from contracting with a third party to fulfill its obligations to ensure equitable participation. This includes contracting with a student's LEA of residence as a third party provider.

**Question: When making a determination regarding the services that an LEA will provide to children with disabilities placed by their parents in private schools, could an LEA decide to only provide services to students from their LEA or their State?**

Answer: No. Although LEAs have discretion to determine how the proportionate share of Federal Part B funds will be expended so long as the consultation requirements in 34 CFR §300.134 are followed for all parentally placed private school children, LEAs cannot determine, prior to or in absence of the timely and meaningful consultation process, that the proportionate share of Federal Part B funds for equitable services can only be expended to meet the needs of children who are residents of that LEA or State.

**Question: Which LEA is responsible for conducting child find for children who are homeschooled?**

Answer: Generally, the LEA where the child resides is responsible for conducting child find activities, including initial evaluations and reevaluations, for children who are homeschooled.

**Question: Are home-schooled children considered parentally placed private school children?**

Answer: Whether home-schooled children with disabilities are considered parentally placed private school children with disabilities is determined under State law. If the State recognizes home-schools as private elementary schools and secondary schools, children with disabilities in those home-schools must be treated in the same way as other parentally placed private school children with disabilities.

**Question: If a home-schooled child enrolled in the public school for the purpose of taking some academic courses was identified as having a disability, would the student be treated as a parentally placed private school child or as a public school child?**

Answer: Whether a home-schooled child with disabilities enrolled in the public school for the purpose of taking some academic courses would be treated as a parentally placed private school child entitled to be considered for equitable services or as a public school child entitled to receive FAPE is determined under State law. Even if such a child were not considered a public school student, the public school would have to meet the requirements of section 504 of the Rehabilitation Act of 1973, as amended, and title II of the Americans with Disabilities Act, as amended, by providing the child an equal opportunity to participate in or benefit from the academic courses provided at the public school. In addition, the responsible public agency, generally the LEA of residence, would have to make FAPE available to the child consistent with Part B requirements if the parent seeks to enroll the child with a disability in the public school full-time.

**Question: Under what circumstances may a parent file a due process complaint under the private school provisions?**

Answer: As provided in 34 CFR §300.140(b), a parent of a child enrolled by that parent in a private school has the right to file a due process complaint regarding the child find requirements in 34 CFR §300.131, including the requirements in 34 CFR §§300.300 through 300.311. Such a complaint must be filed with the LEA in which the private school is located, and a copy must be forwarded to the SEA by the LEA. The due process provisions in section 615 of the Act and 34 CFR §§300.504 through 300.519 of the regulations do not apply to issues regarding the provision of services to any particular parentally placed private school child with disabilities whom an LEA has agreed to serve because there is no individual right to services for such children under the IDEA.

Disputes that arise about equitable services are, however, properly subject to the State complaint procedures in 34 CFR §§300.151 through 300.153. As provided in 34 CFR §300.140(c), a parent may file a signed written complaint in accordance with the State complaint procedures alleging that an SEA or LEA has failed to meet the private school requirements, such as failure to properly conduct the consultation process.

**Question: Do private school officials have the right to file a complaint under the State complaint provisions in 34 CFR §§300.136 and 300.140?**

Answer: Yes. Under 34 CFR §300.136, a private school official has the right to complain to the SEA that the LEA did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official. Under this provision a complaint must provide the basis of the private school official's belief that the LEA did not comply with the consultation requirements. The LEA must forward appropriate documentation related to the complaint to the SEA. If the private school official

is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary providing the basis of the official's belief that the LEA did not comply with the consultation requirements, and the SEA must forward the appropriate documentation related to the complaint to the Secretary.

**Question: If the parent of a parentally placed private school child with a disability files a State complaint alleging that the services identified in the child's services plan were not provided, is it permissible for the SEA to resolve the complaint by requiring the LEA to provide compensatory services? How would the provision of these services affect the calculation of the expenditures to meet the required proportionate share?**

Answer: Under 34 CFR §300.140(c), any complaint alleging that an SEA or LEA has failed to meet the requirements in 34 CFR §§300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the State complaint procedures described in 34 CFR §§300.151 through 300.153. If in resolving such a complaint, the SEA determines that compensatory services are the appropriate remedy, such services may be ordered by the SEA if sufficient funds are available from the proportionate share set aside in the LEA to provide equitable services under 34 CFR §§300.129 through 300.144.

If the proportionate share has been expended prior to the awarding of compensatory services to resolve a complaint, the SEA cannot require an LEA to spend additional Part B funds, beyond the minimum amount required under 34 CFR §300.133(a), to pay for compensatory services for a parentally placed private school child with a disability. However, under 34 CFR §300.133(d), State and local funds may supplement, but not supplant, the proportionate amount of Federal Part B funds required to be expended for parentally placed private school children with disabilities. The use of State and local funds, on top of the proportionate share of Part B funds, is permitted but not mandatory. Therefore, if the proportionate share of Part B funds has been expended, pursuant to the authority in 34 CFR §300.133(d), a State may, but is not required to, order an LEA to use State and local funds to pay for compensatory services for a parentally placed private school child with disabilities. It is important that as part of the consultation process, the LEA, private school officials, and representatives of parents of parentally placed private school children with disabilities consider the amount of the proportionate share of Part B funds in determining what services will be provided in order to ensure an LEA has sufficient Part B funds to implement the services plan for each parentally placed child with a disability who has been designated to receive services.

**Question: What obligation, if any, do districts have to serve three- through five-year-old children who are parentally placed in private preschools?**

Answer: An LEA's obligation to serve children aged three through five under the equitable services provisions depends on whether a child is enrolled in a private school or facility that meets the definition of "elementary school" in the IDEA and the final regulations. "Elementary school" is defined in 34 CFR §300.13 as a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education, as determined under State law. Accordingly, three- through five-year-old children with disabilities who are enrolled by their parents in a private school or facility that meets the State's definition of "elementary school" would be considered parentally placed and the equitable participation provisions would apply.

A child aged three through five enrolled by his or her parents in a private school or facility that does not meet the State's definition of "elementary school" would not be eligible to be considered for equitable services. However, the State's obligation to make FAPE available

to such a child remains. Section 612(a)(1) of the IDEA requires that States make FAPE available to eligible children with disabilities aged three through 21 in the State's mandated age range (34 CFR §300.101). Because many LEAs do not offer public preschool programs, particularly for three- and four-year-olds, LEAs often make FAPE available to eligible preschool children with disabilities in private schools or facilities in accordance with 34 CFR §§300.145 through 300.147. In these circumstances, there is no requirement that the private school or facility be an "elementary school" under State law.

In some instances, an LEA may make FAPE available in the private preschool program that the parent has selected. If there is a public preschool program available, the LEA of residence may choose to make FAPE available to a preschool child in that program. If the group of persons making the placement decision, as specified in 34 CFR §300.116(a)(1), places the child in a public or private preschool program and the parents decline the public agency's offer of FAPE because they want their child to remain in the private preschool program they have selected, the public agency is not required to provide FAPE to that child. The parent may challenge the public agency's determination of what constitutes FAPE for their child using the State complaint and due process procedures available under IDEA.

**Question: Are children enrolled in a for-profit private school counted for the purpose of determining the proportionate share and eligible to receive equitable services?**

Answer: No. The regulations in 34 CFR §300.130 define parentally placed private school children with disabilities as children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in 34 CFR §300.13 or secondary school in 34 CFR §300.36. The definitions of elementary school in 34 CFR §300.13 and secondary school in 34 CFR §300.36 specify that the school must be nonprofit. Therefore, children attending for-profit private schools would not be included in the proportionate share calculation or be eligible for equitable services.

However, under 34 CFR §300.111, the State must ensure that all children with disabilities, including children with disabilities attending private schools, who are in need of special education and related services, are identified, located, and evaluated. This includes children with disabilities attending for-profit schools. A State determines which public agency is responsible for conducting child find under 34 CFR §300.111 for children suspected of having a disability attending for-profit private schools. Generally, this agency is the LEA in which the child resides.

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In February, 2008 the Office of Non-Public Education published a booklet entitled *The Individuals With Disabilities Education Act (IDEA): Provisions Related to Children With Disabilities Enrolled by Their Parents in Private Schools*, which explains the provisions related to, and benefits available to, children with disabilities who are enrolled by their parents in private schools when a free appropriate public education (FAPE) is not at issue. A copy of this booklet can be found at:

<https://www2.ed.gov/admins/lead/spced/privateschools/idea.pdf>





## Section 2

### GENERAL EDUCATION

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## **The Every Student Succeeds Act: An ESSA Overview**

The new Every Student Succeeds Act, signed into law Dec. 10, 2015, rolls back much of the federal government's big footprint in education policy, on everything from testing and teacher quality to low-performing schools. And it gives new leeway to states in calling the shots.

That's a big change from the No Child Left Behind Act (NCLB), which ESSA replaced and updated. The **Every Student Succeeds Act** takes full effect in the 2017-18 school year. Below are key elements of the law.

### **Accountability Plans**

States still have to submit accountability plans to the Education Department. These new ESSA plans will start in the 2017-18 school year. The names of peer-reviewers have to be made public. A state can get a hearing if the department turns down its plan.

### **Accountability Goals**

States can pick their own goals, both a big long-term goal, and smaller, interim goals. These goals must address: proficiency on tests, English-language proficiency, and graduation rates.

Goals have to set an expectation that all groups that are furthest behind close gaps in achievement and graduation rates.

### **Accountability Systems**

#### *Elementary and Middle Schools*

States need to incorporate at least four indicators into their accountability systems. The menu includes three academic indicators: proficiency on state tests, English-language proficiency, plus some other academic factor that can be broken out by subgroup, which could be growth on state tests.

States are required to add at least one additional indicator of a very different kind. Possibilities include: student engagement, educator engagement, access to and completion of advanced coursework, postsecondary readiness, school climate/safety, or whatever else the state thinks makes sense.

States have to figure in participation rates on state tests. (Schools with less than 95 percent participation are supposed to have that included, somehow.) But participation rate is a stand-alone factor, not a separate indicator on its own.

#### *High Schools*

High schools will be judged by basically the same set of indicators, except that graduation rates will have to be part of the mix. They could take the place of a second academic indicator.

#### *Weighing the Indicators*

It will be up to the states to decide how much the individual indicators will count, although the academic factors (tests, graduation rates, etc.) will have to count "much" more as a group than the indicators that get at students' opportunity to learn and post-secondary readiness.

### **Low-Performing Schools**

States have to identify and intervene in the bottom 5 percent of performers. These schools have to be identified at least once every three years.

States have to identify and intervene in high schools where the graduation rate is 67 percent or less.

States, with districts, have to identify schools where subgroups of students are struggling.

### **School Interventions**

#### **For the bottom 5 percent of schools and for high schools with high dropout rates:**

- Districts will work with teachers and school staff to come up with an evidence-based plan.
- States will monitor the turnaround effort.
- If schools continue to founder, after no more than four years the state will be required to step in with its own plan. A state could take over the school if it wanted, or fire the principal, or turn the school into a charter.
- Districts could also allow for public school choice out of seriously low-performing schools, but they have to give priority to the students who need it most.

#### **For schools where subgroup students are struggling:**

- Schools have to come up with an evidence-based plan to help the particular group of students who are falling behind, such as minority students or those in special education.
- Districts must monitor these plans. If the school continues to fall short, the district would step in, though there's no specified timeline.
- Importantly, there's also a provision calling for states and districts to come up with a "comprehensive improvement plan" in schools where subgroups are chronically underperforming, despite local interventions.
- The School Improvement Grant program is consolidated into the bigger Title I pot, which helps districts educate students in poverty. States could set aside up to 7 percent of all their Title I funds for school improvement, up from 4 percent in current law.

### **Testing**

States still have to test students in reading and math in grades 3 through 8 and once in high school, and break out the data for whole schools, plus different "subgroups" of students (English-learners, students in special education, racial minorities, those in poverty). ESSA maintains the federal requirement for 95 percent participation in tests.

States are prohibited from combining different sets of students into so-called "super subgroups" for accountability purposes.

Up to seven states can apply to try out local tests for a limited time, with the permission of the U.S. Department of Education.

Districts can use local, nationally recognized tests at the high school level, with state permission, such as the SAT or ACT.

States can create their own testing opt-out laws, and states decide what should happen in schools that miss targets.

### **Standards**

States are required to adopt “challenging” academic standards. That could be the Common Core State Standards, but doesn’t have to be.

The U.S. Secretary of Education is expressly prohibited from forcing or even encouraging states to pick a particular set of standards (including the common core).

### **Transition From the No Child Left Behind Act**

Waivers from the NCLB law are null and void on Aug. 1, 2016, but states still have to continue supporting their lowest-performing schools (“priority schools”) and schools with big achievement gaps (“focus schools”) until their new ESSA plans kicked in.

In general, ESSA applies to any competitive federal grants given out after Oct. 1, 2016, so most grants are still under the NCLB version of the law for the rest of this school year.

### **English-Language Learners**

Accountability for English-language learners moves from Title III (the English-language acquisition section of the ESEA) to Title I (where everyone else’s accountability is). The idea is to make accountability for those students a priority.

States can include English-language learners’ test scores after they have been in the country a year, as under current law.

During that first year, those students’ test scores won’t count toward a school’s rating, but ELLs will need to take both of the assessments, and have the results publicly reported. In the second year, the state has to incorporate ELLs’ results for both reading and math, using some measure of growth. And in their third year in the country, the proficiency scores of newly arrived ELLs will be treated just like any other students’.

### **Students in Special Education**

Only 1 percent of students overall can be given alternative tests. (That’s about 10 percent of students in special education.)

### **Programs**

#### *Block Grant*

A new \$1.6 billion block grant consolidates dozens of programs, including some involving physical education, Advanced Placement, school counseling, and education technology.

Districts that get more than \$30,000 have to spend at least 20 percent of their funding on at least one activity that helps students become well-rounded, and another 20 percent on at least one activity that helps students be safe and healthy. And part of the money can be spent on technology.

Some programs live on as separate line items, including the 21st Century Community Learning Centers.

#### *New or Existing*

The ESSA enshrines the Preschool Development Grant program in law and focuses it on program coordination, quality, and broadening access to early-childhood education. But the

program is housed at the Department of Health and Human Services, jointly administered by the Education Department.

A new, evidence-based research and innovation program is created, described by some as similar to the Obama administration's Investing in Innovation program.

Other highlights include a standalone program for parent engagement, along with reservations for arts education, gifted and talented education, and Ready to Learn television.

### **Weighted Student Funding**

A pilot program will let 50 districts try out a weighted student-funding formula, combining state, local, and federal funds to better serve low-income students and those with special needs.

### **Teachers**

States will no longer have to do teacher evaluation through student outcomes, as they did under NCLB waivers.

The NCLB law's "highly qualified teacher" requirement is officially a thing of the past.

The former Teacher Incentive Fund—now called the Teacher and School Leader Innovation Program—will provide grants to districts that want to try out performance pay and other teacher-quality improvement measures. **ESSA also includes resources for helping train teachers** on literacy and STEM.

### **Funding and Other Issues**

The current Title I funding formula remains intact, but there are some changes to the Title II formula (which funds teacher quality) that will be a boon to rural states.

**Maintenance of effort will remain in place**, requiring states to keep up their own spending at a particular level in order to tap federal funds.

**By Alyson Klein (@PoliticsK12)**

<https://www.edweek.org/ew/issues/every-student-succeeds-act/>

For the full version of the Every Student Succeeds Act (ESSA) visit:

<https://www.gpo.gov/fdsys/pkg/BILLS-114s1177enr/pdf/BILLS-114s1177enr.pdf>

## **How Will The *Every Student Succeeds Act* (Essa) Support Students In Foster Care?**

### **Q: What is the *Every Student Succeeds Act* (ESSA)?**

On December 10, 2015, President Obama signed the *Every Student Succeeds Act* (ESSA), amending Title I, Part A of the *Elementary and Secondary Education Act*. For the first time, ESSA embeds in federal education law provisions that promote school stability and success for youth in care and collaboration between education and child welfare agencies to achieve these goals.

### **Q: Why are protections for students in foster care included in the ESSA?**

Children in foster care are some of the country's most educationally disadvantaged students. Studies show that students in foster care experience: school suspensions and expulsions at higher rates than their peers not in foster care, lower standardized test scores in reading and math, high levels of grade retention and drop-out, and far lower high school and college graduation rates.

### **Q: What are the specific protections for students in foster care contained in the ESSA?**

#### **Remain in the Same School when in the child's best interest**

Children in foster care frequently change schools – when they first enter foster care, when they move from one foster care living arrangement to another, or when they return home. Research shows that children who change schools frequently make less academic progress than their peers and fall farther behind with each school change. Additionally, school instability makes it difficult for children to develop supportive relationships with teachers or peers.

Under the ESSA, state education agencies must include in their state plans the steps that the agencies will take to ensure – in collaboration with the state child welfare agencies – school stability for youth in care including assurances that children enroll or remain in their “school of origin” unless a determination is made that it not in their best interest. That determination must be based on all factors relating to the child's best interest including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement. Federal child welfare law already requires child welfare agencies to collaborate with education agencies to ensure school stability when it is in the child's best interest; this law creates reciprocal obligations on education agencies.

#### **Immediate enrollment in school and transfer of school records**

Children in foster care frequently face delays in school enrollment or are placed in the wrong classes or schools, often due to missing, incomplete, or delayed school records and documentation.

Under the ESSA, state plans must now include the steps the state will take to ensure that when a school change is warranted, children in foster care can enroll immediately in a new school even if the child cannot produce normally required enrollment documents and school records. Additionally, enrolling schools must immediately contact the school last attended by the child to obtain relevant academic and other education records.

#### **School transportation when necessary**

For some students in foster care, transportation is needed to allow them to remain in the same school. By December 10, 2016, local education and child welfare agencies must collaborate, and the education agencies must include in their local plans, assurances that they have developed and implemented clear written procedures governing how transportation to ensure school stability will be provided, arranged, and funded for the duration of the children's time in foster care in a cost effective manner and in accordance with the provisions of child welfare law that permit the use of certain Title IV-E funds for school stability transportation.

#### **Point of contact designated within State Educational Agency (SEA)**

Under the new law, every state education agency must include in its state plan the steps it will take to ensure collaboration with the state child welfare agency, including designating an employee to serve as a point of contact for child welfare agencies and to oversee implementation of the foster care provisions of the ESSA. The point person should also identify best practices and ensure effective implementation at the local educational agency level and with public charter schools. The point person must be someone other than the state's McKinney-Vento Act Coordinator.

#### **Local Educational Agency (LEA) point of contact**

LEAs (typically a school district, but it could also be a charter school or other LEA) must include in their local plans assurances that they will collaborate local child welfare agencies and that, when a child welfare agency notifies the local education agency that it has a point of contact for the education of children in foster care, the LEA must designate a similar point of contact.

LEA and child welfare "points of contact" can streamline interagency communication, help implement the new law, and, if a school change is warranted, help connect students with their new school communities.

#### **Removal of "Awaiting Foster Care Placement" from the McKinney-Vento Homeless Assistance Act**

Because of these new ESSA protections for students in foster care, and in recognition of the need for additional resources for students who are homeless, this law removes "awaiting foster care placement" from the definition of "homeless" for purposes of the McKinney-Vento Act by December 10, 2016. (For Delaware and Nevada, which define "awaiting foster care placement" in statute, this provision will go into effect by December 10, 2017.)

#### **Required data collection and reporting**

For the first time, state educational agencies will be required to report annually on student achievement and graduation rates for students in foster care. To implement this requirement, education and child welfare agencies will need to work together to ensure effective, appropriate, and confidential data and information sharing between systems.

#### **Charter Schools**

States receiving charter school grants under Title IV Part C of the new law must work with charter schools on recruitment and enrollment practices to promote inclusion of all students. This includes eliminating any barriers to enrollment for youth in foster care.

ESSA marks an important step forward in supporting school stability and success for students in foster care. For more information visit: **[www.fostercareandeducation](http://www.fostercareandeducation)**.



# What Is Curriculum-Based Measurement (CBM) and What Does It Mean to My Child?

By: Kathleen McLane

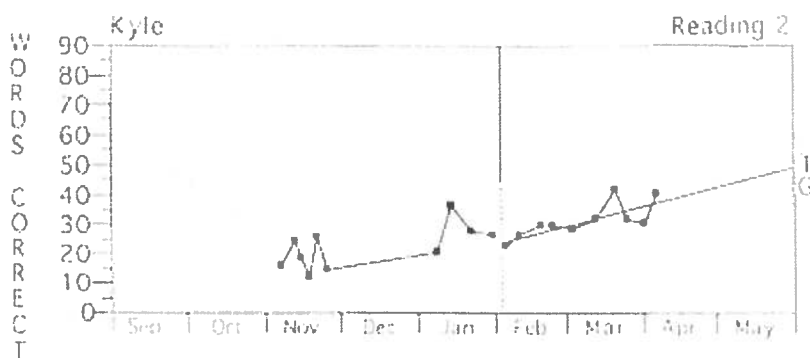
<http://www.readingrockets.org/article/what-curriculum-based-measurement-and-what-does-it-mean-my-child>

Not only must schools teach academic skills, but they must measure how successful each child is acquiring these skills. One way to do this is Curriculum-Based Measurement (CBM), which uses brief, timed tests made up of academic material taken from the child's school curriculum. Curriculum-Based Measurement (CBM) is a method teachers use to find out how students are progressing in basic academic areas such as math, reading, writing, and spelling at a specific grade level.

CBM can be helpful to parents because it provides current, scheduled information on the progress their children are making. When your child's teacher uses CBM, he or she finds out how well your child is progressing in learning the content for the academic year. CBM also monitors the success of the instruction your child is receiving – if your child's performance is not meeting expectations, the teacher then changes the way of teaching your child to try to find the type and amount of instruction your child needs to make sufficient progress toward meeting the academic goals. CBM provides a “snapshot” of a student's academic skills and information for growth.

## How does CBM work?

When CBM is used, each child is tested briefly on a scheduled basis. The tests generally last from 1 to 8 minutes. The teacher counts the number of correct and incorrect responses made in the time allotted to find the child's score. For example, in reading, the child may be asked to read aloud for one minute. Each child's scores are recorded on a graph and compared to the expected performance on the content for that year. The graph allows the teacher, and you, to see quickly how the child's performance compares to expectations. (The figure below is an example of what a CBM graph looks like.)



After the scores are entered on the graphs, the teacher decides whether to continue instruction in the same way, or to change it. A change is called for if the child's rate of learning progress is lower than is needed to meet the goal for the year.

The teacher can change instruction in any of several ways. For example, he or she might increase instructional time, modify a teaching technique or way of presenting the material, or change a grouping arrangement (for example, individual instruction instead of small-

group instruction). After the change, you — and the teacher — can see from the weekly scores on the graph whether the change is helping your child. If it is not, then the teacher can try another change in instruction, and its success will be tracked through the weekly measurements.

## The Power of CBM

Educators and researchers across the country will tell you CBM is their assessment of choice for progress monitoring and Response to Intervention because this method of general outcome measurement is:

- **Brief:** Can be administered frequently (even several times a week) without disrupting instruction
- **Predictive:** Provides accurate predictions of reading and math achievement
- **Sensitive to improvement:** An increase in ability will be reflected in rising scores on the measure
- **Easy to administer and score:** Can be used accurately by a wide range of education personnel
- **A valid measure of skills** that are central to the domain being measured (reading, math, language arts)
- **Standardized and reliable:** Producing consistent results across time or testing conditions
- **Available in multiple equivalent forms** to reduce practice effects on retesting (up to 33 forms per measure, per grade)

## Using aimsweb to identify at-risk students early, monitor and report student progress

**aimsweb** is the leading assessment and RTI solution in school today—a complete web-based solution for universal screening, progress monitoring, and data management for Grades K-12. **aimsweb** provides guidance to administrators and teachers based on accurate, continuous, and direct student assessment.

It helps school administrators demonstrate tangible improvements. It helps teachers become more effective and more efficient in the classroom. Most important of all, **aimsweb** helps to create better outcomes for students— proven by the thousands of schools that use the system across the United States and Canada today.

At the foundation of **aimsweb** is **general outcome measurement**, a form of **curriculum-based measurement (CBM)**, used for universal screening and progress monitoring. This form of brief assessment measures overall performance of key foundational skills at each grade level and draws upon over thirty years of scientific research that demonstrates both its versatility to provide **accurate prediction of reading and math achievement** as well as its **sensitivity to growth**.

More information about CBM is available at <http://www.studentprogress.org>.

## Side-by-Side Comparison of ADA, IDEA, and Section 504

Americans With Disabilities Act of 1990 (ADA)	Individuals with Disabilities Education Act (IDEA), amended in 1997 & 2004	Section 504 of The Rehabilitation Act of 1973
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### Type/Purpose

A civil rights law to prohibit discrimination solely on the basis of disability in employment, public services, and accommodations.	An education act <i>to provide</i> federal financial assistance <i>to state</i> and local education agencies to guarantee special education and related services to eligible children with disabilities.	A civil rights law to prohibit discrimination on the basis of disability in programs and activities, public and private, that receive federal financial assistance.
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### Who Is Eligible?

Any individual with a disability who (1) has a physical or mental impairment that substantially limits one or more life activities; or (2) has a record of such an impairment; or (3) is regarded as having such an impairment. Further, the person must be qualified for the program, service or job.	Children and youth aged 3-21 who are determined through an individualized evaluation and by a multidisciplinary team (including the parent) to be eligible in one or more of 13 categories and who need special education and related services. Infants and toddlers, birth through age 2 may be eligible for early intervention services delivered in accordance with their Individual Family Service Plan	Any person who (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a record of such impairment, or (3) is regarded as having such impairment. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. The person must be qualified for the services or job; in the case of school services, the person must be of an age when nondisabled peers are typically served or be eligible under IDEA.
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### Responsibility To Provide a Free, Appropriate Public Education (FAPE)?

Not directly. However, ADA provides additional protection in combination with actions brought under Section 504 and IDEA. ADA protections apply to nonsectarian private schools, but not to organizations or entities controlled by	Yes. A FAPE is defined to mean special education and related services that are provided at no charge to parents, meet other state educational standards, and are consistent with an individualized educational program (IEP). Special	Yes. An "appropriate" education means an education comparable to that provided to students without disabilities. This may be regular or special education. Students can receive related services under Section 504 even if
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<p>religious organizations. Reasonable accommodations are required for eligible students with a disability to perform essential functions of the job. This applies to any part of the special education program that may be community-based and involve job training/ placement. Although not required, an IEP under IDEA will fulfill requirements of Title II of the ADA for an appropriate education for a student with disabilities.</p>	<p>education means "specially designed instruction, at no cost to the parents, to meet the unique needs of the child with a disability." Related services are those required to assist a child to benefit from special education, including speech-language pathology, physical and occupational therapy, and others.</p>	<p>they are not provided any special education. These are to be provided at no additional cost to the child and his or her parents. Section 504 requires provision of educational and related aids and services that are designed to meet the individual educational needs of the child. For eligible students, the IEP may be used to meet the Section 504 requirement.</p>
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### **Funding To Implement Requirements?**

<p>No, but limited tax credits may be available for removing architectural or transportation barriers. Also, many federal agencies provide grants to public and private institutions to support training and technical assistance</p>	<p>Yes. IDEA provides federal funds under Parts B and C to assist state and local educational agencies in meeting IDEA requirements to serve infants, toddlers, children, and youth with disabilities</p>	<p>No. State and local jurisdictions have responsibility. IDEA funds may not be used to serve children found eligible only under Section 504</p>
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### **Procedural Safeguards/Due Process**

<p>The ADA does not specify procedural safeguards related to special education; it does detail the administrative requirements, complaint procedures, and consequences for noncompliance related to both services and employment. The ADA also does not delineate specific due process procedures. People with disabilities have the same remedies that are available under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991. Thus, individuals who are discriminated against may file a complaint with the relevant federal agency or sue in federal court.</p>	<p>IDEA provides for procedural safeguards and due process rights to parents in the identification, evaluation and educational placement of their child. Prior written notice of procedural safeguards and of proposals or refusals to initiate or change identification, evaluation, or placement must be provided to parents. IDEA delineates the required components of these notices. Disputes may be resolved through mediation, impartial due process hearings, appeal of hearing decisions, and/or civil action.</p>	<p>Section 504 requires notice to parents regarding identification, evaluation, placement, and before a "significant change" in placement. Written notice is recommended. Following IDEA procedural safeguards is one way to meet Section 504 mandates. Local education agencies are required to provide impartial hearings for parents who disagree with the identification, evaluation, or placement of a student. Parents must have an opportunity to participate in the hearing process and to be represented by counsel. Beyond this, due process is left to the</p>
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Enforcement agencies encourage informal mediation and voluntary compliance.		discretion of local districts.
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### Evaluation/Placement Procedures

<p>The ADA does not specify evaluation and placement procedures: it does specify provision of reasonable accommodations for eligible students across educational activities and settings. Reasonable accommodations may include, but are not limited to, redesigning equipment, assigning aides, providing written communication in alternative formats, modifying tests, reassigning services to accessible locations, altering existing facilities, and building new facilities</p>	<p>With parental consent, an individualized evaluation must be conducted using a variety of technically sound, unbiased assessment tools. Based on the results, a team of professionals (including the parent of the child) determines eligibility for special education. Reevaluations are conducted at least every 3 years. Results are used to develop an IEP that specifies the special education, related services, and supplemental aids and services to be provided to address the child's goals.</p> <p>Placement in the least restrictive environment (LRE) is selected from a continuum of alternative placements, based on the child's IEP, and reviewed at least annually. IEPs must be reviewed at least annually to see whether annual goals are being met. IDEA contains specific provisions about IEP team composition, parent participation, IEP content, and consideration of special factors.</p>	<p>Section 504 provides for a placement evaluation that must involve multiple assessment tools tailored to assess specific areas of educational need. Placement decisions must be made by a team of persons familiar with the student who understand the evaluation information and placement options. Students with disabilities may be placed in a separate class or facility only if they cannot be educated satisfactorily in the regular education setting with the use of supplementary aids and services. Significant changes to placement must be preceded by an evaluation.</p> <p>Section 504 provides for periodic reevaluation. Parental consent is not required for evaluation or placement.</p>
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## Section 504 Committee Decision Making Chart

### 1. Referral Analysis (performed by 504 Coordinator or other appropriate person)

- Is this a proper referral?
- What problems does the child show?
- What are the child's grades/scores?
- Are there disciplinary referrals?
- Signs of disability?
- Prior attempts at informal modifications?

Documents needed:

- Referral form (internal)
- Notice of Parent Rights
- Parental Consent?

### 2. The 504 Evaluation (performed by the 504 Committee)

Prior to meeting, the Coordinator should:

- Send Notice of evaluation to parent
- Determine committee members (who have knowledge about the child, the meaning of the evaluation data and the placement options?)
- Document evaluation data

At the meeting, the Committee should:

- Gather data from variety of sources
- Carefully consider the data
- Do we need additional data/formal tests?

Eligibility Determination

- Physical or mental impairment?
- What is the major life activity impacted?
- Is there a substantial limitation?
- Is the disability too severe for 504?

Placement/Accommodations (If the child is eligible)

- Does the child need services because of the qualifying disability?
- What in-class services?
- What related services?
- Behavior Management Plan needed?
- Other programs (tutoring, peer mentor, dyslexia?)

After the Evaluation meeting:

- Report of evaluation/meeting to parent
- Copy of Accommodation Plan to parent (if the child was eligible)

### 3. Review or Reevaluation (performed by the 504 Committee)

Prior to meeting: Notice of evaluation/meeting to parent

At the meeting:

- Need new evaluation data?
- Is the child still eligible? (If not, dismiss)

- Is there a need for a change in services?

After the meeting:

- Report of Evaluation/Meeting to parent
- Copy of updated Accommodation Plan (if any)

### **Manifestation Determination (Performed by the 504 Committee)**

Prior to meeting: Notice to parents

At the meeting:

- Recommendation for major discipline?
- Would the disciplinary action constitute a change in placement (10-Day Rule)?
- What data is necessary?
- Is the behavior directly related to disability? (Manifestation or Link)?
- Is the behavior directly related to inappropriate placement?
- Should the child's program change?
- If no link, are modifications necessary for disciplinary placement?

After the meeting:

- Report of Evaluation to parents
- Manifestation Determination Form (optional)

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### **A few things to remember about Section 504:**

- Requires parental notice but not consent to evaluate for eligibility
- Parent participation is not mentioned in the regulations for determination of eligibility or placement
- Districts with more than 15 employees must designate an employee to be responsible for assuring district compliance with Section 504 and provide grievance procedures for parent, students, or employees
- Enforcement by the Office of Civil Rights by complaint investigation and monitoring activities

## School Accommodations and Modifications

Some students with disabilities need accommodations or modifications to their educational program in order to participate in the general curriculum and to be successful in school. While the Individuals with Disabilities Education Act (IDEA) and its regulations do not define accommodations or modifications, there is some agreement as to what they mean. An *accommodation* as used in this document allows a student to complete the same assignment or test as other students, but with a change in the timing, formatting, setting, scheduling, response and/or presentation. This accommodation does not alter in any significant way what the test or assignment measures. Examples of accommodations include a student who is blind taking a Braille version of a test or a student taking a test alone in a quiet room.

A *modification* as used in this document is an adjustment to an assignment or a test that changes the standard or what the test or assignment is supposed to measure. Examples of possible modifications include a student completing work on *part* of a standard or a student completing an alternate assignment that is more easily achievable than the standard assignment.

Needed modifications and accommodations should be written into a student's IEP or 504 Plan. These changes should be chosen to fit the student's individual needs. It's important to include the student, if appropriate, when discussing needed accommodations and modifications. Asking the student what would be helpful is a good first step.

Here are some ideas for changes in textbooks and curriculum, the classroom environment, instruction and assignments, and possible behavior expectations that may be helpful when educating students with disabilities. When reviewing these ideas, keep in mind that any accommodations or modifications an IEP team chooses must be based on the individual needs of students, and the changes must be provided if included in the child's IEP.

### Textbooks and Curriculum

#### Books

- Provide alternative books with similar concepts, but at an easier reading level.
- Provide audiotapes of textbooks and have the student follow the text while listening.
- Provide summaries of chapters.
- Provide interesting reading material at or slightly above the student's comfortable reading level.
- Teach through multi-sensory modes: visual, auditory, kinesthetic, olfactory
- Use peer readers.
- Use marker to highlight important textbook sections.
- Use word-for-word sentence fill-ins.
- Provide two sets of textbooks, one for home and one for school.
- Use index cards to record major themes.
- Provide the student with a list of discussion questions before reading the material.
- Give page numbers to help the student find answers.
- Include a variety of activities during each lesson
- Provide books & other written materials in alternative formats such as Braille or large print.



## Curriculum

- Shorten assignments to focus on mastery of key concepts.
- Shorten spelling tests to focus on mastering the most functional words.
- Substitute alternatives for written assignments (clay models, posters, panoramas, collections, etc.).
- Specify and list exactly what the student will need to learn to pass. Review this frequently.
- Modify expectations based on student needs (e.g., "When you have read this chapter, you should be able to list three reasons for the Civil War.").
- Give alternatives to long written reports (e.g., write several short reports, preview new audiovisual materials and write a short review, give an oral report on an assigned topic).

## Classroom Environment

- Develop individualized rules for the student (consider contracting with student); keep rules clear and simple.
- Evaluate the classroom structure against the student's needs (flexible structure, firm limits, etc.).
- Keep workspaces clear of unrelated material.
- Provide a structured routine in written form.
- Provide study skills training/learning strategies.
- Teacher to monitor students self-paced assignments (daily, weekly, and bi-weekly).
- Recognize and give credit for student's oral participation in class.
- Provide peer assistance with organizational skills.
- Develop a reward system for in-schoolwork and homework completion.
- Keep the classroom quiet during intense learning times.
- Reduce visual distractions in the classroom (mobiles, etc.).
- Provide a computer for written work.
- Seat the student close to the teacher or a positive role model.
- Use a study carrel. (Provide extras so that the student is not singled out.)
- Seat the student away from windows, doorways, air conditioners, overhead projectors, etc...
- Provide an unobstructed view of the chalkboard, teacher, movie screen, etc.
- Keep extra supplies of classroom materials (pencils, books) on hand.
- Use alternatives to crossword puzzles or word finds.
- Allow legitimate movement and/or time out of seat to run errands, etc.
- Maintain adequate space between desks.

## **Instruction and Assignments**

### Directions

- Use both oral and printed directions.
- Arrange for homework assignments to reach home with clear, concise directions.
- Give directions in small steps and in as few words as possible.
- Number and sequence the steps in a task.
- Have student repeat the directions for a task.
- Provide visual aids.
- Show a model of the end product of directions (e.g., a completed math problem or finished quiz).

- Stand near the student when giving directions or presenting a lesson.

#### Time/transitions

- Alert student several minutes before a transition from one activity to another is planned; give several reminders.
- Provide additional time to complete a task.
- Allow extra time to turn in homework without penalty.
- Provide assistance when moving about the building.
- Structure transitional and unstructured times (recess, hallways, lunchroom, locker room, library, field trips, etc.)

#### Handwriting

- Use worksheets that require minimal writing.
- Do not grade handwriting.
- Student should not be required to use cursive or manuscript writing.
- Reversals and transpositions of letters should not be marked wrong but pointed out for corrections.
- Use fill-in questions with space for a brief response rather than a short essay.
- Provide a "designated note taker" or photocopy of other student or teacher notes. (Do not require a poor note taker or a student with no friends to arrange with another student for notes.)
- Provide a print outline with videotapes and filmstrips.
- Provide a print copy of any assignments or directions written on the blackboard.
- Omit assignments that require copying, or let the student use a tape recorder to dictate answers.

#### Grading

- Provide a partial grade based on individual progress or effort.
- Use daily or frequent grading averaged into a grade for the quarter.
- Weight daily work higher than tests for a student who performs poorly on tests.
- Mark the correct answers rather than the incorrect ones.
- Permit a student to rework missed problems for a better grade.
- Average grades out when assignments are reworked, or grade on corrected work.
- Use a pass-fail or an alternative grading system when the student is assessed on his or her own growth.

#### Tests

- Go over directions orally.
- Teach the student how to take tests (e.g., how to review, to plan time for each section).
- Provide a vocabulary list with definitions.
- Permit as much time as needed to finish tests.
- Allow tests to be taken in a room with few distractions (e.g., the library).
- Have test materials read to the student, and allow oral or tape recorded responses.
- Give frequent short quizzes, not long exams.
- Avoid placing student under pressure of time or competition.
- Divide tests into small sections of similar questions or problems.
- Use recognition tests (true-false, multiple choice, or matching) instead of essays.
- Allow the student to complete an independent project as an alternative test.

- Give progress reports instead of grades.
- Grade spelling separately from content.
- Provide typed test materials, not tests written in cursive.
- Allow take-home or open-book tests.
- Provide possible answers for fill-in-the blank sections.
- Provide the first letter of the missing word.

#### Math

- Allow the student to use a calculator without penalty.
- Group similar problems together (e.g., all addition in one section).
- Provide fewer problems on a worksheet
- Require fewer problems to attain passing grades.
- Use enlarged graph paper to write problems to help the student keep numbers in columns.
- Provide a table of math facts for reference.
- Tape a number line to the student's desk.
- Read and explain story problems, or break problems into smaller steps.
- Use pictures or graphics.

#### Other

- Use Post-it notes to mark assignments in textbooks.
- Check progress and provide feedback often in the first few minutes of each assignment.
- Place a ruler under sentences being read for better tracking.
- Introduce an overview of long-term assignments so the student knows what is expected and when it is due.
- Break long-term assignments into small, sequential steps, with daily monitoring and frequent grading.
- Have the student practice presenting in a small group before presenting to the class.
- Hand out worksheets one at a time.
- Sequence work, with the easiest part first.
- Provide study guides and study questions that directly relate to tests.
- Reinforce student for recording assignments and due dates in a notebook.
- Draw arrows on worksheets, chalkboard, or overheads to show how ideas are related, or use other graphic organizers such as flow charts.

#### Behavior

- Arrange a "check-in" time to organize the day.
- Pair the student with a student who is a good behavior model for class projects.
- Modify school rules that may discriminate against the student.
- Use nonverbal cues to remind the student of rule violations.
- Amend consequences for rule violations (e.g., reward a forgetful student for remembering to bring pencils to class, rather than punishing the failure to remember).
- Minimize the use of punishment; provide positive as well as negative consequences.
- Develop an individualized behavior intervention plan that is positive and consistent with the student's ability and skills.
- Send daily/weekly progress reports home.
- Increase the frequency and immediacy of reinforcement.

- Arrange for the student to leave the classroom voluntarily and go to a designated "safe place" when under high stress.
- Develop a system or a code word to let the student know when behavior is not appropriate.
- Ignore behaviors that are not seriously disruptive.
- Develop interventions for behaviors that are annoying but not deliberate (e.g., provide a small piece of foam rubber for the desk of a student who continually taps a pencil on the desktop).
- Be aware of behavior changes that relate to medication or the length of the school day; modify expectations if appropriate.
- Use timers to facilitate task completion.
- Use self-monitoring strategies.

#### Special Considerations

- Alert bus driver
- Monitor student closely on field trips
- In-service teacher(s) on student's handicap
- Provide group/individual counseling
- Provide social skills group experiences
- Develop intervention strategies for transition periods (e.g.: cafeteria, physical education, etc.)

Families & Advocates Partnership for Education (FAPE)

# **Office of Civil Rights (OCR) Complaint Processing Procedures**

## **Law Enforced by the Office of Civil Rights**

OCR enforces the following laws:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- Age Discrimination Act of 1975, which prohibits discrimination on the basis of age;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability;
- Boy Scouts of America Equal Access Act, part of the No Child Left Behind Act of 2001, which prohibits denial of access to or other discrimination against the Boy Scouts or other Title 36 U.S.C. youth groups in public elementary schools, public secondary schools, local education agencies, and state education agencies that have a designated open forum or limited public forum.

## **Evaluation of the Complaint**

OCR evaluates each complaint that it receives in order to determine whether it can investigate the complaint. OCR makes this determination with respect to each allegation in the complaint. For example, OCR must determine whether OCR has legal authority to investigate the complaint; that is, whether the complaint alleges a violation of one or more of the laws OCR enforces. OCR must also determine whether the complaint is filed on time. Generally, a complaint must be filed with OCR within 180 calendar days of the last act that the complainant believes was discriminatory. If the complaint is not filed on time, the complainant should provide the reason for the delay and request a waiver of this filing requirement. OCR will decide whether to grant the waiver. In addition, OCR will determine whether the complaint contains enough information about the alleged discrimination to proceed to investigation. If OCR needs more information in order to clarify the complaint, it will contact the complainant; the complainant has 20 calendar days within which to respond to OCR's request for information.

OCR will dismiss a complaint if OCR determines that:

- OCR does not have legal authority to investigate the complaint;
- The complaint fails to state a violation of one of the laws OCR enforces;
- The complaint was not filed timely and that a waiver will not be granted;
- The complaint is unclear or incomplete and the complainant does not provide the information that OCR requests within 20 calendar days of OCR's request;
- The allegations raised by the complaint have been resolved;
- The complaint has been investigated by another Federal, state, or local civil rights agency or through a recipient's internal grievance procedures, including due process proceedings, and the resolution meets OCR regulatory standards or, if still pending, OCR anticipates that there will be a comparable resolution process under comparable legal standards;

- The same allegations have been filed by the complainant against the same recipient in state or Federal court;
- The allegations are foreclosed by previous decisions of the Federal courts, the U.S. Secretary of Education, the U.S. Department of Education's Civil Rights Reviewing Authority, or OCR policy determinations.

### **Opening the Complaint for Investigation**

If OCR determines that it will investigate the complaint, it will issue letters of notification to the complainant and the recipient. Opening a complaint for investigation in no way implies that OCR has made a determination with regard to the merits of the complaint. During the investigation, OCR is a neutral fact-finder. OCR will collect and analyze relevant evidence from the complainant, the recipient, and other sources as appropriate. OCR will ensure that investigations are legally sufficient and are dispositive of the allegations raised in the complaint.

### **Investigation of the Complaint**

OCR may use a variety of fact-finding techniques in its investigation of a complaint. These techniques may include reviewing documentary evidence submitted by both parties, conducting interviews with the complainant, recipient's personnel, and other witnesses, and/or site visits. At the conclusion of its investigation, OCR will determine with regard to each allegation that:

- There is insufficient evidence to support a conclusion that the recipient failed to comply with the law, or
- A preponderance of the evidence supports a conclusion that the recipient failed to comply with the law.

OCR's determination will be explained in a letter of findings sent to the complainant and recipient. Letters of findings issued by OCR address individual OCR cases. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

### **Resolution of the Complaint After a Determination of Noncompliance**

If OCR determines that a recipient failed to comply with one of the civil rights laws that OCR enforces, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. If the recipient agrees to resolve the complaint, the recipient will negotiate and sign a written resolution agreement that describes the specific remedial actions that the recipient will undertake to address the area(s) of noncompliance identified by OCR. The terms of the resolution agreement, if fully performed, will remedy the identified violation(s) in compliance with applicable civil rights laws. OCR will monitor the recipient's implementation of the terms of the resolution agreement to verify that the remedial actions agreed to by the recipient have been implemented consistent with the terms of the agreement and that the area(s) of noncompliance identified was resolved consistent with applicable civil rights laws.

If the recipient refuses to negotiate a voluntary resolution agreement or does not immediately indicate its willingness to negotiate, OCR will inform the recipient that it has 30 days to indicate its willingness to engage in negotiations to voluntarily resolve identified

areas of noncompliance, or OCR will issue a Letter of Finding to the parties providing a factual and legal basis for a finding noncompliance.

If, after the issuance of the Letter of Finding of noncompliance, the recipient continues to refuse to negotiate a resolution agreement with OCR, OCR will issue a Letter of Impending Enforcement Action and will again attempt to obtain voluntary compliance. If the recipient remains unwilling to negotiate an agreement, OCR will either initiate administrative enforcement proceedings to suspend, terminate, or refuse to grant or continue Federal financial assistance to the recipient, or will refer the case to the Department of Justice. OCR may also move immediately to defer any new or additional Federal financial assistance to the institution.

### **Resolution of the Complaint Prior to the Conclusion of the Investigation**

#### **Early Complaint Resolution (ECR):**

Early Complaint Resolution allows the parties (the complainant and the institution which is the subject of the complaint) an opportunity to resolve the complaint allegations quickly; generally, soon after the complaint has been opened for investigation. If both parties are willing to try this approach, and if OCR determines that Early Complaint Resolution is appropriate, OCR will facilitate settlement discussions between the parties and work with the parties to help them understand the legal standards and possible remedies. To the extent possible, staff assigned by OCR to facilitate the Early Complaint Resolution process will not be the staff assigned to the investigation of the complaint.

OCR does not approve, sign or endorse any agreement reached between the parties as a result of Early Complaint Resolution, and OCR does not monitor the agreement. However, if the recipient institution does not comply with the terms of the agreement, the complainant may file another complaint with OCR within 180 days of the date of the original discrimination or within 60 days of the date the complainant learns of the failure to comply with the agreement, whichever date is later.

### **Resolution of the Complaint Prior to the Conclusion of the Investigation**

A complaint may also be resolved before the conclusion of an investigation, if the recipient expresses an interest in resolving the complaint. If OCR determines that resolution of the complaint before the conclusion of an investigation is appropriate, OCR will attempt to negotiate an agreement with the recipient. OCR will notify the complainant of the recipient's request and will keep the complainant informed throughout all stages of the resolution process. The provisions of the resolution agreement that is reached must be aligned with the complaint allegations and the information obtained during the investigation, and must be consistent with applicable regulations. A resolution agreement reached before the conclusion of an investigation will be monitored by OCR.

### **Appeal of OCR's Determinations**

OCR is committed to a high quality resolution of every case. OCR affords an opportunity to the complainant to submit an appeal of OCR's letter finding insufficient evidence of a violation. The appeal process provides an opportunity for complainants to bring information to OCR's attention that would change OCR's decision. The appeal process will not be a *de novo* review of OCR's decision (i.e., OCR will not review the matter as if no previous decision had been rendered). If the complainant disagrees with OCR's decision, he or she may send a written appeal to the Director of the Enforcement Office (Office Director) that

issued the determination. If the complainant has documentation to support the appeal, the documentation must be submitted with the complainant's appeal. In an appeal, the complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, *and* how this would change OCR's determination in the case. Failure to do so may result in the denial of the appeal.

In order to be timely, an appeal (including any supporting documentation) must be submitted within 60 days of the date of the determination letter. The Office Director may exercise discretion in granting a waiver of the 60-day timeframe where:

1. the complainant was unable to submit the appeal within the 60-day timeframe because of illness or other incapacitating circumstances and the appeal was filed within 30 days after the period of illness or incapacitation ended; or
2. unique circumstances generated by agency action have adversely affected the complainant.

A written response to an appeal will be issued. A decision of the Office Director constitutes the agency's final decision. Such a decision will inform the complainant that he or she "may have the right to file a private suit in federal court whether or not OCR finds a violation."

### **Additional Information**

#### **Right to File a Separate Court Action**

The complainant may have the right to file suit in Federal court, regardless of OCR's findings. OCR does not represent the complainant in case processing, so if the complainant wishes to file a court action, he or she must do so through his or her own attorney or on his or her own through the court's pro se clerk's office.

If a complainant alleges discrimination prohibited by the Age Discrimination Act of 1975, a civil action in Federal court can be filed only after the complainant has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred:

1. 180 days have elapsed since the complainant filed the complaint with OCR and OCR has made no findings; or
2. OCR issues a finding in favor of the recipient. If this occurs, OCR will promptly notify the complainant and will provide additional information about the right to file for injunctive relief.

#### **Prohibition against Intimidation or Retaliation**

An institution under the jurisdiction of the Department of Education may not intimidate, threaten, coerce, or retaliate against anyone who asserts a right protected by the civil rights laws that OCR enforces, or who cooperates in an investigation. Anyone who believes that he or she has been intimidated or retaliated against should file a complaint with OCR.

#### **Investigatory Use of Personal Information**

In order to investigate a complaint, OCR may need to collect and analyze personal information such as student records or employment records. No law requires anyone to give personal information to OCR and no formal sanctions will be imposed on complainants or other persons who do not cooperate in providing information during the complaint investigation and resolution process. However, if OCR is unable to obtain the information necessary to investigate a complaint, we may have to close the complaint.



The Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. §552, govern the use of personal information that is submitted to all Federal agencies and their individual components, including OCR. The Privacy Act of 1974 protects individuals from the misuse of personal information held by the Federal government. It applies to records that are maintained by the government that are retrieved by the individual's name, social security number, or other personal identifier. It regulates the collection, maintenance, use and dissemination of certain personal information in the files of Federal agencies.

The information that OCR collects is analyzed by authorized personnel within the agency and will be used by the government only for authorized civil rights compliance and enforcement activities. However, in order to investigate or resolve a complaint, OCR may need to reveal certain information to persons outside the agency to verify facts or gather additional information. Such details could include the name, age, or physical condition of the person who is the alleged subject of discrimination. Also, OCR may be required to reveal information requested under FOIA, which gives the public the right of access to records of Federal agencies. OCR will not release any information about a complainant to any other agency or individual except in the one of the 11 instances defined in the Department's regulation at 34 C.F.R. § 5b.9(b).

OCR does not reveal the name or other identifying information about an individual (including individuals who file complaints or speak to OCR) unless (1) such information would assist in the completion of an investigation or for in enforcement activities against an institution that violates the laws, or; (2) unless such information is required to be disclosed under the FOIA or the Privacy Act. OCR will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under the FOIA, the Privacy Act or otherwise by law; or (3) information is permitted to be disclosed under both FOIA and the Privacy Act and OCR determines disclosure would further an interest of the Department and the United States.

However, OCR can release certain information about your complaint to the press or general public, including the name of the school or institution; the date your complaint was filed; the type of discrimination included in your complaint; the date your complaint was resolved, dismissed or closed; the basic reasons for OCR's decision; or other related information. Any information OCR releases to the press or general public will not include your name or the name of the person on whose behalf you filed the complaint except as noted in the paragraph above.

FOIA gives the public the right of access to records and files of Federal agencies. Individuals may obtain items from many categories of records of the Federal government, not just materials that apply to them personally. OCR must honor requests for records under FOIA, with some exceptions. Generally, OCR is not required to release documents during the case evaluation and investigation process or enforcement proceedings, if the release could reasonably be expected to interfere with the affect the ability of OCR to do its job. 5 U.S.C. § 552(b)(7)(A). Also, a Federal agency may refuse a request for records if their release would or could reasonably be expected to result in an unwarranted invasion of privacy of an individual. 5 U.S.C. § 552(b)(6) and (7)(C). Also, a request for other records, such as medical records, may be denied where disclosure would be a clearly unwarranted invasion of privacy.

# **The Office of Civil Rights - Protecting Students with Disabilities**

*This document is a revised version of a document originally developed by the Chicago Office of the Office for Civil Rights (OCR) in the U.S. Department of Education (ED) to clarify the requirements of Section 504 of the Rehabilitation Act of 1973, as amended (Section 504) in the area of public elementary and secondary education. The primary purpose of these revisions is to incorporate information about the Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, which amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 that affects the meaning of disability in Section 504. The Amendments Act broadens the interpretation of disability. The Amendments Act does not require ED to amend its Section 504 regulations. ED's Section 504 regulations as currently written are valid and OCR is enforcing them consistent with the Amendments Act. In addition, OCR is currently evaluating the impact of the Amendments Act on OCR's enforcement responsibilities under Section 504 and Title II of the ADA, including whether any changes in regulations, guidance, or other publications are appropriate. The revisions to this Frequently Asked Questions document do not address the effects, if any, on Section 504 and Title II of the amendments to the regulations implementing the Individuals with Disabilities Education Act (IDEA) that were published in the Federal Register at 73 Fed. Reg. 73006 (December 1, 2008).*

## **INTRODUCTION**

An important responsibility of the Office for Civil Rights (OCR) is to eliminate discrimination on the basis of disability against students with disabilities. OCR receives numerous complaints and inquiries in the area of elementary and secondary education involving Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504). Most of these concern identification of students who are protected by Section 504 and the means to obtain an appropriate education for such students.

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

OCR enforces Section 504 in programs and activities that receive Federal financial assistance from ED. Recipients of this Federal financial assistance include public school districts, institutions of higher education, and other state and local education agencies. The regulations implementing Section 504 in the context of educational institutions appear at 34 C.F.R. Part 104.

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

## **INTERRELATIONSHIP OF IDEA AND SECTION 504**

**1. What is the jurisdiction of the Office for Civil Rights (OCR), the Office of Special Education and Rehabilitative Services (OSERS) and state departments of education/instruction regarding educational services to students with disabilities?**

OCR, a component of the U.S. Department of Education, enforces Section 504 of the Rehabilitation Act of 1973, as amended. (Section 504) a civil rights statute which prohibits discrimination against individuals with disabilities. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), which extends this prohibition against discrimination to the full range of state and local government services, programs, and activities (including public schools) regardless of whether they receive any Federal financial assistance. The Americans with Disabilities Act Amendments Act of 2008 (Amendments Act), effective January 1, 2009, amended the Americans with Disabilities Act of 1990 (ADA) and included a conforming amendment to the Rehabilitation Act of 1973 (Rehabilitation Act) that affects the meaning of disability in Section 504. The standards adopted by the ADA were designed not to restrict the rights or remedies available under Section 504. The Title II regulations applicable to free appropriate public education issues do not provide greater protection than applicable Section 504 regulations. This guidance focuses primarily on Section 504.

Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education. Title II prohibits discrimination on the basis of disability by state and local governments. The Office of Special Education and Rehabilitative Services (OSERS), also a component of the U.S. Department of Education, administers the Individuals with Disabilities Education Act (IDEA), a statute which funds special education programs. Each state educational agency is responsible for administering IDEA within the state and distributing the funds for special education programs. IDEA is a grant statute and attaches many specific conditions to the receipt of Federal IDEA funds. Section 504 and the ADA are antidiscrimination laws and do not provide any type of funding.

## **2. How does OCR get involved in disability issues within a school district?**

OCR receives complaints from parents, students or advocates, conducts agency initiated compliance reviews, and provides technical assistance to school districts, parents or advocates.

## **3. Where can a school district, parent, or student get information on Section 504 or find out information about OCR's interpretation of Section 504 and Title II?**

OCR provides technical assistance to school districts, parents, and students upon request. Additionally, regulations and publicly issued policy guidance is available on OCR's website, at <http://www.ed.gov/policy/rights/guid/ocr/disability.html>.

## **4. What services are available for students with disabilities under Section 504?**

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

## **5. Does OCR examine individual placement or other educational decisions for students with disabilities?**

Except in extraordinary circumstances, OCR does not review the result of individual placement or other educational decisions so long as the school district complies with the

procedural requirements of Section 504 relating to identification and location of students with disabilities, evaluation of such students, and due process. Accordingly, OCR generally will not evaluate the content of a Section 504 plan or of an individualized education program (IEP); rather, any disagreement can be resolved through a due process hearing. The hearing would be conducted under Section 504 or the IDEA, whichever is applicable.

OCR will examine procedures by which school districts identify and evaluate students with disabilities and the procedural safeguards which those school districts provide students. OCR will also examine incidents in which students with disabilities are allegedly subjected to treatment which is different from the treatment to which similarly situated students without disabilities are subjected. Such incidents may involve the unwarranted exclusion of disabled students from educational programs and services.

#### **6. What protections does OCR provide against retaliation?**

Retaliatory acts are prohibited. A recipient is prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Section 504.

#### **7. Does OCR mediate complaints?**

OCR does not engage in formal mediation. However, OCR may offer to facilitate mediation, referred to as “Early Complaint Resolution,” to resolve a complaint filed under Section 504. This approach brings the parties together so that they may discuss possible resolution of the complaint immediately. If both parties are willing to utilize this approach, OCR will work with the parties to facilitate resolution by providing each an understanding of pertinent legal standards and possible remedies. An agreement reached between the parties is not monitored by OCR.

#### **8. What are the appeal rights with OCR?**

OCR affords an opportunity to the complainant for appeal of OCR’s letters of finding issued pursuant to Section 303(a) of the OCR Case Processing Manual. OCR also affords an opportunity to the complainant for appeal of OCR’s dismissals or administrative closures of complaints issued pursuant to Sections 108, 110 and 111 of the Manual. The appeal process provides an opportunity for complainants to bring information to OCR’s attention that would change OCR’s decision, but it does not involve a de novo review of OCR’s decision. The complainant may send a written appeal to the Director of the regional Enforcement Office that issued the determination within 60 days of the date of the determination letter being appealed from. In an appeal, the complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change OCR’s determination in the case. More information about appeals is found in Section 306 of the Manual.

#### **9. What does noncompliance with Section 504 mean?**

A school district is out of compliance when it is violating any provision of the Section 504 statute or regulations.

#### **10. What sanctions can OCR impose on a school district that is out of compliance?**

OCR initially attempts to bring the school district into voluntary compliance through negotiation of a corrective action agreement. If OCR is unable to achieve voluntary compliance, OCR will initiate enforcement action. OCR may: (1) initiate administrative

proceedings to terminate Department of Education financial assistance to the recipient; or (2) refer the case to the Department of Justice for judicial proceedings.

### **11. Who has ultimate authority to enforce Section 504?**

In the educational context, OCR has been given administrative authority to enforce Section 504. Section 504 is a Federal statute that may be enforced through the Department's administrative process or through the Federal court system. In addition, a person may at any time file a private lawsuit against a school district. The Section 504 regulations do not contain a requirement that a person file a complaint with OCR and exhaust his or her administrative remedies before filing a private lawsuit.

### **STUDENTS PROTECTED UNDER SECTION 504**

Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance. To be protected under Section 504, a student must be determined to: (1) have a physical or mental impairment that substantially limits one or more major life activities; or (2) have a record of such an impairment; or (3) be regarded as having such an impairment. Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

### **12. What is a physical or mental impairment that substantially limits a major life activity?**

The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry. The Section 504 regulatory provision at 34 C.F.R. 104.3(j)(2)(i) defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

Major life activities, as defined in the Section 504 regulations at 34 C.F.R. 104.3(j)(2)(ii), include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. Other functions can be major life activities for purposes of Section 504. In the Amendments Act (see FAQ 1), Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating. Congress also provided a non-exhaustive list of examples of "major bodily functions" that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision's list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

**13. Does the meaning of the phrase "qualified student with a disability" differ on the basis of a student's educational level, i.e., elementary and secondary versus postsecondary?**

Yes. At the elementary and secondary educational level, a "qualified student with a disability" is a student with a disability who is: of an age at which students without disabilities are provided elementary and secondary educational services; of an age at which it is mandatory under state law to provide elementary and secondary educational services to students with disabilities; or a student to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).

At the postsecondary educational level, a qualified student with a disability is a student with a disability who meets the academic and technical standards requisite for admission or participation in the institution's educational program or activity.

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

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

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

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

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

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

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

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

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

**EVALUATION**

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

**18. What is an appropriate evaluation under Section 504?**

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

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

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

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

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

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

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

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

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

**22. Does OCR endorse a single formula or scale that measures substantial limitation?**

No. The determination of substantial limitation must be made on a case-by-case basis with respect to each individual student. The Section 504 regulatory provision at 34 C.F.R. 104.35 (c) requires that a group of knowledgeable persons draw upon information from a variety of sources in making this determination.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**34. How should a recipient school district view a temporary impairment?**

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

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

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

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

## PLACEMENT

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

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

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

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

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

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

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

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

<http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C3%2C>

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

Regular education teachers must implement the provisions of Section 504 plans when those plans govern the teachers' treatment of students for whom they are responsible. If the

teachers fail to implement the plans, such failure can cause the school district to be in noncompliance with Section 504.

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

A regular education intervention plan is appropriate for a student who does not have a disability or is not suspected of having a disability but may be facing challenges in school. School districts vary in how they address performance problems of regular education students. Some districts employ teams at individual schools, commonly referred to as "building teams." These teams are designed to provide regular education classroom teachers with instructional support and strategies for helping students in need of assistance. These teams are typically composed of regular and special education teachers who provide ideas to classroom teachers on methods for helping students experiencing academic or behavioral problems. The team usually records its ideas in a written regular education intervention plan. The team meets with an affected student's classroom teacher(s) and recommends strategies to address the student's problems within the regular education environment. The team then follows the responsible teacher(s) to determine whether the student's performance or behavior has improved. In addition to building teams, districts may utilize other regular education intervention methods, including before-school and after-school programs, tutoring programs, and mentoring programs.

**PROCEDURAL SAFEGUARDS**

Public elementary and secondary schools must employ procedural safeguards regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services.

**41. Must a recipient school district obtain parental consent prior to conducting an initial evaluation?**

Yes. OCR has interpreted Section 504 to require districts to obtain parental permission for initial evaluations. If a district suspects a student needs or is believed to need special instruction or related services and parental consent is withheld, the IDEA and Section 504 provide that districts may use due process hearing procedures to seek to override the parents' denial of consent for an initial evaluation.

**42. If so, in what form is consent required?**

Section 504 is silent on the form of parental consent required. OCR has accepted written consent as compliance. IDEA as well as many state laws also require written consent prior to initiating an evaluation.

**43. What can a recipient school district do if a parent withholds consent for a student to secure services under Section 504 after a student is determined eligible for services?**

Section 504 neither prohibits nor requires a school district to initiate a due process hearing to override a parental refusal to consent with respect to the initial provision of special education and related services. Nonetheless, school districts should consider that IDEA no longer permits school districts to initiate a due process hearing to override a parental refusal to consent to the initial provision of services.

**44. What procedural safeguards are required under Section 504?**

Recipient school districts are required to establish and implement procedural safeguards that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

**45. What is a recipient school district's responsibility under Section 504 to provide information to parents and students about its evaluation and placement process?**

Section 504 requires districts to provide notice to parents explaining any evaluation and placement decisions affecting their children and explaining the parents' right to review educational records and appeal any decision regarding evaluation and placement through an impartial hearing.

**46. Is there a mediation requirement under Section 504?**

No.

**TERMINOLOGY**

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

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

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

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

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

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

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

## **A Few More Questions and Answers About 504**

### **Is it possible for a 504 program to be appropriate when the student fails a class?**

Yes. A problem sometimes encountered by Section 504 coordinators is concern over a child who even with accommodations has failing grades. A question often asked is what do we do if we know the accommodation plan is appropriate and is being implemented in the classroom and the child still fails? As the following cases demonstrate, school officials need to be able to articulate and demonstrate the reason for the failure. Presumably, the reason cannot arise from disability unless it has been accommodated, and the student rejects the accommodation.

A disabled student fails because he didn't turn in work-he didn't try. The parent complains to OCR that the student's IEP has not been implemented causing the student to fail in keyboarding and Spanish class. The student is learning disabled. Classroom modifications included extra time for written work, the chance to redo work deemed unacceptable by the teacher, and verbal clarification of instructions and assignments. The student failed keyboarding when he failed to complete, print, or turn in work. In the Spanish class (where no accommodations were required) the student nose-dived after the third 9- week session when he failed to make up three tests, a vocabulary poster and a major composition. The student left his final exam blank. When given the opportunity to redo papers or make corrections on assignments for a new grade (something the teacher did for all students), the student chose not to participate. OCR finds no violation. "Student B's failure to pass keyboarding and Spanish was not related to the District not implementing his IEP. The District tried [sic] to implement his IEP, however, the student would not attend make up or tutoring sessions and did not retake exams when the opportunity was available." Beaufort County (SC) School District, 29 IDELR 75 (OCR 1998). See also, Spartanburg #4 (SC) School District, 29 IDELR 252 (OCR 1998).

An important lesson emphasized by this case is that disability is but one potential contributing factor in a child's ability to perform at school. Another important factor in these two cases is the districts' good faith and clean hands. In these cases, there was no question that school officials were concerned for the child and his performance. There was also a level of extra attention and effort in each case, and procedural compliance. Since OCR will typically not second-guess educational decisions made following the proper procedures, and the good faith of the school officials deflected any other concerns, the districts were found in compliance.

### **Can a principal or other administrator veto a 504 Committee decision because it is too expensive, even if the modification is necessary for a free appropriate public education?**

No. The Section 504 regulations require that decisions about a child's educational placement be made a "group of knowledgeable people" which we refer to as the "504 Committee." Inherent in that requirement is the prohibition on a single person making the placement decision instead of the required group, and a prohibition on a single person overruling the 504 Committee. That being said, a principal or other administrator's concerns about the cost of a program cannot be overlooked (especially when Committee members are subject to employment actions by the principal). Cost can certainly be a factor, but the regulations do not allow a district to omit a modification required for FAPE simply because it is costly. Unlike the ADA's application in the employment context, there is no "reasonable

accommodation" requirement under Section 504 for the public schools when FAPE is at issue. OCR Response to Zirkel, June 28, 1993. So, if an expensive modification is needed, the sheer cost does not mean that the modification can be rejected by the Committee. Note that, just like in special education, a more expensive modification is never required when a less expensive alternative is also appropriate.

Of course, should expensive programming or services be required to provide a student with FAPE, the Committee should consider whether 504 is the appropriate program to provide services. After all, 504 students are generally educable in the regular classroom with fairly routine and inexpensive modifications. If more serious programming or services are required (resource classes, a one-on-one aide, occupational therapy, physical therapy, speech, etc.) the Committee should consider whether special education eligibility is possible, thus opening up the resources of the IDEA for the child.

### **Can the 504 Committee order accommodations to the ACT/SAT?**

Not with any real authority. The testing services will review the modifications a student is receiving under 504 or IDEA, and then will make their own independent determination of whether modifications to college entrance exams will be allowed. Understandably, a student who receives modified testing in the school setting seems a more likely candidate to receive modifications on college entrance exams. Likewise, the longer the student has received the modifications, the more likely they will be considered favorably. As might be expected, a few juniors and seniors claim disability each year for the sole purpose of receiving extra time on these critical exams. The independent review by the testing services apparently is calculated to prevent that abuse.

### **What is the school district's duty to transport students under §504?**

With respect to transportation, the district's duty to 504 students is twofold. First, is the basic 504 nondiscrimination duty. Simply stated, a disabled student should not be denied access to transportation a similarly situated non-disabled student can access. In other words, a student should not be denied transportation for which he is otherwise eligible because he is disabled. If the district provides transportation to students who live a certain distance from the school or who must cross a dangerous road to get to school, that service must be offered equally to disabled and non-disabled students who meet the eligibility criteria.

Second, even if transportation services are not available to a population of students (because they live too close to school, for example), a disabled child's physical or mental impairment may require the district to provide transportation services so that the disabled child can access education at the school. "Under Section 504, a recipient is required to offer transportation services in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities." Whitman- Hanson (Ma) Regional Sch. Dist., 20 IDELR 775, 779 (OCR 1993). For example, a student whose asthma is aggravated by certain climates/seasons may be unable to walk to school during certain times of the year without experiencing severe breathing problems. Similarly, a student who used to be able to walk to school but cannot do so now (due to broken leg or similar mobility impairment) may require transportation to school as a 504 accommodation. Note that in neither case would a special bus be required (unless the mobility impairment resulted in the temporary use of a wheelchair). Giving both students access to the regular bus (which they could not access earlier due to the short distance to school) is an appropriate accommodation.

## What is Response to Intervention (RTI)?

Response to Intervention (RTI) is a multi-tier approach to the early identification and support of students with learning and behavior needs. The RTI process begins with high-quality instruction and universal screening of all children in the general education classroom. Struggling learners are provided with interventions at increasing levels of intensity to accelerate their rate of learning. These services may be provided by a variety of personnel, including general education teachers, special educators, and specialists. Progress is closely monitored to assess both the learning rate and level of performance of individual students. Educational decisions about the intensity and duration of interventions are based on individual student response to instruction. RTI is designed for use when making decisions in both general education and special education, creating a well-integrated system of instruction and intervention guided by child outcome data.

For RTI implementation to work well, the following essential components must be implemented with fidelity and in a rigorous manner:

- *High-quality, scientifically based classroom instruction.* All students receive high-quality, research-based instruction in the general education classroom.
- *Ongoing student assessment.* Universal screening and progress monitoring provide information about a student's learning rate and level of achievement, both individually and in comparison with the peer group. These data are then used when determining which students need closer monitoring or intervention. Throughout the RTI process, student progress is monitored frequently to examine student achievement and gauge the effectiveness of the curriculum. Decisions made regarding students' instructional needs are based on multiple data points taken in context over time.
- *Tiered instruction.* A multi-tier approach is used to efficiently differentiate instruction for all students. The model incorporates increasing intensities of instruction offering specific, research-based interventions matched to student needs.
- *Parent involvement.* Schools implementing RTI provide parents information about their child's progress, the instruction and interventions used, the staff who are delivering the instruction and the academic or behavioral goals for their child.

Each of these essential components is addressed in the "Include Essential Components" section of this Web site.

Though there is no single, thoroughly researched and widely practiced "model" of the RTI process, it is generally defined as a three-tier (or three-step) model of school supports that uses research-based academic and/or behavioral interventions. Following is the Three-Tier Model:

### **Tier 1: High-Quality Classroom Instruction, Screening, and Group Interventions**



Within Tier 1, all students receive high-quality, scientifically based instruction provided by qualified personnel to ensure that their difficulties are not due to inadequate instruction. All students are screened on a periodic basis to establish an academic and behavioral baseline and to identify struggling learners who need additional support. Students identified as being “at risk” through universal screenings and/or results on state- or districtwide tests receive supplemental instruction during the school day in the regular classroom. The length of time for this step can vary, but it generally should not exceed 8 weeks. During that time, student progress is closely monitored using a validated screening system such as curriculum-based measurement. At the end of this period, students showing significant progress are generally returned to the regular classroom program. Students not showing adequate progress are moved to Tier 2.

### **Tier 2: Targeted Interventions**

Students not making adequate progress in the regular classroom in Tier 1 are provided with increasingly intensive instruction matched to their needs on the basis of levels of performance and rates of progress. Intensity varies across group size, frequency and duration of intervention, and level of training of the professionals providing instruction or intervention. These services and interventions are provided in small-group settings in addition to instruction in the general curriculum. In the early grades (kindergarten through 3rd grade), interventions are usually in the areas of reading and math. A longer period of time may be required for this tier, but it should generally not exceed a grading period. Students who continue to show too little progress at this level of intervention are then considered for more intensive interventions as part of Tier 3.

### **Tier 3: Intensive Interventions and Comprehensive Evaluation**

At this level, students receive individualized, intensive interventions that target the students’ skill deficits. Students who do not achieve the desired level of progress in response to these targeted interventions are then referred for a comprehensive evaluation and considered for eligibility for special education services under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004). The data collected during Tiers 1, 2, and 3 are included and used to make the eligibility decision.

It should be noted that at any point in an RTI process, IDEA 2004 allows parents to request a formal evaluation to determine eligibility for special education. An RTI process cannot be used to deny or delay a formal evaluation for special education.

In addition to variations in the tiers used to deliver RTI services, schools use different approaches in implementation, such as problem-solving, functional assessment, standard protocol, and hybrid approaches. Although there are many formats for how a school might implement RTI to best serve the needs of its students, in every case RTI can be a school-wide framework for efficiently allocating resources to improve student outcomes.

## Identifying Children for Evaluation

Before a child's eligibility under IDEA can be determined, a full and individual evaluation of the child must be conducted. There are at least two ways in which a child may be identified to receive an evaluation under IDEA:

*(1) Parents may request that their child be evaluated.* Parents are often the first to notice that their child's learning, behavior, or development may be a cause for concern. If they're worried about their child's progress in school and think he or she might need extra help from special education services, they may call, email, or write to their child's teacher, the school's principal, or the Director of Special Education in the school district. If the school agrees that an evaluation is needed, *it must evaluate the child at no cost to parents.*

*(2) The school system may ask to evaluate the child.* Based on a teacher's recommendation, observations, or results from tests given to all children in a particular grade, a school may recommend that a child receive further screening or assessment to determine if he or she has a disability and needs special education and related services. The school system must ask parents for permission to evaluate the child, and parents must give their informed written permission before the evaluation may be conducted.

### Giving Parents Notice

It is important to know that IDEA requires the school system to **notify parents in writing** that it would like to evaluate their child (or that it is *refusing* to evaluate the child). This is called giving prior written notice. It is not enough for the agency to tell parents that it would like to evaluate their child or that it refuses to evaluate their child. The school must also:

- explain why it wants to conduct the evaluation (or why it refuses);
- describe each evaluation procedure, assessment, record, or report used as a basis for proposing the evaluation (or refusing to conduct the evaluation);
- where parents can go to obtain help in understanding IDEA's provisions;
- what other options the school considered and why those were rejected; and
- a description of any other factors that are relevant to the school's proposal (or refusal) to evaluate the child.

The purpose behind this thorough explanation is to make sure that parents are fully informed, understand what is being proposed (or refused), understand what evaluation of their child will involve (or why the school system is refusing to conduct an evaluation of the child), and understand their right to refuse consent for evaluation, or to otherwise exercise their rights under IDEA's procedural safeguards if the school refuses to evaluate.

All written communication from the school must be in a form the general public can understand. It must be provided in parents' native language if they do not read English, or in the mode of communication they normally use (such as Braille or large print) unless it is clearly not feasible to do so. If parents' 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 (or by other means) to parents in their native language or other mode of communication,
- that parents understand the content of the notice, and
- that there is written evidence that the above two requirements have been met.

### Parental Consent

Before the school may proceed with the evaluation, parents must give their informed written consent. This consent is for the evaluation only. It does not mean that the school has the parents' permission to provide special education services to the child. *That* requires a *separate* consent.

If parents refuse consent for an initial evaluation (or simply don't respond to the school's request), the school must carefully document all its attempts to obtain parent consent. It may also continue to pursue conducting the evaluation by using the law's due process procedures or its mediation procedures, unless doing so would be inconsistent with state law relating to parental consent.

However, if the child is home-schooled or has been placed in a private school by parents (meaning, the parents are paying for the cost of the private school), the school *may not override* parents' lack of consent for initial evaluation of the child. As the Department of Education (2006) notes:

...once parents opt out of the public school system, States and school districts do not have the same interest in requiring parents to agree to the evaluation of their children. In such cases, it would be overly intrusive for the school district to insist on an evaluation over a parent's objection. (71 Fed. Reg. at 46635)

### **Timeframe for Initial Evaluation**

Assuming that parents' informed consent has been given, the child will be evaluated. The evaluation must be conducted within a certain period of time after parents give their consent. The initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation—or if the state establishes its own timeframe for conducting an initial evaluation, within *that* timeframe. (In other words: Any timeframe established by the state takes precedence over the 60-day timeline required by IDEA.)

### **The Scope of Evaluation**

A child's initial evaluation must be *full and individual*, focused on that child and only that child. An evaluation of a child under IDEA means much more than the child sitting in a room with the rest of his or her class taking an exam for that class, that school, that district, or that state. How the child performs on such exams will contribute useful information to an IDEA-related evaluation, but large-scale tests or group-administered instruments are not enough to diagnose a disability or determine what, if any, special education or related services the child might need, let alone plan an appropriate educational program for the child.

The evaluation must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. When conducting an initial evaluation, it's important to examine all areas of a child's functioning to determine not only if the child is a child with a disability, but also determine the child's educational needs. This full and individual evaluation includes evaluating the child's:

- health,
- vision and hearing,
- social and emotional status,
- general intelligence,
- academic performance,

- communicative status, and
- motor abilities

As IDEA states, the school system must ensure that—

...the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

### **Review Existing Data**

Evaluation (and particularly reevaluation) typically begins with a review of existing evaluation data on the child, which may come from the child's classroom work, his or her performance on State or district assessments, information provided by the parents, and so on. The purpose of this review is to decide if the existing data is sufficient to establish the child's eligibility and determine educational needs, or if additional information is needed. If the group determines there is sufficient information available to make the necessary determinations, the public agency must notify parents:

- of that determination and the reason for it; and
- that parents have the right to request assessment to determine the child's eligibility and educational needs.

Unless the parents request an assessment, the public agency is not required to conduct one. If it is decided that additional data is needed, the group then identifies what is needed to determine:

- whether the child has a particular category of disability (e.g., "other health impairment," "specific learning disability");
- the child's present levels of performance (that is, how he or she is currently doing in school) and his or her academic and developmental needs;
- whether the child needs special education and related services; and
- if so, whether any additions or modifications are needed in the special education and related services to enable the child to meet the goals set out in the IEP to be developed and to participate, as appropriate, in the general curriculum.

The evaluation must use a variety of assessment tools and strategies. Under IDEA, it is inappropriate and unacceptable to base any eligibility decision upon the results of only one procedure. Tests alone will not give a comprehensive picture of how a child performs or what he or she knows or does not know. Only by collecting data through a *variety of approaches* (e.g., observations, interviews, tests, curriculum-based assessment, and so on) and from a *variety of sources* (parents, teachers, specialists, child) can an adequate picture be obtained of the child's strengths and weaknesses.

IDEA also requires schools to use technically sound instruments and processes in evaluation. Technically sound instruments generally refers to assessments that have been shown through research to be valid and reliable (71 Fed. Reg. at 46642). Technically sound processes require that assessments and other evaluation materials be:

- administered by trained and knowledgeable personnel;
- administered in accordance with any instructions provided by the producer of the assessments; and
- used for the purposes for which the assessments or measures are valid and reliable.

In conjunction with using a variety of sound tools and processes, assessments must include those that are tailored to assess specific areas of educational need (for example, reading or math) and not merely those that are designed to provide a single general intelligence quotient, or IQ.

Taken together, all of this information can be used to determine whether the child has a disability under IDEA, the specific nature of the child's special needs, whether the child needs special education and related services and, if so, to design an appropriate program.

### **Consider Language, Communication Mode, and Culture**

Another important component in evaluation is to ensure that assessment tools are not discriminatory on a racial or cultural basis. Evaluation must also be conducted in the child's typical, accustomed mode of communication (unless it is clearly not feasible to do so) and in a form that will yield accurate information about what the child knows and can do academically, developmentally, and functionally. For many, English is not the native language; others use sign to communicate, or assistive or alternative augmentative communication devices. To assess such a child using a means of communication or response not highly familiar to the child raises the probability that the evaluation results will yield minimal, if any, information about what the child knows and can do.

Specifically, consideration of language, culture, and communication mode means the following: If your child has limited English proficiency, materials and procedures used to assess your child must be selected and administered to ensure that they measure the extent to which your child has a disability and needs special education, rather than measuring your child's English language skills.

This provision in the law is meant to protect children of different racial, cultural, or language backgrounds from misdiagnosis. For example, children's cultural backgrounds may affect their behavior or test responses in ways that teachers or other personnel do not understand. Similarly, if a child speaks a language other than English or has limited English proficiency, he or she may not understand directions or words on tests and may be unable to answer correctly. As a result, a child may mistakenly appear to be a slow learner or to have a hearing or communication problem.

- If an assessment is not conducted under standard conditions—meaning that some condition of the test has been changed (such as the qualifications of the person giving the test or the method of giving the test)—a description of the extent to which it varied from standard conditions must be included in the evaluation report.
- If the child has impaired sensory, manual, or speaking skills, the law requires that tests are selected and administered so as best to ensure that test results accurately reflect his or her aptitude or achievement level (or whatever other factors the test claims to measure), and not merely reflect your child's impaired sensory, manual, or speaking skills (unless the test being used is intended to measure those skills).

### **What About Evaluation for Specific Learning Disabilities?**

IDEA's regulations specify additional procedures required to be used for determining the existence of a specific learning disability. Sections 300.307 through 300.311 spell out what these procedures are:

- States must *not require* the use of a severe discrepancy between intellectual ability and achievement.

- States must permit the use of a process based on the child's response to scientific, research-based intervention; and
- States may permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability.
- The team that makes the eligibility determination must include a regular education teacher and at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

### **Determining Eligibility**

Parents were not always included in the group that determined their child's eligibility and, in fact, were often excluded. Since the IDEA Amendments of 1997, parents are to be part of the group that determines their child's eligibility and are also to be provided a copy of the evaluation report, as well as documentation of the determination of the child's eligibility. Some school systems will hold a meeting where they consider only the eligibility of the child for special education and related services. At this meeting, your child's assessment results should be explained. The specialists who assessed your child will explain what they did, why they used the tests they did, your child's results on those tests or other evaluation procedures, and what your child's scores mean when compared to other children of the same age and grade.

It is important to know that the group may not determine that a child is eligible if the determinant factor for making that judgment is the child's lack of instruction in reading or math or the child's limited English proficiency. The child must otherwise meet the law's definition of a "child with a disability"—meaning that he or she has one of the disabilities listed in the law and, because of that disability, needs special education and related services. If the evaluation results indicate that your child meets the definition of one or more of the disabilities listed under IDEA and needs special education and related services, the results will form the basis for developing your child's Individual Education Program (IEP).

### **What Happens if You Don't Agree with the Evaluation Results?**

If you, as parents of a child with a disability, disagree with the results of your child's evaluation as obtained by the public agency, you have the right to obtain what is known as an Independent Educational Evaluation, or IEE. An IEE means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of your child. If you ask for an IEE, the public agency must provide you with, among other things, information about where an IEE may be obtained.

### **Who pays for the independent evaluation?**

The answer is that some IEEs are at public expense and others are paid for by the parents. For example, if you are the parent of a child with a disability and you disagree with the public agency's evaluation, you may request an IEE at public expense. "At public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you as parents. The public agency may grant your request and pay for the IEE, or it may initiate a hearing to show that its own evaluation was appropriate. The public agency may ask why you object to the public evaluation. However, the agency may not require you to explain, and it may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend the public evaluation.

If the public agency initiates a hearing and the final decision of the hearing officer is that the agency's evaluation was appropriate, then you still have the right to an IEE but not at public expense. As part of a due process hearing, a hearing officer may also request an IEE; if so, that IEE must be at public expense. Whenever an IEE is publicly funded, that IEE must meet the same criteria that the public agency uses when it initiates an evaluation. The public agency must tell you what these criteria are—such as location of the evaluation and the qualifications of the examiner—and they must be the same criteria the public agency uses when it initiates an evaluation, to the extent they are consistent with your right to an IEE. However, the public agency may not impose other conditions or timelines related to your obtaining an IEE at public expense.

Of course, you have the right to have your child independently evaluated at any time at your own expense. (Note: When the same tests are repeated within a short time period, the validity of the results can be seriously weakened.) The results of this evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to providing your child with FAPE. The results may also be presented as evidence at a hearing regarding your child.

### **What Happens Down the Road?**

After the initial evaluation, evaluations must be conducted at least every three years after your child has been placed in special education. Reevaluations can also occur more frequently if conditions warrant, or if you or your child's teacher requests a reevaluation. Informed parental consent is also necessary for reevaluations.

As with initial evaluations, reevaluations begin with the review of existing evaluation data, including evaluations and information provided by you, the child's parents. Your consent is not required for the review of existing data on your child. As with initial evaluation, this review is to identify what additional data, if any, are needed to determine whether your child continues to be a "child with a disability" and continues to need special education and related services. If the group determines that additional data are needed, then the public agency must administer tests and other evaluation materials as needed to produce the data. Prior to collecting this additional information, the agency must obtain your informed written consent.

If the group determines that no additional data are needed to determine whether your child continues to be a "child with a disability," or to determine if the child continues to receive appropriate programming, the public agency must notify you:

- of this determination and the reasons for it (via prior written notice); and
- of your right, as parents, to request an assessment to determine whether, for the purposes of services under IDEA, your child continues to be a "child with a disability."

*A final note with respect to reevaluations:* Before determining that your child is no longer a "child with a disability" and, thus, no longer eligible for special education services under IDEA, the public agency must evaluate your child in accordance with all of the provisions described above. This evaluation, however, is not required before terminating your child's eligibility due to graduation with a regular high school diploma or due to exceeding the age eligibility for FAPE under State law.

## **Medical Homebound Instruction - South Carolina § 43-241**

I. Students who cannot attend public school because of illness, accident, or pregnancy, even with the aid of transportation, are eligible for medical homebound or hospitalized instruction.

(A) A physician must certify that the student is unable to attend school but may profit from instruction given in the home or hospital.

(B) Any student participating in a program of medical homebound instruction or hospitalized instruction must be approved by the district superintendent or his or her designee on standardized forms provided by the State Department of Education.

(C) A South Carolina school district may count in membership a pupil who is compelled to reside outside the State to receive medical services provided the teacher is certificated by the Department of Education in the state where services are rendered.

(D) All approved forms must be maintained by the district for documentation.

II. A student is eligible for medical homebound instruction (1) on the day following his or her last day of school attendance or (2) on the first day of the regular nine-month academic year of the school in which he or she is enrolled and would otherwise be in attendance. The student remains eligible (1) until the day before he or she returns to school or (2) until the last day of the regular academic year in the school year he or she would normally be enrolled, whichever occurs first.

III. The State Department of Education shall fund a maximum of five periods per week of medical homebound instruction pursuant to the Education Finance Act (EFA).

(A) A day of instruction must be based on the student's individual need but may be no less than fifty minutes to qualify for state funding.

(B) There is no limit to the amount of instruction that may be provided with funds other than state funds.

(C) If more instruction is needed, the school district must provide the additional funds.

IV. Should an approved student not be provided the medical homebound instruction that he or she is entitled to receive, the student is eligible to have the medical homebound instruction made up by the district.

(A) This make up may occur during the student's remaining eligibility for medical homebound instruction or may occur after the student returns to school provided the make-up periods are not during the regular school day.

(B) State funding for medical homebound instruction is available until the last day of the regular school year. If the school district delays the start of services for any reason, the student is still entitled to the instructional services, and the school district must make up the missed instructional periods even if the regular school year has ended and services are provided without the benefit of state funding.

V. All teachers providing medical homebound instruction to students domiciled in South Carolina must hold a valid South Carolina teacher's certificate.



(A) The teacher shall teach the medical homebound student or students in a room especially set aside for the period of instruction.

(B) Medical homebound teachers are required to keep a weekly record of teaching services provided.

## **Some Questions & Answers Regarding Medical Homebound Instruction**

### **1. What is the difference between a special education home-based placement and medical homebound instruction?**

Medical homebound instruction is provided for both nondisabled and disabled students who cannot attend school for a medical reason—a mental or physical condition that exists due to an accident, an illness, or pregnancy—even when transportation is furnished. A licensed physician must certify that such a medical condition exists and must complete the medical homebound application that the local school district provides. The intent of medical homebound instruction is to keep such a student connected to his or her regular curriculum until the time when his or her return to the classroom setting is possible.

On the other hand, a special education home-based placement is provided only to the student with a disability and only upon the determination of the student's IEP team that the home setting is appropriate for the child's education and constitutes the least restrictive environment in light of his or her particular disability. If the medical homebound placement will result in a change of placement, the IEP team must meet and make an individualized determination regarding the special education and related services needed to provide the student a FAPE.

Both the medically homebound student and the special education home-based student must be provided an opportunity to participate in nonacademic and extracurricular activities with his or her nondisabled peers to the maximum extent appropriate. The ultimate goal for both is transition back into the regular education environment as soon as possible.

### **2. Is medical homebound instruction the same as home schooling?**

No. In home school programs, the parents are responsible for their child's education. These students are not eligible for medical homebound services and will not receive services unless they are enrolled in the school district.

### **3. How does a parent arrange for his or her child to receive medical homebound instruction?**

The procedure for requesting medical homebound instruction is not determined at the state level but is established by the individual school district. Therefore, the parent should start by contacting the school guidance counselor, the school's medical homebound contact, or a school administrator. State Board of Education Regulation 43-241 requires that a licensed physician certify that the student cannot attend school as a result of an accident, illness, or pregnancy, despite the aid of transportation, and that he or she may profit from instruction given in the home or in a hospital. The physician must complete the state's medical homebound instruction form that the local school district provides. The district superintendent, or his or her designee, may or may not then approve the student's participation in a program for medical homebound instruction.

If the child has an IEP, then the parent should also notify the designated school or district contact person for special education regarding the request for medical homebound services.

If the child has an accommodations plan under Section 504, then the parent should notify the Section 504 school or district coordinator about the request.

**4. Can a parent request medical homebound instruction for a child because of a mental health problem?**

Yes. A mental health problem may be a legitimate reason to request medical homebound instruction. However, a licensed physician must certify that the state of the child's mental health is the cause of his or her inability to attend school. If the mental health diagnosis indicates that long-term medical homebound instruction will be necessary, the school should advise the parent(s) to make arrangements for a licensed mental health professional to develop a treatment plan and strategy for reentry into the school environment.

**5. If a physician writes a prescription for medical homebound instruction or completes a medical homebound application, isn't the school district required to provide medical homebound instruction?**

No. The superintendent of the school district, or his or her designee, must approve any medical homebound instruction request. Upon the signed authorization of the parent, the district's medical representative may ask the physician to supply additional documentation in order to determine if medical homebound instruction is appropriate. School districts are encouraged to discuss with physicians the accommodations and modifications that can be made to keep students in the least restrictive environment.

**6. What happens if the superintendent denies a request for medical homebound instruction for a child?**

The district superintendent has the authority to approve or deny the physician's medical homebound recommendation. A parent may choose to go through the local school district's appeal process.

**7. Can the superintendent request a second medical opinion if he or she disagrees with the first physician or feels that inadequate information has been provided?**

There is no regulation in federal or state law that prohibits a superintendent from doing so. If the superintendent feels that additional information is needed, then he or she may request a second medical opinion in order to gain the necessary information to approve medical homebound instruction, deny medical homebound instruction, or determine possible accommodations or modifications to allow the student to continue in his or her regular school program.

**8. What is the procedure for requesting medical homebound instruction for a pregnant student?**

First, the parent must let the school know that the student will be a school-aged parent. Then, a licensed physician must certify that the student cannot attend school because of prenatal or postnatal complications associated with the pregnancy. In general, abdominal pain, back pain, fatigue, and vomiting are common to pregnancy but are not usually considered serious enough to warrant medical homebound instruction.

**9. Can a nonpublic school student receive medical homebound instruction?**

A student must be enrolled in a public school to qualify for medical homebound instruction. The district may then count the student in its attendance report for state aid purposes. If the student is not enrolled in a public school, there is no requirement under either federal or state laws that district provide medical homebound instruction to the student.

**10. What should parents do if their child has a recurring medical condition that only intermittently prevents him or her from attending school?**

If a student has a recurring medical condition that intermittently makes him or her unable to attend school, that student may be eligible to receive medical homebound instruction during those periods, coming back to school and leaving school again as the need dictates.

If the student has intermittent medical homebound needs, an agreement should be set between the parent of the student and the district that specifies when homebound services will begin and end on an intermittent basis. The plan should state an “if . . . then” description of services when a pattern of intermittent absences exists due to an illness, accident or pregnancy when, even with the aid or transportation, the student cannot attend public school.

A recurring medical condition may also allow a child to qualify for services and/or accommodations under Section 504. Section 504 protects all persons who meet the definition of the term “disability” in Title II of the Americans with Disabilities Act of 1990 and the 2008 amendments: The term “disability” means, with respect to an individual-- (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment. Contact your district’s Section 504 coordinator for more information on services and accommodations available for your child. If the student has a Section 504 plan, it could include medical and educational considerations as elements of that student’s individual accommodation plan. The Section 504 plan should indicate how necessary services will be rendered when the student is not able to attend school for medical reasons.

**11. When should an IEP team meet to discuss whether to change the placement of a student with a disability to medical homebound?**

When it is projected that a student with a disability will receive medical homebound instruction during a school year, the IEP team should consider, on the basis of individual circumstances and appropriateness, whether the student’s placement needs to be changed. When considering whether the student’s placement should be changed to medical homebound, the IEP team must follow all special education procedural safeguards. The IEP team is required to change the student’s placement to medical homebound when it is projected that he or she will receive medical homebound instruction for more than ten consecutive days or for periods of time that establish a pattern that would be considered as a change of placement. When it is projected that a student with a disability will receive medical homebound instruction for less than ten days, the IEP team should conduct a meeting to review the student’s IEP and change his or her placement if that action is deemed necessary.

The IEP team must remain proactive when intermittent absences occur due to illness or a disability. When a student with a disability is projected to receive intermittent medical homebound services during the year, the IEP team is required to conduct a meeting to review and revise the IEP to reflect a description of the planned medical homebound services. The IEP team should consider an “if . . . then” description of services when a pattern of intermittent absences exists due to an illness or disability. If the planned medical homebound services should change for the student (e.g., the semester ends and new courses begin), the IEP team is required to call a meeting to review and revise the IEP and describe the updated medical homebound service.



## Section 3

### SPECIAL EDUCATION

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## Why Special Education Law Is Complex

Special Education is, and always has been, a complex, law-driven process. It is a world with its own language full of required forms, required meetings and required participants at those meetings. It has timelines which must be met, categories of disability that students must be "fit into"; and precise definitions of key words and phrases.

One may well wonder why it is that so much regulation and legislation would be required for students with special needs. After all, children naturally want to learn, and parents want their children to learn as much as they can and get along well with others. This is exactly what schools were created to do.

Teachers are individuals who care deeply about children and about society in general, and who have chosen a career dedicated to helping young ones learn all they can and grow up successfully. Therefore, it seems obvious that parents and teachers have the same ultimate goal; the success of their student. If there are disagreements, why can't parents and teachers just sit down and figure out what's best for the child?

One answer is that it's not always so easy to just sit down and figure out what's "best". Teachers and parents can have honest disagreements about how to educate a child. A school may have the overall goal of serving all students equally with their available resources. Parents may have the goal of getting the best education possible for their children even if it is more expensive than normal. Educating special needs children is a multi-faceted, often complicated process which is rife with the possibilities for disagreements. Parents and teachers can both become very emotional about a child's education. After all, it is true for all of us that our children are our future. Educating children is a high stakes enterprise.

A second answer has to do with the issues of trust and communication. The more we trust someone, the less formal and detailed our agreements need to be. We simply trust that the plan will be carried out, and we trust that our ability to communicate with other party will resolve any differences.

However, the special education laws could not be written relying on trust. They were written to cover every detail and imagine every contingency. We may regularly complain about the detail, complexity and paperwork the law requires, but in fact the law is very carefully designed to respond to important concerns and issues.

### Special Education, Trust, and Good Agreements

The law does not have to be intimidating or overwhelming. If we can communicate well and trust each other, we can create agreements for educating our children in spite of the complexity of the law. What's best for the child can always drive our decisions, rather than a simple adherence to 'what the law says we should do. We will find that when we make decisions in this manner, we will be able to fit our educational recommendations into the framework of special education law. Our ability to be successful in building this kind of trust will stem largely from our skill as dispute resolvers, problem solvers and communicators, as well as from our commitment to responsibly carry out what we agree to do.

# **The Individuals with Disabilities Education Act (IDEA)**

## **A Guide**

The IDEA is a law, or statute, that governs how states and public agencies provide early intervention, special education and related services to eligible infants, toddlers, children and youth with disabilities. The IDEA authorizes formula grants to states to support early-intervention services for infants and toddlers with disabilities and their families, preschool children ages three through five, and special education for children and youth with disabilities. The IDEA also authorizes discretionary grants to state educational agencies, institutions of higher education, and other nonprofit organizations to support research, demonstrations projects, technical assistance and dissemination, technology, personnel development, and parent-training and -information centers. *(For example, the PTRC – the agency that has provided this manual – is funded through Part D of IDEA).*

Originally passed as the Education of the Handicapped Act in 1975, the law has been reauthorized and amended several times since. Congress reauthorized the IDEA in 2004, and the IDEA was amended in December of 2015 through Public Law 114-95, the Every Student Succeeds Act (ESSA). **To read and research the full text of the IDEA visit:**

**<http://uscode.house.gov/view.xhtml?path=/prelim@title20/chapter33&edition=prelim>**

When reviewing the IDEA, it is common to see references to 600 sections and 1400 United States Codes (U.S.C.). As an example, IDEA Part B State Eligibility requirements are found in section 612 of the IDEA, which can be cited as 20 U.S.C. 1412.

The IDEA statute includes four parts:

- Part A. General Provisions
- Part B. Assistance for All Children with Disabilities (3-21)
- Part C. Infants and Toddlers with Disabilities (birth – 2)
- Part D. National Activities to Improve Education of Children with Disabilities

### **Part A--General Provisions**

- Sec. 601. Short title; table of contents; findings; purposes.
- Sec. 602. Definitions.
- Sec. 603. Office of Special Education Programs.
- Sec. 604. Abrogation of State sovereign immunity.
- Sec. 605. Acquisition of equipment; construction or alteration of facilities.
- Sec. 606. Employment of individuals with disabilities.
- Sec. 607. Requirements for prescribing regulations.
- Sec. 608. State administration.
- Sec. 609. Paperwork reduction.
- Sec. 610. Freely associated states.

### **Part B--Assistance for Education of All Children With Disabilities**

- Sec. 611. Authorization; allotment; use of funds; authorization of appropriations.
- Sec. 612. State eligibility.
- Sec. 613. Local educational agency eligibility.
- Sec. 614. Evaluations, eligibility determinations, individualized education programs, and educational placements.
- Sec. 615. Procedural safeguards.
- Sec. 616. Monitoring, technical assistance, and enforcement.
- Sec. 617. Administration.



Sec. 618. Program information.

Sec. 619. Preschool grants.

### **Part C--Infants and Toddlers With Disabilities**

Sec. 631. Findings and policy.

Sec. 632. Definitions.

Sec. 633. General authority.

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### **Part D--National Activities To Improve Education of Children With Disabilities**

Sec. 650. Findings.

subpart 1--state personnel development grants

Sec. 651. Purpose; definition of personnel; program authority.

Sec. 652. Eligibility and collaborative process.

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subpart 2--personnel preparation, technical assistance, model demonstration projects, and dissemination of information

Sec. 661. Purpose; definition of eligible entity.

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subpart 3--supports to improve results for children with disabilities

Sec. 670. Purposes.

Sec. 671. Parent training and information centers.

Sec. 672. Community parent resource centers.

Sec. 673. Technical assistance for parent training and information centers.

Sec. 674. Technology development, demonstration, and utilization; and media services.

Sec. 675. Authorization of appropriations.

subpart 4--general provisions

Sec. 681. Comprehensive plan for subparts 2 and 3.

Sec. 682. Administrative provisions.

## Six Principals of the Individuals with Disabilities Education Act (IDEA)

The following six main principles of IDEA embody the underlying spirit and intent of IDEA and provide the framework around which special education services are designed and provided to students with disabilities:

**1. Free Appropriate Public Education** - IDEA guarantees that each child with a disability, eligible for special education, will be entitled to a free appropriate public education (FAPE). **Free** requires that the education of each child with a disability must be provided at public expense and at no cost to the child's parents. The only exception is that incidental fees normally charged to non-disabled students or their parents as part of the regular education program may also be charged to students with disabilities and their parents. **Appropriate** means that each child with a disability is entitled to an education that is "appropriate for his or her needs." "Appropriate education" is determined on an individual basis and may not be the same for each child with a disability. **Public** refers to the public school system. Children with disabilities, regardless of the nature or severity of their disabilities, have the same right to attend the public schools as their non-disabled peers. The public school system must educate students with disabilities, respond to their individual needs, and help them plan for their future. **Education** - IDEA is an education act that guarantees that eligible children with disabilities will receive a public education that includes special education and related services as directed by the child's Individualized Education Program (IEP), based on the child's individual needs.

**2. Appropriate & Non-discriminatory Evaluation** - IDEA requires that each child suspected of having a disability receive an appropriate evaluation:

- a. In all areas of suspected disability.
- b. By a team of evaluators knowledgeable and trained in the use of the tests and other evaluation materials they use.
- c. Employing a variety of sound evaluation materials and procedures selected and administered so as not to be racially or culturally discriminatory.
- d. Without subjecting a child to unnecessary tests and assessments.
- e. Including the gathering of relevant information from a variety of sources.
- f. Based on information that is useful instructionally in planning for the child's education.
- g. An appropriate evaluation provides information to be used to determine the child's eligibility for special education and related services and the educational needs of the child.

**3. Individualized Education Program (IEP)** - In order to ensure that students with disabilities receive an appropriate and individualized education, IDEA requires that, after drawing upon current evaluation information, the IEP team develop a written document, the IEP, designed to meet the unique educational needs of each student with disabilities. IDEA contains clear language about:

- a. The information which the IEP must contain.
- b. Who develops the IEP.
- c. The public agency's obligation to provide the special education and related services identified in the IEP.

**4. Least Restrictive Environment (LRE)** - IDEA guarantees that a child with a disability will receive a free appropriate public education in the least restrictive environment (LRE) appropriate. This principle reflects IDEA's strong preference for educating students with disabilities in general education classes with the access to general education curriculum. Placement in the general education classroom is the first placement option the IEP team must consider.

When considering placement in the general education classroom, the team is required to explore the range of modifications and supplementary aids and services that are needed to ensure that the student can receive a satisfactory education in the general education classroom. If the IEP team determines that the student can be appropriately educated in the general education classroom using modifications/supplementary aids and services, this is the LRE for that particular student.

However, the IEP team may determine that the student cannot be educated satisfactorily in the general classroom, even with the provision of modifications and supplementary aids and services. The team must then consider other placements outside of the general classroom in order to provide FAPE for the child. The range of such placements that each school system is required to have available is commonly referred to as the "continuum of alternative placements." Thus, like all other components of a student's special education, the LRE must be determined for each student based upon that child's individual needs.

**5. Parent and Student Participation in Decision Making** -This principle reinforces the belief that the education of children with disabilities is made more effective by strengthening the role of parents in the special education process. IDEA requires that parents (and students, as appropriate) participate in each step of the special education process. Students must be invited to participate in IEP meetings where transition services are to be discussed. Parent involvement includes:

- a. Equal partnership in the decision-making process.
- b. The right to receive notice.
- c. The right to give consent for certain activities such as evaluations, changes in placement; and release of information to others.
- d. The right to participate in all meetings concerning their child's special education.

**6. Procedural Safeguards** -Procedural safeguards are a set of activities whose purpose is to ensure that:

- a. The rights of children with disabilities and their parents are protected.
- b. All information needed to make decisions about the provision of a free appropriate public education to the student is provided to parents of children with disabilities and to the student when appropriate.
- c. Procedures (mediation and due process) are in place to resolve disagreements between parties.

## Quick Guide

### If Your Child Receives Special Education Services You Should:

- Understand the special education process and your procedural rights.
- Be involved at every step of IEP development from assessment to writing the IEP, and reviewing the IEP
- Ensure that all IEP members are present and that there is someone with expertise in your child's disability on the team.
- Not be afraid to ask questions and don't be rushed
- Understand that programming precedes placement
- Know the answers to the following important questions:
  - ✓ Have all my child's needs been identified & addressed
  - ✓ Are the goals measurable? (e.g., How will you measure that? Observation of what? Percentage of what?)
  - ✓ What services will be provided & are they based on research?
  - ✓ How will my child's progress be monitored? When? How often? How will this be reported to me?
  - ✓ Is my child placed in the least restrictive appropriate environment?
- Understand that an IEP is not a guarantee of success-but it is a guarantee that the school will make good faith efforts and will provide the services specified in the IEP
- Understand that the best programming comes from parents and school-based personal collaborating to develop, implement, and evaluate a program that confers meaningful educational benefit
- Make all requests in writing
- Understand problem-solving mechanisms for situations in which problems haven't been resolved (IEP facilitation, mediation, state complaints, due process hearings)

*Special thanks to Dr. Mitch Yell who allows us to share this important list he uses in the training he provides to the Staff & Mentors of the Family Resource Center's Parent Training & Resource Center. Dr. Yell is Fred and Francis Lester Palmetto Chair of Teacher Education and Professor in Special Education in the College of Education at the University of South Carolina (USC) in Columbia, South Carolina. Previously, Dr. Yell was a special education teacher in Minnesota for 16 years. During this time he taught in elementary, middle, and secondary classrooms for students with mild mental retardation, learning disabilities, emotional and behavioral disorders, and autism. His professional interests include special education law, evidence-based interventions for children and youth with disabilities, school wide positive behavior support, and progress monitoring.*

## **Parental Rights under IDEA**

The federal regulations for IDEA 2004 include a section (Subpart E) called Procedural Safeguards. These safeguards are designed to protect the rights of parents and their child with a disability and, at the same time, give families and school systems several mechanisms by which to resolve their disputes. The most notable procedural safeguards include those listed below.

### **The right of parents to receive a complete explanation of all the procedural safeguards available under IDEA and the procedures in the state for presenting complaints.**

At least one time a year, the parents of a child with a disability must receive from the school system a complete explanation of all the procedural safeguards available to them, as parents, under IDEA. This explanation is called the “Procedural Safeguards Notice.” Locally, this document is often called the “parent’s handbook”. The purpose of the procedural safeguards notice is simple: to inform parents completely about the procedural safeguards available under IDEA. These represent their rights as parents and the protections they have—and their child as well—under the law and its implementing regulations. IDEA states that schools must send the procedural safeguards notice to the parents only one time a school year, except that schools must also give a copy to parents:

- in their child’s initial referral for evaluation under IDEA, or when the parents ask for such an evaluation of their child;
- the first time in the school year that a State complaint is filed and when the first due process complaint is received in a school year;
- in accordance with the discipline procedures in §300.530(h); and
- when a parent requests a copy of the procedural safeguards notice.

Your local school district may also post a current copy of the procedural safeguards notice on its website, if it has a website.

### **Confidentiality and the right of parents to inspect and review the educational records of their child.**

IDEA and other federal laws protect the confidentiality of your child’s education records. These safeguards address the following three aspects:

- the use of personally identifiable information;
- who may have access to your child’s records; and
- the rights of parents to inspect their child’s education records and request that these be amended to correct information that is misleading or inaccurate, or that violates the child’s privacy or other rights.

### **The right of parents to participate in meetings related to the identification, evaluation, and placement of their child, and the provision of FAPE (a free appropriate public education) to their child.**

The right to participate in meetings related to their child is one of the most important and powerful of parent rights. Parents have the right to participate in meetings with respect to the:

- their child’s identification,
- their child’s evaluation,
- their child’s educational placement, and

- provision of FAPE (free appropriate public education) to their child.

This includes the right to participate in meetings to develop, review, or revise their child's individualized education program (IEP). Parents also have the right to be part of:

- any group that determines if the child is a "child with a disability" and, for that reason, is eligible to receive special education and related services under IDEA;
- the IEP team (which develops, reviews, and revises the IEP of their child); and
- any group that makes decisions related to the educational placement of their child.

### **The right of parents to obtain an independent educational evaluation (IEE) of their child.**

If you, as a parent of a child with a disability, do not agree with the results of the individualized evaluation of your child, as conducted by the school system, you have the right to obtain what is known as an Independent Educational Evaluation, or an IEE (§300.502). This means that you may ask that a professional, competent evaluator who is not employed by the school system conduct another evaluation of your child. If you request an IEE of your child, the school must provide you with information about where you can obtain such an evaluation.

### **The right of parents to receive "prior written notice" on matters relating to the identification, evaluation, or placement of their child, and the provision of FAPE to their child.**

Parental rights under IDEA include the right to receive prior written notice from the school each time that the school proposes to take (or refuses to take) certain actions with respect to your child. Specifically, the school must provide parents with prior written notice each time that it:

- proposes to initiate or change the identification, evaluation, or educational placement of your child;
- proposes to initiate or change the provision of FAPE to your child;
- refuses to initiate or change the identification, evaluation, or educational placement of your child;
- refuses to initiate or change the provision of FAPE to your child.

### **The right of parents to give or deny their consent before the school may take certain action with respect to their child.**

One of parents' most important rights is the right to give (or not give) their consent for certain actions of the school system with respect to their child with a disability. The right of parents to disagree with decisions made by the school system on those issues

### **The right of parents to disagree with decisions that the school system makes with respect to their child with a disability.**

This includes the school's decisions about:

- the identification of the child as a "child with a disability";
- the child's evaluation;
- the child's educational placement; and
- the special education and related services that the school provides to the child.

**The right of parents and schools to use IDEA's mechanisms for resolving disputes, including the right to appeal determinations.**

There are times when parents and schools simply do not agree on some issue affecting a child's education. They may try informal approaches to resolving the conflict, such as reviewing and revising the child's IEP or holding a facilitated IEP meeting. When these don't result in agreement on what represents an appropriate education for a child, the IDEA provides several approaches that parents and schools can use to help resolve the dispute.

*Informal Approaches to Resolving Disputes:* While IDEA offers parents and schools several ways to resolve their disputes, other less formal approaches are available as well, including holding an IEP meeting to review and revise the child's IEP or holding a facilitated IEP meeting.

*Filing a State Complaint:* Find out about the state complaint under IDEA—what is involved, who may file one and to whom, what information the complaint must contain, and what happens when it's received.

*Mediation:* Mediation is designed to bring about a peaceful settlement or compromise between parties to a dispute through the objective intervention of a neutral party. This section provides the details.

*The Due Process Complaint:* Filing a due process complaint is the first step in the process that may lead to a due process hearing, a formal proceeding held to resolve conflicts between parents and schools. Find out what's involved in filing a due process complaint and what must occur as a result.

*The Resolution Process:* The resolution process became part of IDEA in 2004! The school system must convene a resolution meeting within 15 days of receiving notice of the parent's due process complaint and prior to initiating the hearing. The purpose of the meeting is for parents to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the school system has the opportunity to resolve the dispute.

*Due Process Hearings:* When parents and schools have been unable or unwilling to resolve a dispute themselves, they may proceed to a due process hearing. There, an impartial, trained hearing officer hears the evidence and issues a hearing decision. Learn about important timelines, the rights each party has at the hearing, and the role the hearing officer plays.

*Appeals and Civil Action:* Can a hearing officer's decision be appealed? Yes.

You will find additional information on dispute resolution in this section of your manual.

These are not the only procedural safeguards under IDEA, but they are the most relevant to the majority of parents. For more information visit:

**<http://www.parentcenterhub.org/parental-rights/>**

## Rosa's Law

*Rosa's Law* (Pub. L. 111-256), signed in 2010, amended sections of the Individuals with Disabilities Education Act (IDEA), and the Rehabilitation Act of 1973, as amended (Rehabilitation Act), by removing the words "mental retardation" and replacing them with the words "intellectual disability" or "intellectual disabilities." Final regulations implemented these statutory changes in applicable Office of Special Education and Rehabilitative Services regulations.

### IDEA Statute:

*Rosa's Law* amended *IDEA* by substituting "intellectual disabilities" for "mental retardation" in sections

- 601(c)(12)(C) (20 U.S.C. 1400(c)(12)(C)) and
- 602(3)(A)(i) and (30)(C) (20 U.S.C. 1401(3)(A)(i) and (30)(C)).

### IDEA Regulations:

As stated above, the final regulations published today in the *Federal Register* implement *Rosa's Law*. Because *Rosa's Law* amended *IDEA*, we have made conforming changes to the *IDEA* regulations (34 CFR part 300). The term "mental retardation" has been changed to "intellectual disability" in the following Part B regulations:

- §§300.8(a)(1) and (c)(6), (c)(7), and (c)(10)(ii) (Child with a disability);
- §300.309(a)(3)(ii) (Determining the existence of a specific learning disability); and
- §300.311(a)(6) (Specific documentation for the eligibility determination).

### Rehabilitation Act:

*Rosa's Law* amended the *Rehabilitation Act* by

- substituting "intellectual disability" for "mental retardation" in section 7(21)(A)(iii) (29 U.S.C. 705(21)(A)(iii));
- substituting "intellectual disabilities" for "mental retardation" in section 204(b)(2)(C)(vi) (29 U.S.C. 764(b)(2)(C)(vi)); and
- substituting "President's Disability Employment Partnership Board and the President's Committee for People with Intellectual Disabilities" for "President's Committees on Employment of People With Disabilities and on Mental Retardation" in section 501(a) (29 U.S.C. 791(a)).

### Rehabilitation Act Regulations:

In the regulations implementing the *Rehabilitation Act*, we have substituted "intellectual disability" for "mental retardation" and "having an intellectual disability" for "mentally retarded" in the following definitions:

- "handicapped person" in §104.3(j)(2)(i)\*;
- "individual with a severe disability" in §385.4\*;
- "individual with a significant disability" in §361.5\* and §373.4\*;
- "individual with handicaps" in §105.3\*; and
- "physical or mental impairment" in §361.5\*.

\*Indicates section is within Title 34 CFR.

"intellectual disability" has been substituted for "mental retardation" in Appendix A to part 104, Title 34 CFR.



## Overview to the Part C Program Under IDEA

Congress established this program in 1986 in recognition of "an urgent and substantial need" to:

- enhance the development of infants and toddlers with disabilities;
- reduce educational costs by minimizing the need for special education through early intervention;
- minimize the likelihood of institutionalization, and maximize independent living; and,
- enhance the capacity of families to meet their child's needs.

The Program for Infants and Toddlers with Disabilities (Part C of IDEA) is a federal grant program that assists states in operating a comprehensive statewide program of early intervention services for infants and toddlers with disabilities, ages birth through age 2 years, and their families. In order for a state to participate in the program it must assure that early intervention will be available to every eligible child and its family.

Also, the governor must designate a lead agency to receive the grant and administer the program, and appoint an interagency Coordinating Council (ICC), including parents of young children with disabilities, to advise and assist the lead agency.

Currently, all states and eligible territories are participating in the Part C program. Annual funding to each state is based upon census figures of the number of children, birth through 2, in the general population.

*For comprehensive information on Part C of the Individuals with Disabilities Education Act please visit the National Early Childhood Technical Assistance Center at:  
<http://www.nectac.org/>*

### Minimum Components Under IDEA for a Statewide, Comprehensive System of Early Intervention Services to Infants and Toddlers With Special Needs

1. A rigorous definition of the term developmental delay
2. Appropriate early intervention services based on scientifically based research, to the extent practicable, are available to all infants and toddlers with disabilities and their families, including Indian and homeless infants and toddlers
3. Timely and comprehensive multidisciplinary evaluation of needs of children and family-directed identification of the needs of each family
4. Individualized family service plan and service coordination
5. Comprehensive child find and referral system
6. Public awareness program including the preparation and dissemination of information to be given to parents, and disseminating such information to parents
7. Central directory of services, resources, and research and demonstration projects
8. Comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources
9. Policies and procedures to ensure that personnel are appropriately and adequately prepared and trained

10. Single line of authority in a lead agency designated or established by the governor for carrying out:
  - General administration and supervision
  - Identification and coordination of all available resources
  - Assignment of financial responsibility to the appropriate agencies
  - Development of procedures to ensure that services are provided in a timely manner pending resolution of any disputes
  - Resolution of intra- and interagency disputes
  - Development of formal interagency agreements
11. Policy pertaining to contracting or otherwise arranging for services
12. Procedure for securing timely reimbursement of funds
13. Procedural safeguards
14. System for compiling data on the early intervention system
15. State interagency coordinating council
16. Policies and procedures to ensure that to the maximum extent appropriate, early intervention services are provided in natural environments except when early intervention cannot be achieved satisfactorily in a natural environment

*Note: Adapted from 20 U.S.C. §1435(8).*

## **South Carolina Part C**

BabyNet is South Carolina's interagency system of early intervention services for families who have infants and toddlers, birth to three years of age, with developmental delays or conditions associated with developmental delays. Children may be eligible for BabyNet if they are learning or developing slowly. Eligible children are served regardless of family income or nationality.

BabyNet matches the special needs of infants and toddlers who have developmental delays with the professional resources available within the community. Services are provided in everyday routines, activities and places relevant to the life of the family. Anyone (a parent, doctor, caregiver, teacher or friend) can make a referral by calling the referral phone number listed below. The earlier you get help, the better. Early intervention makes a difference!

BabyNet services are provided in accordance with Part C of the Individuals with Disabilities Education Act (IDEA). The South Carolina Department of Health and Human Services (DHHS) serves as the Lead Agency for BabyNet.

### **What Is BabyNet**

Young children learn and develop differently. One baby may walk earlier than another, while another baby might talk first. Often, these differences will even out. But, some children will need extra help. Look for signs that an infant or toddler might need extra help. If you suspect a child may have a problem, the earlier you get help, the better. BabyNet will evaluate the child at no cost to determine if they may be eligible for services.

If a child is eligible for the BabyNet program, the next step is to prepare for the initial Individualized Family Service Plan (IFSP). The IFSP is a written plan for Early Intervention Services the child and family will receive. The family plays a key role in working with early

intervention professionals to create this plan. The initial IFSP must be completed within 45 calendar days after the referral to BabyNet.

BabyNet serves the child and family in what are called "natural environments". These environments are part of the family's typical daily routines, activities, and places (i.e., family homes, childcare centers, community play groups or libraries, etc.). Everyday routines, activities, and places are unique to each child and family and are identified by the family as they talk about their typical daily activities, such as visiting grandpa, walking to the store, getting the mail, feeding the dog, and doing the laundry. These typical activities are the child's opportunities for learning and adults' opportunities for enhancing the child's development.

### **What is Early Intervention?**

Early Intervention Services help infants and toddlers who have delays in growing, developing and learning.

Early Intervention Services may include therapies, assistive aids and devices, speech/hearing/vision services, service coordination and family training.

### **What are Early Intervention Services?**

- Hearing Services..... example: fitting a hearing device.
- Vision Services.....example: prescribing glasses.
- Speech Services..... example: finding out why a child does not talk.
- Nursing Services..... example: tube feeding or bandage changing.
- Health Services.....example: giving prescribed shots at home.
- Nutrition Services..... example: special diets.
- Family Training .....example: teaching how to hold a child.
- Physical Therapy.....example: working to improve a child's movement.
- Evaluations.....example: checking for a hearing loss.
- Occupational Therapy..... example: teaching a child to use a spoon.
- Support Groups..... example: parents getting together.
- Social Work Services .....example: family counseling.
- Transportation .....example: arranging taxi for doctor's appointment.
- Special Instruction..... example: teaching sign language to a mother.
- Psychological Services..... example: information about child behavior.
- Service Coordination (case management) ... example: making a plan (IFSP) to pull services together for the family.

### **Why is Early Intervention Important?**

Research, as well as our own experiences, tells us that the first three years of a child's life are the most critical time of learning. When problems or needs are identified early, they can be lessened or corrected.

### **Who is Eligible?**

Infants and toddlers from birth to three years may be eligible for BabyNet services if they are developing more slowly in any of the following ways:

- Learning to walk

- Height & weight
- Learning how to think
- Learning to listen & talk
- Getting along with others
- Doing things on their own

All children who meet the eligibility criteria will be served regardless of family income.

### **Who is Involved?**

BabyNet consists of parents and professionals working together. There are many agencies involved in the BabyNet program. These include:

- Head Start
- Department of Mental Health
- Department of Social Services
- Commission for the Blind
- School for Deaf and Blind
- Department of Disabilities and Special Needs
- Department of Health and Environmental Control
- Department of Health and Human Services

To receive additional information Contact: 1-877-621-0865 or  
**[www.scfirststeps.org/BabyNet.html](http://www.scfirststeps.org/BabyNet.html)**

### **Early Intervention Services**

The following services are available to eligible South Carolina families who have children under age three with delays in development. Depending on each child's needs, BabyNet programs directly provide or offer access to 17 core early intervention services. The specific services a child receives is based on a custom-tailored plan for that child. The family plays a key role in working with staff to create this plan.

- Assistive Technology - services and equipment, including adaptive assistive devices, designed or altered for special use by children with developmental delays.
- Audiology - testing your child's hearing, making referrals for further auditory services, as needed.
- Early Identification Screening and Assessment - identifying your child's strengths, developmental needs, and your family's concerns.
- Family Education - teaching your family about your child's delay and ways to help your child.
- Health Services - helping your child benefit from other services including: clean intermittent catheterization, tracheostomy care, tube feeding, changing dressings, colostomy collection bags, and consultation with service providers concerning special health care needs.
- Medical Services - diagnostic or evaluation services by a licensed physician who will assess your child's eligibility for BabyNet services. BabyNet programs do not pay for other medical services.
- Nursing - health assessments, nursing care to prevent health problems or improve functioning, administration of medications, and regimens prescribed by a licensed

physician.

- Nutrition - services provided by a dietitian/nutritionist who evaluates your child's nutrition and needs.
- Occupational Therapy - helping children learn skills needed for play and daily living as well as designing and providing adaptive and assistive devices.
- Parent to Parent support – to promote access to evidence-based parent to parent support for individuals and families
- Physical Therapy - identifying and preventing or reducing movement disabilities, includes designing and providing adaptive and assistive devices.
- Psychological Services - counseling, analysis of your child's functioning, and interpretation of behavior.
- Social Work Services - assessing your child in the family setting, counseling, and social skill-building activities for your child.
- Special Instruction - helping your child develop learning skills.
- Speech-language Therapy - helping your child understand language or learn to communicate, includes designing and providing assistive devices.
- Transportation - arranging for someone to drive your child and family to and from early intervention services. This could include using a taxi or bus.
- Vision Services - evaluation and assessment of vision, includes referral for medical or other professional services to train or restore visual functioning.

## **What is an Individual Family Service Plan (IFSP)?**

The IFSP is a written document that, among other things, outlines the early intervention services that your child and family will receive.

One guiding principal of the IFSP is that the family is a child's greatest resource, that a young child's needs are closely tied to the needs of his or her family. The best way to support children and meet their needs is to support and build upon the individual strengths of their family. So, the IFSP is a whole family plan with the parents as major contributors in its development. Involvement of other team members will depend on what the child needs. These other team members could come from several agencies and may include medical people, therapists, child development specialists, social workers, and others.

Each state has specific guidelines for the IFSP. Your service coordinator can explain what the IFSP guidelines are in your state.

### **What is included in the IFSP?**

Your child's IFSP must include the following:

- Your child's present levels of functioning and need in the areas of his or her physical, cognitive, communication, social/emotional, and adaptive development
- Family information (with your agreement), including the resources, priorities, and your concerns, as parents, and other family members closely involved with the child
- The major results or outcomes expected to be achieved for your child and family
- The specific early intervention services your child will be receiving
- Where in the natural environment (e.g., home, community) the services will be provided (if the services will not be provided in the natural environment, the IFSP must include a statement justifying why not)
- When and where your son or daughter will receive services
- The number of days or sessions he or she will receive each service and how long each session will last
- Who will pay for the services
- The name of the service coordinator overseeing the implementation of the IFSP
- The steps to be taken to support your child's transition out of early intervention and into another program when the time comes.

The IFSP may also identify services your family may be interested in, such as financial information or information about raising a child with a disability.

The IFSP must be fully explained to you, the parents, and your suggestions must be considered. You must give written consent before services can start. If you do not give your consent in writing, your child will not receive services.

### **Who develops the IFSP?**

The meeting to develop the child's first IFSP (and each annual meeting thereafter to review the IFSP) must include the following participants:

- the parent or parents of the child;
- other family members, as requested by the parent, if feasible to do so;
- an advocate or person outside of the family, if the parent requests that the person participate;

- the service coordinator designated by the system to be responsible for implementing the IFSP;
- a person or persons directly involved in conducting the evaluations and assessments of the child and family; and
- persons who will be providing early intervention services under this part to the child or family (as appropriate).

### **What happens next?**

With your written consent, the IFSP is then implemented, meaning that the services described in the IFSP are provided to your child in the manner described in the IFSP. In other words, all that information you included in the IFSP now serves as a roadmap for the early intervention system as it provides services to your child and family.

About parent consent | You, as parents, have the right to decline any early intervention service without jeopardizing your child's eligibility for other early intervention services. Parents may also revoke their consent for one or more services at any time.

Review and update of the IFSP | The IFSP is reviewed every six months and is updated at least once a year. You, as parents, are also part of that review and revision process. Together, you and the team will look at your child's progress and decide how (or if) the IFSP needs to be changed to reflect your child's growth toward the goals you've set, the family's current situation, and so on.

### **More Information on the IFSP**

The Individualized Family Service Plan (IFSP) is the cornerstone of family involvement and early intervention services provided to infants and toddlers with disabilities. Find out the basics and more about the IFSP below.

#### ***IFSPweb.***

This online self-paced tutorial is designed to help families and professionals develop better IFSPs for young children with disabilities. It is specifically for Nebraska families and professionals, but we all can learn here, too.

<http://ifspweb.org/>

#### **ECTA Center.**

The ECTA Center is the Early Childhood Technical Assistance Center. ECTA offers lots of information about early intervention, including info on the IFSP. Check it out!

<http://ectacenter.org/topics/ifsp/ifspprocess.asp>

#### ***IFSPs in your state.***

It's amazing how many states have online modules and explanations for parents and professionals with respect to the state's approach to IFSPs and service delivery. Just to name a few...to give you an idea of what a valuable resource you might find if you visit the website of the agency in your state responsible for early intervention.

# Transition from Early Intervention Services (IFSP) to Preschool Services (IEP)

*Transition from Early Intervention Services (IFSP) to Preschool Services (IEP)*

*By PEAK Parent Center / March 15, 2012*

From the age of birth up until 3 years, special education services are provided by an Individualized Family Service Plan (IFSP), which is governed under Part C of the Individuals with Disabilities Education Act (IDEA). Once your child turns 3, special education services are provided by an Individualized Education Plan (IEP) and governed under Part B of IDEA. For more information on both Part C and Part B of IDEA, please visit the US Department of Education's website (<http://idea.ed.gov/>)

## What are the differences between an IFSP and an IEP?

IFSP	IEP
Birth through age 3	Age 3 – 21
Is inclusive of the family's needs	Focuses on the child's needs
Services provided in natural environments	Services provided at school
Families are assigned a service coordinator	No service coordinator
Generally reviewed every 6 months	Required to be reviewed annually
IFSP Team makes decisions	IEP Team makes decisions
Governed under Part C of IDEA	Governed under Part B of IDEA

Despite these differences, there is an important similarity. IDEA states that parents are equal members of the IFSP team and the IEP team. This is because parents know their child best and will always be a part of their child's life, unlike professionals who generally interact with a child for a year or two. IDEA recognizes that children are most successful when parents and professionals form partnerships to identify the strengths, needs, and developmental and educational goals for children with disabilities.

## When does the transition process begin?

As early as age 2, your service coordinator and IFSP team will start to discuss the transition process with you. With your input, transition steps will be written on the transition plan page of your child's IFSP. With your consent, the school district Child Find staff will be notified that your child is approaching age 3, and Child Find will evaluate your child to see if he/she qualifies for pre-school special education services. If your child does not qualify, your service coordinator will help connect you to other services in your community. If your child does qualify, you will develop an IEP that will meet your child's needs.

## The components of the transition plan:

1. The family's involvement in the transition process.
2. How the child will be prepared for the transition.
3. Evaluation/assessment information to be shared.
4. Discussion and documentation of options that are discussed with the family.
5. Part B eligibility status.

## The transition meeting:

A transition meeting is a required meeting that must take place no later than 90 days before your child's 3rd birthday. If your child is eligible for special education services, someone from the school district will be invited to attend the meeting along with your service



coordinator, your child's current service providers, and a representative of the program into which your child will transition. Parents are welcome to invite family members, friends, or anyone else they would like to attend the meeting, and the meeting cannot take place without a parent or legal guardian present.

**Examples of Part B transition programs:**

- Head Start
- Private or Public Pre-School
- Other School-Age Programs

**Frequently Asked Questions:**

**Q. - What if someone cannot attend the transition meeting?** If a required person cannot attend the meeting, that person may participate via phone, have a representative attend the meeting for them, or provide a written report to be reviewed at the meeting. You also have the right to request that the meeting be rescheduled to a time when everyone can participate.

**Q. - Will my child continue to receive the same services?** The way your child's services will be delivered will be different. They will be provided by different people and in different settings. However, the services should still be designed to meet your child's unique and individual needs, and there should not be an interruption of services.

**Q. - What should I focus on at the meeting?** Focus on your child (not your child's disability) and where you think your child will best learn. A guiding question is, "Where would my child be if he/she did not have a disability?" Have high expectations for your child.

**Q. - Can I refuse Preschool services paid for by Part B?** Yes. Your IFSP team will discuss with you what they see as the potential impact on your child's development of refusing Part B services.

# **SC Education of Students with Disabilities**

Title of Regulation: Regulation No.: R43-243 - Effective Date: 5/27/16

Constitutional and Statutory Provisions: Section(s): 59-5-60. General powers of [State] Board 59-21-510, et seq. Education of Physically and Mentally Handicapped Children. 59-21-580. Rules, regulations and policies. of State Board of Education 59-33-10, et seq. Special Education for the Handicapped. Code of Laws of South Carolina, 1976.

20 U.S.C. 1400 et seq. Individuals with Disabilities Education Improvement Act of 2004  
U.S. Code of Laws

State Board Regulation: 43-243. Special Education, Education of Students with Disabilities.

## **I. Purpose**

The purpose of this regulation is to promulgate the state's requirements of educational programs for students with disabilities, as outlined by the Individuals with Disabilities Education Act, 2004 (IDEA). The South Carolina Department of Education (SCDE), as the state educational agency (SEA); all local educational agencies (LEAs); all state-operated programs (SOPs); and all other public programs providing special education and related services as outlined in the IDEA follow and comply with all statutory and regulatory requirements of the IDEA as outlined in 20 U.S.C. Section 1400 et seq. and the Code of Federal Regulations (C.F.R.), Chapter 34, Part 300.

In addition to the statutory and regulatory requirements to which the state adheres, this regulation further delineates state-specific requirements of the IDEA.

## **II. Policies and Procedures**

Pursuant to the statutory requirements in Part B of the IDEA and regulatory requirements found in 34 C.F.R. Part 300, the state has in effect policies and procedures governing public educational programs for children with disabilities. These state policies and procedures are reviewed and approved by the SCDE. These state policies and procedures are broadly disseminated and are found in electronic format on the SCDE's website.

## **III. Clarified Definitions**

A. Child with a disability. For the purposes of the definitions of a child with a disability, SBE R.43243.1 provides the definitions of a child with a disability as outlined at 34 CFR Part 300 Section 8.

B. Children with disabilities enrolled by their parents in private schools. Parentally placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools, homeschool programs, or facilities that meet the definition of elementary schools in 34 C.F.R. Section 300.13 or secondary schools in 34 C.F.R. Section 300.36; or in homeschool programs as defined by S.C. Code Ann. Sections 59-65-40, 45, and 47; other than children with disabilities covered under 34 C.F.R. Sections 300.145 through 300.147.

C. Free appropriate public education. A free appropriate public education must be available to all children residing in the state between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for

in 34 C.F.R. Section 300.530(d). In South Carolina, this means that if any student turns age 21 after September 1 of the school year, the LEA must permit the student to enroll and complete the school year, and all applicable statutes and regulations apply. If a student turns age 21 on or prior to September 1, the LEA is not required to permit the student to enroll.

D. Intellectual disabilities. For the purposes of this regulation, all references in 34 C.F.R. Part 300 to mental disabilities or mental retardation are forthwith referred to as intellectual disabilities, as required by Pub. L. No. 111-256.

E. Residential treatment facilities. For the purposes of this regulation, residential placements defined at 34 C.F.R. Section 300.104 include residential treatment facilities authorized by the South Carolina Department of Health and Environmental Control and are governed by state statutes, regulations, and annually through state provisos in the State Appropriations Act. Requirements set forth in state statutes, regulations, and provisos delineate the responsibilities of the state and LEAs with regards to those children who are placed, or referred to such placements, by public agencies.

F. Transfer of rights at age of majority.

1. General Requirements. Beginning not later than one year before the child reaches the age of majority under state law, the child's Individualized Education Program (IEP) must include a statement that the child has been informed of his or her rights under Part B of the IDEA, if any, that will transfer to the child on reaching the age of majority under 34 C.F.R. Section 300.520. For the purposes of this definition, the age of majority in South Carolina is 18 years.

2. Exceptions to transfer of rights at age of majority.

a) Parental rights transfer to a child with a disability who reaches the age of majority under state law that applies to all children, except for a child with a disability who has been determined to be incompetent under the laws of South Carolina (S.C. Code Ann. Sections 62-5-501 et seq).

b) The state has established procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the child's eligibility under the IDEA when the child has not been determined to be incompetent under state law (S.C. Code Ann. Sections 62-5-501 et seq).

G. Transition services. Beginning not later than the first IEP to be in effect when the child turns 13 years, or younger if deemed appropriate by the IEP team, and updated annually thereafter, the IEP must include—

1. appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

2. transition services (including courses of study) needed to assist the child in reaching those goals that align with the child's career goals and course of study in the child's Individualized Graduation Plan (IGP) as outlined in S.C. Code Ann. Section 59-59-140.

#### **IV. Monitoring, Enforcement, and Program Information**

A. General Requirements. As outlined throughout the IDEA, the state is responsible for ensuring—

1. that the requirements of the IDEA and SBE R.43-243 are carried out; and

2. that each educational program for children with disabilities administered within the state, including each program administered by any other state or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—

a) is under the general supervision of the persons responsible for educational programs for children with disabilities in the state; and

b) meets the educational standards of the state.

B. State Monitoring. As outlined in 34 C.F.R. Sections 300.600 et seq., the state monitors the implementation of educational programs for students with disabilities, as provided by the IDEA.

C. Local Determinations. As outlined in 34 C.F.R. Sections 300.600, 300.603, 300.604, and 300.608, the state makes determinations annually about the performance of each LEA and SOP using the categories in 34 C.F.R. Section 300.603(b)(1). The state makes these determinations based on the totality of information the state has regarding the compliance and performance of each LEA and SOP with regards to its educational programs for students with disabilities covered under the IDEA.

D. Enforcement. The state retains all rights for enforcement of this regulation and of the state and federal statutory and regulatory requirements as outlined in the IDEA, in the Education Department General Administrative Regulations (EDGAR), and in 2 C.F.R. Section 200.300.

E. Fiscal Sanctions. If the state, represented by the SEA, finds that an LEA, special school, or other agency, herein referred to as an applicant, with the responsibility under state law for the provision of a free appropriate public education (FAPE) to students with disabilities is failing to comply with any requirement described under Part B of the IDEA, the applicable federal or state regulations, or state policies and procedures related to the requirements of the IDEA, the state may impose sanctions, including the reduction, withholding, or recovery of payments made relative to the IDEA grant administered by the state. In accordance with Part B of the IDEA and EDGAR 34 C.F.R. Parts 75 and 76, and 2 C.F.R. Section 200.300, the state shall provide reasonable notice and an opportunity for a hearing prior to taking any final action regarding the reduction, withholding, or recovery of payments to the applicant.

1. Hearing Issues. The state shall provide the applicant with notification of the right to a hearing and the procedures for a hearing if the state determines

a) an applicant is not eligible for assistance under Part B of the IDEA;

b) an applicant, for three or more consecutive years, needs intervention or substantial intervention in implementing the requirements of Part B of the IDEA;

c) an applicant is unable or unwilling to consolidate with other applicants or agencies in accordance with the IDEA;

d) an applicant failed to submit an accurate and unduplicated count of the number of students with disabilities receiving special education and related services, or in the case of children enrolled by their parents in private or homeschool programs, failed to accurately report the count of students eligible to receive special education and related services;

e) an applicant is not meeting the requirements of Part B of the IDEA and the provision of an applicable FAPE to students with disabilities and the applicant has not, or the state has reason to believe the applicant cannot, correct the problem within one year; or

f) an applicant is not meeting any of the other federal or state requirements relative to Part B of the IDEA that allow the reduction, withholding, or recovery of funds.

2. Hearing Appeals Panel. When an applicant requests a hearing relative to these matters, in writing, the State Superintendent of Education (Superintendent) shall select a three-member hearing panel to conduct the proceeding. The hearing panel shall consist of at least two of the SEA's deputy superintendents, or their designees, and one additional individual designated by the superintendent.

### 3. Hearing Procedures.

a) An applicant shall request a hearing by notifying the Superintendent by certified mail of its decision to appeal a decision as set forth in these procedures.

b) The applicant shall include the nature of the request for the hearing, including the reasons for any disagreement with the determinations by the state, and the facts on which the request for the hearing is based.

c) The applicant shall request a hearing within thirty calendar days of the date of the state's notification of the intent to impose the specified sanction. For purposes of these procedures, the date of the notification by the state is the date the notice is received by the applicant.

d) The hearing shall be scheduled before a hearing panel within thirty calendar days from the receipt of the request.

e) The applicant shall receive written notice at least ten days prior to the hearing date. The notice shall include the date, location, and time of the hearing.

f) The applicant and the state may present evidence in writing and through witnesses and may be represented by counsel at the hearing. The parties shall exchange the names of proposed witnesses no later than five days prior to the hearing. The parties shall have six copies available of written materials that will be used as evidence during the hearing.

g) The hearing panel may determine the length and order of the presentations by the parties and determine the course of the proceedings. The hearing panel shall take all steps necessary to conduct a fair and impartial proceeding, avoid delays, maintain order, and comply with the additional procedures set forth in the SEA Policies and Procedures for Programs for Students with Disabilities.

h) The hearing panel shall make a formal recommendation to the Superintendent within five calendar days following the hearing.

i) If the applicant or its authorized representative fails to appear at the hearing, the appeal shall be considered closed and the hearing process terminated.

j) If the state determines that its proposed action is contrary to federal or state statutes, regulations, or applicable policies and procedures related to the requirements of the IDEA, the state shall review its proposal and determine what, if any, alternative action is warranted.

k) The Superintendent shall issue a written decision within ten days of the date of the conclusion of the hearing. The written decision shall include the findings of fact and reasons for the decision.

l) The Superintendent's decision is final unless the applicant disagrees with the decision and files an appeal of the decision with a court of competent jurisdiction. If the state does not receive notice of an intent to appeal the decision within thirty calendar days of the issuance of the written decision, the state shall implement the proposed action in whole or in part until the state is satisfied that the applicant is complying with the applicable federal and state requirements.

m) The SEA shall keep a record of the proceedings. Any party, at its expense, may obtain a copy of the record of the proceedings.

4. Decision. The Superintendent shall issue a written decision within ten days of the date of the conclusion of the hearing by transmitting the written decision to the applicant or other representative authorized by the applicant.

5. Public attention. Any applicant that receives notice that the state is proposing to take or is taking an enforcement action pursuant to this section must, by means of public notice, take such actions as may be necessary to notify the public of the pendency of the action, including, at a minimum, posting the notice on the applicant's web site and distributing notice of the proposed act to the media and through public agencies.

F. State Advisory Panel. The state has established and maintains an advisory panel for the purposes of providing policy guidance with respect to special education and related services for children with disabilities in the state. In addition to the state advisory panel requirements at 34 C.F.R. Section 300.167, the state has expanded the State Advisory Panel to meet the requirements of S.C. Code Ann. Section 5936-30.

G. The South Carolina State Board of Education authorizes the South Carolina Department of Education to develop and amend special education policies and procedures as necessary to meet U.S. Department of Education approval.

## Disability Categories

The Individuals with Disabilities Education Act (IDEA) lists 13 different disability categories of eligibility for an Individual Education Program (IEP). A child with a disability means a child evaluated in accordance with §§300.304 through 300.311 as having meeting eligibility under one of the disabilities categories and who, by reason thereof, needs special education and related services. It is noteworthy that many children have disabilities that do not bring with them the need for extra educational assistance or individualized educational programming.

**AU – Autism Spectrum Disorder:** There is evidence that the child has any of the Pervasive Developmental Disorders, such as Autistic Disorder, Asperger's Disorder, Pervasive Developmental Disorder – Not Otherwise Specified (PDD-NOS)

**DB - Deaf-Blindness:** There is evidence that the child meets the criteria for both the Deaf or Hard of Hearing category and the Visual Impairment category.

**ED - Emotional Disturbance/Disability:** There is evidence that the child exhibits one or more of the following characteristics over a long period of time and to a marked degree: a) an inability to learn that cannot be explained by intellectual, sensory, or health factors; b) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; c) inappropriate types of behavior or feelings in normal circumstances; d) a general pervasive mood of unhappiness or depression; or e) a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not apply to children who are socially maladjusted unless it is determined that they have a serious emotional disturbance.

**HI - Hearing Impairment:** The student has a hearing loss that is 20 dB or greater at any one frequency, either unilaterally or bilaterally, or the student has a fluctuating hearing loss, either unilaterally or bilaterally.

**ID - Intellectual Disability** (mild, moderate, severe): There is evidence that the child has: a) Significant limitations in intellectual functioning must be evidenced by scores on both verbal and nonverbal scales that are at least two standard deviations below the mean (+/- the standard error of measurement) on an individually administered intelligence test. b) Significant deficits in adaptive behavior must be evidenced by a score at least two standard deviations below the mean (+/- the standard error of measurement) in at least two adaptive skill domains. c) Significant deficits in educational performance (pre-academic, academic and/or functional academic skills) must be evidenced by significant delays in functioning when compared to the child's same aged peers.

**MD - Multiple disabilities:** 1) There is evidence that the child meets all eligibility requirements for two or more disabilities. The term does not include developmental delay, deaf-blindness, or speech/language impairment. 2) The adverse effects of the multiple disabilities on the child's educational performance cannot be accommodated in special education programs solely for one of the disabilities and require specialized instruction and/or related services.

**OI - Orthopedic Impairment:** There is evidence that the child has a severe orthopedic impairment.

**OHI - Other Health Impairment:** 1) There is evidence that the child has a chronic or acute health problem. 2) There is evidence that the diagnosed chronic or acute health problem results in limited alertness to the educational environment due to limited strength, limited vitality, limited or heightened alertness to the surrounding environment.

**SLD - Specific Learning Disability:** 1) There is evidence that the child does not achieve adequately for his/her age or to meet state approved grade level standards in one or more of the following areas: Basic reading skills, Reading fluency, Reading comprehension, Mathematics calculation, Mathematics problem-solving, Written expression, Oral expression, or Listening comprehension; and either a) does not make sufficient progress to meet age or state-approved grade-level standards when using a process based on the child's response to scientific, research-based intervention OR b) exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments. 2) The child's underachievement is not due to: Visual, hearing, or motor disability; intellectual disability; Emotional disability; Cultural factors; Environmental or economic disadvantage; Limited English proficiency; or Lack of appropriate instruction in reading or math.

**SLI - Speech or Language Impairment:** There is evidence that the child has one or more of the following: a) Fluency - interruption in the flow of speech characterized by an atypical rate, or rhythm in sounds, syllables, words, and phrases that significantly reduces the child's ability to participate within the learning environment with or without his or her awareness of the dysfluencies or stuttering; b) Articulation - atypical production of phonemes characterized by substitutions, omissions, additions or distortions that impairs intelligibility in conversational speech and adversely affects academic achievement and/or functional performance in the educational setting; c) Language – impaired comprehension and/or use of spoken language which adversely affects written and/or other symbol systems and the child's ability to participate in the classroom environment; d) Voice –interruption in one or more processes of pitch, quality, intensity, resonance, or a disruption in vocal cord function that significantly reduces the child's ability to communicate effectively.

**TBI - Traumatic Brain Injury:** There is evidence that the child had a traumatic brain injury.

**VI - Visual Impairment** (including blindness): One of the following: The visual acuity with correction is 20/70 or worse in the better eye; or the visual acuity is better than 20/70 with correction in the better eye, and there is documentation of either of the following conditions: a diagnosed progressive loss of vision or a visual field of 40 degrees or less; the visual acuity is unable to be determined by a licensed optometrist or ophthalmologist, and the existence of functional vision loss is supported by functional vision assessment findings; or There is evidence of cortical visual impairment, and the student's visual impairment adversely affects his or her educational and functional performance.

IDEA allows states (including South Carolina) and local educational agencies to use the term: **DD - Developmental Delay** for children ages 3 through 9 experiencing developmental delays in one or more of the following areas: physical, cognitive, communication, social/emotional, or adaptive; and needs special education services. 1) There is evidence that child is exhibiting a significant developmental delay in one or more of the following areas: a) physical development; b) cognitive development; c) communication development; d)



social or emotional development; e) adaptive behavior development. 2) For children ages 6-8, there is evidence that the delay is not due to: a) Lack of appropriate instruction in reading, including the essential components of reading instruction (defined in section 1208(3) of the ESEA (NCLB); b) Lack of appropriate instruction in math; c) Limited English proficiency; or d) The presence of any other disability for children ages six through seven.

The Standards for Evaluation and Eligibility Determination (SEED) document is used as a companion to South Carolina State Board of Education regulation 43-243.1 (Criteria for Entry into Programs of Special Education for Students with Disabilities). The SEED contains the standards designed to assist evaluation teams in implementing the regulation. It is a living document and will be updated on a regular basis as South Carolina receives further guidance from the United States Department of Education, Office of Special Education Programs, results of court decisions, and changes in state statute.

A copy of the Standards for Evaluation and Eligibility Determination (2011) is available on the Family Resource Center website:

**<http://frcdsn.org/wp-content/uploads/2014/06/Standards-for-Evaluation-and-Eligibility-Determination-SEED.pdf>**

#### **“Adversely Effects Educational Performance”**

You will notice that the phrase “adversely affects educational performance” appears in most of the disability definitions. This does not mean, however, that a child must be failing in school to receive special education and related services. According to IDEA, states must make a free appropriate public education (FAPE) available to “any individual child with a disability who needs special education and related services, even if the child has not failed or been retained in a course or grade, and is advancing from grade to grade.”  
[§300.101(c)(1)]

Once a child has been determined to be a child with a disability and in need of specialized instruction, a meeting will be held to develop an Individual Education Program (IEP) that will identify the support and services the child needs in order to receive the Free and Appropriate Public Education (FAPE) mandated by Federal Law.

*PLEASE NOTE: If a child has a disability but is not eligible under IDEA, he or she may be eligible for the protections afforded by other laws—such as Section 504 of the Rehabilitation Act of 1973, as amended. It’s not uncommon for a child to have a 504 plan at school to address disability-related educational needs. Such a child will receive needed assistance but not under IDEA.*

# The Individual Education Program (IEP)

*A legacy resource from NICHCY*

An IEP is a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in keeping with certain requirements of law and regulations. These requirements are discussed in this section.

## The Big Picture

Before diving into the specifics of what must be included in an IEP, it's important to consider the "Big Picture" of the IEP—its purposes, how it serves as a blueprint for the child's special education and related services under IDEA, and the scope of activities and settings it covers.

**The IEP has two general purposes:** (1) to establish measurable annual goals for the child; and (2) to state the special education and related services and supplementary aids and services that the public agency will provide to, or on behalf of, the child. When constructing an appropriate educational program for a child with a disability, the IEP team broadly considers the child's involvement and participation in three main areas of school life:

- the general education curriculum,
- extracurricular activities, and
- nonacademic activities.

By general education curriculum, we mean the subject matter provided to children without disabilities and the associated skills they are expected to develop and apply. Examples include math, science, history, and language arts.

When we talk about extracurricular activities and nonacademic activities, we're referring to school activities that fall outside the realm of the general curriculum. These are usually voluntary and tend to be more social than academic. They typically involve others of the same age and may be organized and guided by teachers or other school personnel. Examples: yearbook, school newspaper, school sports, school clubs, lunch, recess, band, pep rallies, assemblies, field trips, after-school programs, recreational clubs.

The IEP can be understood as the blueprint, or plan, for the special education experience of a child with a disability across these school environments.

**Remember: After a child is found eligible for special education and related services, a meeting must be held within 30 days to develop to the IEP.**

## Who Develops the IEP?

The IEP is developed by a team of school personnel and the child's parents. This team meets *at least* once a year and more often, if necessary. Team members work together to craft an education that will address the child's individual needs and enable the child to participate in general education and school activities, learning alongside his or her nondisabled peers to the maximum extent appropriate. The IEP team then puts its crafted plan down in writing—resulting in the IEP that will guide the delivery of the child's special education and related services.

### The IEP Team must include:

- The Parent

- Not less than 1 Special Education Teacher
- Not less than 1 Regular Education Teacher
- A Person who can interpret the instructional implications of evaluation results
- A Representative of the Local Educational Agency (LEA)
- At the discretion of the Parent or LEA, other individuals who have special knowledge or expertise
- When appropriate the student with a disability

Remember, the IEP team can have many members. You may ask anyone to attend your meeting. The school has the same rights but must provide information on who has been invited to the meeting. The above list is just the mandatory players. Under IDEA '04, some members of the IEP team noted above may be excused by mutual agreement and when certain conditions are met. *None of the aforementioned IEP team members can be excused without permission from the parent.*

The LEA represents the school system and can't be excluded from the IEP meeting. This individual is usually the school principal or assistant principal. The LEA has received special training to perform the duties associated with the position. It is important that the LEA has the authority to commit resources and ensure that whatever services are set out in the IEP will actually be provided.

Often, it will be the school psychologist who can best interpret evaluation results. Therapists or related service providers working with your child may be excused with permission from you and the LEA. However, if the meeting includes modifications in related service, a written report must be provided to the Team.

### **What an IEP Must Contain**

When the members of a child's IEP team sit down together and consider how the child will be involved in and participate in school life, they must be sure that the resulting IEP contains the specific information required by IDEA, our nation's special education law. Here's a brief list of what IDEA requires:

- A statement of the child's present levels of academic achievement and functional performance (PLAAFP) including how the child's disability affects his or her involvement and progress in the general education curriculum;
- A statement of measurable annual goals, including academic and functional goals;
- A description of how the child's progress toward meeting the annual goals will be measured, and when periodic progress reports will be provided;
- A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child;
- A statement of the program modifications or supports for school personnel that will be provided to enable the child to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children;
- An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in extracurricular and nonacademic activities;

- A statement of any individual accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments
- The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications.

Note: If the IEP team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, the IEP must include a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child. If the child is given an alternate assessment then there must be benchmarks (steps of progress) included in annual goals.

### **Extra IEP Content for Youth with Disabilities**

For students approaching the end of their secondary school education, the IEP must also include statements about what are called *transition services*, which are designed to help youth with disabilities prepare for life after high school. IDEA requires that, beginning not later than the first IEP to be in effect when the child turns 13 (in South Carolina), the IEP must include:

- measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
- the transition services (including courses of study) needed to assist the child in reaching those goals.

Also, beginning no later than one year before the child reaches the age of majority under State law, the IEP must include:

- a statement that the child has been informed of the child's rights under Part B of IDEA (if any) that will transfer to the child on reaching the age of majority.

### **A Closer Look at Each IEP Component**

Present Levels of Academic Achievement and Functional Performance (PLAAFP): How is the child currently doing in school? How does the disability affect his or her performance in class? This type of information is captured in the "present levels" statement in the IEP.

Annual Goals: Once a child's needs are identified, the IEP team works to develop appropriate goals to address those needs. Annual goals must be measurable, must tell what the student can accomplish in a 12-month period, and, if achieved, must result in meaningful educational progress. The goal will include 3 elements: Behavior - which refers to what the student will be able to do at the end of the IEP time period (For example, what the student will achieve academically, functionally, and/or behaviorally); Condition - which describes where and under what circumstances the student will perform the goal or objective (For example, in the special education classroom, general education classroom, campus wide, or therapy room and with whom); and Evaluation or mastery criteria - that provides information to determine whether the student has attained the goal.

Benchmarks or Short-Term Objectives: Benchmarks or short-term objectives are required only for children with disabilities who take alternate assessments aligned to alternate achievement standards.

Measuring and Reporting Progress: Each child's IEP must also contain a description of how his or her progress toward meeting the annual goals will be measured and when it will be reported to parents.

Special Education: The IEP must contain a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child. This article focuses on the first element: a statement of the special education that will be provided for the child.

Related Services: To help a child with a disability benefit from special education, he or she may also need extra help in one area or another, such as speaking or moving. This additional help is called *related services*. Please refer to "Support Personnel Who Provide Related Services" for more information.

Supplementary Aids and Services: Supplementary aids and services are intended to improve children's access to learning and their participation across the spectrum of academic, extracurricular, and nonacademic activities and settings. The IEP team must determine what supplementary aids and services a child will need and specify them in the IEP. One example of supplementary aids and services could be professional development or special training for teachers (and others involved in the child's education) regarding a student's disability.

Program Modifications for School Personnel: Also part of the IEP is identifying the program modifications or supports for school personnel that will be provided.

Extent of Nonparticipation: The IEP must also include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in other school settings and activities.

Accommodations in Assessment: IDEA requires that students with disabilities take part in *state or districtwide assessments*. The IEP team must decide if the student needs accommodations in testing or another type of assessment entirely. In this component of the IEP, the team documents how the student will participate.

Service Delivery: When will the child begin to receive services? Where? How often? How long will a "session" last? Pesky details, but important to include in the IEP!

Transition Planning: In South Carolina, beginning no later than the student's 13th birthday the IEP must contain transition-related plans designed to help the student prepare for life after secondary school. Transition Services are required for these students and should involve providing students with a coordinated set of services to help the student move from school to adult life focusing on the student's needs or interest in such areas as: higher education or training, employment, adult services, independent living, or taking part in the community.

Age of Majority: Beginning at least one year before the student reaches the age of majority (18), the IEP must include a statement that the student has been told about the rights (if any) that will transfer to him or her at age of majority.

### **Considerations of Special Factors**

The IEP will also address Special Factors related to the student's needs. These factors address behavior, limited English proficiency, blindness/vision impairment, and communication needs. For example, if a student's behavior impedes the student's learning or the learning of others the IEP may call for a Functional Behavior Assessment and/or a

Behavior Plan that includes positive behavior interventions and supports. If the student has limited English proficiency, language needs should be addressed. A student's communication needs may be addressed by assistive technology and/or support from a speech-language pathologist. The IEP asks the IEP Team to consider these special factors:

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

### **Support Personnel Who Provide Related Services**

Related services are provided to students at no cost and delivered as described in the student's IEP. Related Services must be provided if needed to ensure a Free and Appropriate Public Education (FAPE), even if special education services are not provided.

Audiologist: The audiologist provides diagnostic audiological testing for children who fail the hearing screening evaluation.

Braillist: The braillist is responsible for converting regular classroom texts and other material into braille for students with visual impairments.

Guidance Counselors: All students, K-12, including those with disabilities, receive assistance and services from the guidance counselors in the areas of personal, social, educational and career development.

Interpreters: These individuals assist students with hearing impairments by providing interpreting services in classrooms, at school functions and for extracurricular activities.

Job Coaches/Transition Specialists: Students are introduced to the work force through the intervention of a job counselor. Placement and supervision of the students improve the transition from school to the adult world or from school to post-secondary programs.

Nurses: All students are served by the nursing staff. Some students may require written Health Management Plans which are developed and monitored by the nursing staff.

Occupational Therapists: Skills and work experiences are provided for students with physical disabilities in order to prepare them for functional participation in the community at large. Therapy is provided in order for the students to benefit from their special education instruction.

Orientation/Mobility Specialists: Students with visual impairments are assisted in their development of mobility skills within the school & community.

Parent Counselors and Trainers: Schools provide assistance to parents in understanding the special needs of their child and child development.

Physical Therapists: Children who need physical therapy for improving or maintaining their mobility are aided by the therapists. Program goals are directed by attending physicians and provided in order for the students to profit from their special education instruction.

Psychologists: These professionals provide consultation, counseling, and diagnostic testing for both regular and special education students. They participate with school-based testing teams to formulate intervention strategies.

Instruction Specialists (may have a different title district by district): These master's level teachers provide consultation and intervention in all special classrooms. Assistance is provided to the teacher in adapting the curriculum to meet the students' education needs.

Speech Clinicians: Students with speech/language problems receive services in individual or small group therapy sessions on a weekly basis by these professionals.

Social Worker: Coordinating interagency efforts to support students in the least restrictive environment, the social worker is the liaison between the home, school and community.

Transportation is considered a "Related Service" and should be included on the IEP.

## **Educating Children with Disabilities in Their Least Restrictive Environment (LRE)**

In basic terms, Least Restrictive Environment (LRE) refers to the setting where a child with a disability can receive an appropriate education designed to meet his or her educational needs, alongside peers without disabilities to the maximum extent appropriate.

IDEA's LRE provisions are found at §§300.114 through 300.117. The IDEA requires that "Each public agency must ensure that—(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [§300.114(a)]

### **Key Terms in LRE**

The core of IDEA's LRE provisions contains many key terms and phrases that, together, reveal the law's strong preference for where children with disabilities are to be educated: the regular educational environment. Consider the specific wording and phrases in the provision:

- Special classes
- Separate schooling
- Other removal from the regular educational environment
- *Occurs only if...*

Since its earliest days, the law has displayed a strong preference for children with disabilities to be educated alongside their peers without disabilities, to the maximum extent appropriate. It recognizes that, in many cases, *supplementary aids and services* must be provided to a

child with a disability to enable him or her to be educated in the general education classroom. Supplementary aids and services can play a pivotal role in supporting the education of individual children with disabilities in the regular educational environment.

Simply put, removal of a child with disabilities from the regular education class may occur *only if* the child cannot be satisfactorily educated in the regular educational environment *with* the use of supplementary aids and services.

### **Models of Service Delivery in School Settings**

Once eligibility for special education services is determined based on the categories previously listed, children receive help in one of the settings listed below. Service delivery should be discussed and determined by the IEP Team who will decide the least restrictive environment in which the IEP can be implemented. The continuum listed here ranges from least to most restrictive.

Regular Class with Consultation to the Teacher: In this placement option the student spends the entire school day in the regular classroom & receives no direct special education services. An instructional specialist or other staff member provides assistance to the teacher in relating to the individual needs within the classroom.

Itinerant Services: A special education teacher provides direct services *less than 50 minutes daily*. Such a model can provide flexibility to students who have less severe disabilities or who are being transitioned out of special education.

Resource Services: A special education teacher provides *at least 50 minutes of daily services* directly to the student.

Inclusion (Push In) Resource: Students receive Resource Services only within their regular education classroom for the amount of time specified in their Individual Education Program (IEP).

Pull Out Resource: Students are removed from their regular education classroom to receive Resource Services for the amount of time specified in their IEP.

Self Contained Services: The student attends a special education program taught by a special education teacher who is certified in the child's specific disabling condition. Only students with a disability will be in the self-contained classroom unless there is a program that includes reverse inclusion. The child should be mainstreamed as much as possible with general education students in the subjects/areas which are strengths.

Special Day or Alternative School: Some districts have alternative schools or programs where students are placed who have persistent behavioral difficulties or serious discipline records and can't be accommodated elsewhere. Some districts have contractual arrangements with agencies to provide treatment for those students who cannot benefit from inclusion in a regular school.

Homebased Services: Such services are deemed necessary for those students exhibiting severe problems such as significant emotional problems, those who are posing a danger to themselves or others. Homebased services are provided when the team determines the child's educational needs can best be met at home.

Homebound Services: Medical homebound services are provided when students are too ill (physically or mentally) to attend school. Instruction is provided at home by certified teachers on a daily basis.



## **Prior Written Notice (PWN)**

Parental rights under IDEA include the right to receive Prior Written Notice (PWN) from the school each time that the school proposes to take (or refuses to take) certain actions with respect to your child. Parents should receive PWN within a reasonable time before the school plans to take (or refuses to take) actions related to the provision of FAPE for your child. The PWN must be written in language understandable to the general public and in the parents' native language or other mode of communication, unless this is clearly not feasible.

Specifically, the school must provide parents with PWN each time that it:

- proposes to initiate or change the identification, evaluation, or educational placement of your child;
- refuses to initiate or change the identification, evaluation, or educational placement of your child;
- refuses to initiate or change the provision of FAPE to your child.

For example, you must receive this notice:

- when the school would like to conduct an initial evaluation of your child;
- when you've asked for your child to be evaluated and the school denies your request;
- when the school wants to begin or change your child's identification as a "child with a disability";
- when the school proposes, refuses, or wants to change a particular educational placement for your child;
- when the school wants to change aspects of the special education or related services that your child is receiving.

According to the IDEA, prior written notice must contain [§300.503(b)]:

- a description of the action proposed or refused by the school;
- an explanation of why the school proposes or refuses to take the action;
- a description of each evaluation procedure, assessment, record, or report the school used as a basis for their decision;
- a statement that the parents of a child with a disability have protection under the procedural safeguards and, how the parents can obtain a copy of them;
- sources for parents to contact to obtain assistance in understanding these provisions;
- a description of other options that the IEP Team considered and the reasons why those options were rejected; and
- a description of other factors relevant to the school's proposal or refusal.

## **Preparing for the IEP Meeting**

Your IEP meeting should be a place where concerned people plan the best program to serve your child with special needs. As the parent, you must expect your child's free and appropriate public education be meaningful and you must participate in the planning process to the fullest. Here are some key points to think about as you prepare for the meeting:

- Know who will attend the meeting.
- Know the purpose of the meeting (i.e.: annual review, special review, evaluation review/results, manifestation determination review)

- If this is NOT the initial IEP meeting for your child, then you should know the contents of the current IEP. Have the current goals and objective been met? Has progress been satisfactorily reported? Has lack of progress been addressed in a proactive manner? Are the goals and objectives still relevant?
- If you need to obtain or review your child's files, parents (or their representatives) have the right to inspect and review all educational records in their child's file. This includes a response by the agency to a reasonable request for explanations and interpretations of the records.
- What related services (ie: speech, OT, PT, etc.) does your child currently receive? How much? Where are the services delivered – classroom/pull out? How services are delivered - large group/small/1:1? Are services direct or consultative?
- How is behavior addressed in the IEP? Is there a history of behavior problems? Has a functional assessment been done if behavior interferes with learning? Is there a Positive Behavior Intervention Plan in place?
- Does your child need a transition plan? South Carolina has determined that transition services for students with a disability should begin with the IEP during which the child turns 13.
- Consider what extent that your child to participate in activities with non-disabled peers? Is your child being educated in the least restrictive environment (LRE)?
- Make a list of your priorities and concerns before the meeting. You may want to share your list with your child's IEP case manager and ask that your items be included on the agenda.
- If your child will be attending the meeting, be sure to prepare him/her for what to expect and what level of participation will be needed.

You may ask for a DRAFT copy of the IEP the school prepares in advance of the meeting. Write down your questions.

The fact is that IEPs are generated on computers using special software. This method is helpful to teachers as they prepare the many IEP documents for the children they teach. At first it may seem impersonal, maybe less that "individual" but think of that computer generated IEP as a starting point. That's why it is important to review this draft copy before the meeting so that you may add your comments and suggestions. **Remember that special education decisions are based on data rather than personal opinion.**

## What Happens at an IEP Meeting?

During the IEP meeting, the different members of the IEP team share their thoughts and suggestions. If this is the first IEP meeting after the child's evaluation, the team may go over the evaluation results, so the child's strengths and needs will be clear. These results will help the team decide what special help the child needs in school. There are a lot of important matters to talk about in an IEP meeting! You will be presented with a proposed draft and based on the Team's discussions, all components (mentioned previously) of the IEP will be finalized during the meeting. The resultant IEP will then guide how services are provided to the child in the coming year. Before the school system can provide the child with special education *for the first time*, parents must give written consent.

Placement - where the child receives his or her special education and related services – can be a complicated issue. The IEP forms the basis for the placement decision, which is made by a group of persons, including the child's parents, and other persons knowledgeable about the child, the meaning of evaluation data, and placement options. As noted, appropriate

placement must be in the child's least restrictive environment. *It is important to remember that placement is directly connected to the child's IEP, is based on the child's IEP, must be decided by a knowledgeable group of persons, including the child's parents, but is not necessarily decided by the IEP team.* The placement group may or may not be the IEP team, but in all cases, the parents are members of that group and participate in making the determination of placement for their child. (§300.327)

### **Maintaining Productive Meeting Environments**

Here are some basic guidelines to minimize disagreeable situations compiled by Peter S. Chantilis, Attorney-Mediator, from Dallas, Texas. His forty years of practicing law and mediation brought him these conclusions.

- Learn to disagree without being disagreeable. It's all right to be assertive, but not aggressive, abusive, or abrasive.
- When someone says something with which you disagree, try not to be judgmental.
- Maintain eye contact when greeting people, and shake their hands. (Touching is important.)
- Be kind and courteous to everyone.
- Remember that civility is a sign of strength, not weakness.
- Speak softly. (People tune out loud, angry voices.)
- Saving face is important. Give your opponent the opportunity to withdraw.
- Your attitude is more important than your aptitude.
- Mutual respect is the key to avoiding conflict.
- Give the other person a chance to be heard without interrupting.
- The shortest distance between two people is a smile.

### **Implementing the IEP**

Once the IEP is written, it is time to carry it out. The IDEA states that, as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. [§300.323(c)(2)]. IDEA also requires that the school system ensure that "each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible" for the IEP's implementation:

- have access to the IEP;
- are informed of their specific responsibilities; and
- are informed of specific accommodations, modifications, and supports to be provided to the child, in accordance with the IEP. [§300.323(d)]

### **Reviewing and Revising the IEP**

Each year (12 month period) a meeting must be scheduled with IEP team members to review the child's progress and develop next year's IEP. The meeting will be similar to the IEP meeting described above. The team will talk about:

- the child's progress toward the goals in the current IEP,
- what new goals should be added, and
- whether any changes need to be made to the special education and related services the child receives.

The IEP team may also meet periodically throughout the course of the school year, if circumstances warrant it. For example, parents may feel that their child is not making good progress toward his or her annual goals. Or—on the positive side—the special educator on the team may want to write new goals, because the student has made such great progress!

Parents must be notified of each meeting in plenty of time to arrange their participation. Typically this is a seven-day notice. If a parent needs an interpreter at the meeting to ensure full involvement and understanding, he or she should inform the school system ahead of time, so that arrangements can be made to have an interpreter present. This includes sign language interpreters.

### **Meeting without a Meeting**

If parents or the LEA want to amend or modify the IEP, does the team have to actually, physically, meet? No, not necessarily, subject to certain conditions. This possibility of “meeting without a meeting” is new; it was added in the 2004 reauthorization of IDEA. Now, IEP teams have the option of drafting a written amendment to the IEP, agreeing to the amendment, and incorporating this modification into the IEP. However, before the IEP team can use this new alternative to gathering in person, specific conditions must be met. Three primary conditions must be met in order for the IEP team to not have to physically meet to make changes to the IEP. These are:

- This option cannot be used with the IEP meeting that is required at least annually to review and revise the IEP. This option applies only to modifications the team might want to make after the annual IEP meeting has been held in person.
- Parents and LEA must agree to not meet but to take this approach instead.
- The amendment or modification to the IEP must be in writing.

If this option is used, the public agency (LEA) must ensure that the child’s IEP team is informed of those changes.

Regarding these conditions:

*Parent and LEA agreement:* A number of aspects are worth noting about this:

- IDEA does not place any restrictions on the types of changes that may be made to the IEP, so long as the parent and public agency agree to using the option of not physically meeting.
- IDEA’s protections are still in effect. This means that a child’s IEP cannot be changed without prior notice by the school system and an opportunity for parents to discuss any changes with the school system.
- Agreement between the parent and the school system to use this new option does not have to be in writing.
- The parent is not required to provide consent (as defined in §300.9) to amend the IEP without an IEP meeting.
- The parent does not have to agree to the school system’s request to amend the IEP without an IEP team meeting. (71 Fed. Reg. at 46685)

All changes to the IEP made in this way should be recorded on the document and the IEP team informed of when and how the IEP has been changed. All service providers must have access to the child’s amended IEP and must be informed of their responsibilities for implementing it.

## **Questions to ask about IEP Development:**

Did the LEA/SOP take the required steps to ensure that the parents could meaningfully participate in the IEP process, and did the LEA/SOP obtain parent consent when necessary?

Did the LEA/SOP ensure that necessary parties were invited to and/or participated in the IEP process?

Did the LEA/SOP adhere to required time lines and procedures, including those for initial evaluations and reevaluations?

Did the IEP team appropriately consider all relevant special factors?

Did the IEP team develop an appropriate statement of present levels of academic achievement and functional performance?

Did the IEP team develop appropriate, measurable annual goals and designate how and when the goals would be measured and progress reported to parents?

Did the IEP team appropriately develop: measurable post-secondary goals; a statement of transition services; course of study; and, when appropriate, a notice to the student and parents of the transfer of rights?

Did the IEP team appropriately identify in the IEP: special education and related services, supplementary services, testing participation, and classroom and testing accommodations and modifications?

Did the IEP team appropriately explain the extent to which the student will not participate in general education classes and activities, and the IEP team's decisions with respect to least restrictive environment (LRE)?

Did the IEP team appropriately consider the need for extended school year services (ESY)?

Did the LEA/SOP provide appropriate notice (PWN) to the parents in a reasonable time before changing, or refusing to change, the student's eligibility, evaluation, program, or placement?

If there was disciplinary action that involved a potential change in placement for the student, did the LEA/SOP follow the applicable procedures?

## **Questions to ask about IEP Implementation:**

Is there evidence that the LEA is providing specialized instruction and related services as delineated in the student's IEP?

Is the LEA providing appropriate reports to parents on the student's progress towards meeting IEP goals with the frequency set forth in the IEP?

Is the student participating in educational activities with non-disabled peers for the amount of time designated in the IEP?

Is there evidence that the student's teachers received notice of, and have a system in place to implement, the accommodations listed on the IEP?

Is there evidence that the school site administrators and the student's teachers are familiar with, and are prepared to utilize when necessary, the student's behavioral intervention plan (BIP)?

# How to Determine Measurable Annual Goals in an IEP

## (Including Academic and Functional Goals)

The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes

*(II) a statement of measurable annual goals, including academic and functional goals, designed to--*

*(aa) meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and*

*(bb) meet each of the child's other educational needs that result from the child's disability*

### Definition

Annual goals are statements that identify what knowledge, skills and/or behaviors a student is expected to be able to demonstrate within the period of time beginning with the time the IEP is implemented until the next scheduled review. Annual goals must be identified that meet the student's needs, as identified in the present levels of performance.

A goal is a measurable statement that describes what a child is reasonably expected to accomplish from the specialized educational program during the school year.

### Explanation

The academic and functional goals should focus on the learning and behavioral problems resulting from the child's disability and be aligned with state and district performance standards. They should address the needs that are summarized in the statement of the child's present levels of academic achievement and functional performance. For those students taking alternate assessment, there should be at least one goal, with corresponding objectives or benchmarks, for each area of need.

The goals and objectives or benchmarks provide a mechanism for determining whether the child is progressing in the special education program and the general education curriculum, and whether the placement and services are appropriate to meet the child's identified educational needs (20 USC 1414 d 1 A i II).

**IMPORTANT:** *In the past, benchmarks or short-term objectives were required elements in every child's IEP. When the IDEA was reauthorized in 2004, benchmarks or short-term objectives were no longer an IEP requirement except for children with disabilities who take alternate assessments aligned to alternate achievement standards. IDEA's verbatim requirement for this component of the IEP is: (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives... §300.320(a)(2)(ii)*

*While benchmarks or short-term objectives are no longer required for the majority of students with disabilities, the information in this section is important for those parents whose children require them as a necessary part of the IEP, but also to provide all parents with a better understanding of measurable IEP goals and how to recognize one.*

Individual need determinations (i.e., present levels of performance and individual needs) must provide the basis for written annual goals. The IEP must list measurable annual goals,

consistent with the student's needs and abilities to be followed during the period beginning with placement and ending with the next scheduled review by the Committee (effective dates of the IEP).

The measurable annual goals, including benchmarks or short-term objectives, must be related to:

- meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum (or for preschool students, in appropriate activities); and
- meeting each of the student's other educational needs that result from the student's disability.

Measurable annual goals set the general direction for instruction and assist in determining specific courses, experiences, and skills a student will need to reach his or her vision. There must be a direct relationship between the goal and the needs identified in the PLEP. Goals also are descriptions of what a student can reasonably be expected to accomplish within one school year.

A goal must be meaningful, measurable, able to be monitored, and useful in decision making. The annual goal is meaningful if it specifies a level of performance and an expectation that is reasonable; the skill or knowledge the goal represents is necessary for success in school and post-school activities; and the family believes the accomplishment of the goal is important. The goal is measurable if it reflects performance or behavior that can be measured or observed.

A goal is able to be monitored if there are multiple increments in performance between the present levels of performance and the criteria stated in the goal. The goal should be written so that it can be monitored frequently.

Finally, the goal is useful in making decision regarding the student's education and the effectiveness of the student's IEP.

To meet the requirements of this part, the IEP team reviews and analyzes the present levels of educational performance and then writes an applicable annual goal for each area of need described. Goals must be written to enable the student to be involved in and progress in the general curriculum and to advance in other areas of educational need.

**The IEP team writes annual goals that:**

- show a direct relationship to the present levels of educational performance;
- describe only what the student can reasonably be expected to accomplish within one school year or the 12-month term of the IEP;
- are written in measurable terms;
- prepare the student for his or her desired post-school activities, when planning for the school-to-adult life transition; and
- The goal must include at least three parts:
  1. expected change in performance-specifies the anticipated change in performance from a baseline and usually reflects an action or can be directly observed;
  2. proposed area of change- identifies skill, knowledge, understanding or behavior;

3. proposed criteria specify the amount of growth, how much and how frequent, or to what standard or level of proficiency.

## **Principles of Formulating Goals for a Student's IEP**

*When formulating goal statements, use the following guidelines:*

- Goals should be general statements that focus on deficit skill areas.
- Goals should be designed to address the needs identified in the statement of the child's present level of academic achievement or functional performance.
- Goals should be challenging and describe what a child can reasonably be expected to accomplish during the school year.
- All members of the IEP Team should easily understand the language of the goals.
- Goals should be written to increase the child's successful participation in the general education curriculum and allow for inclusion in the general education environment to the maximum extent appropriate, or for preschool children, to participate in appropriate activities with non-disabled peers.
- Goals should be stated so they are meaningful. Helpful questions to ask include:

*Is accomplishment of the goal necessary for success in current and future environments?*

- Does the family believe the accomplishment of the goal is important?
- Does the goal specify a level of performance and expectation that is reasonable?
- Goals should be measurable; they must reflect behavior that can be measured.
- Goals should be written so they can be monitored frequently and repeatedly.
- Goals should be written to enhance decision-making. Monitoring the goal provides data that can be used to determine the effectiveness of the child's educational program.
- Goals should reflect transition needs, if appropriate.

## **Step-by-Step procedures for determining Measurable Annual Goals**

### **Step A: Determine the Skills the Student Requires to Master the Content of the Curriculum**

Annual goals should focus on the knowledge, skills, behaviors and strategies to address the student's needs. A student's needs generally relate to domains such as, but not limited to, reading, writing, listening, organization, study skills, communication, physical development, motor skills, cognitive processing, problem-solving, social skills, play skills, memory, visual perception, auditory perception, attention, behavior, and career and community living skills. The goals on a student's IEP should relate to the student's need for specially designed instruction to address the student's disability needs and those needs that interfere with the student's ability to participate and progress in the general curriculum.

Goals should not be a restatement of the general education curriculum (i.e., the same curriculum as for students without disabilities), or a list of everything the student is expected to learn in every curricular content area during the course of the school year or other areas not affected by the student's disability. In developing the IEP goals, the Committee needs to select goals to answer the question: "What skills does the student require to master the content of the curriculum?" rather than "What curriculum content does the student need to master?"



For example, a student may be performing very poorly on written tests in global studies that require written expression. The IEP goal for this student should focus on developing written expressive skills (e.g., using outlines or other strategies to organize sentences in paragraphs) rather than the curriculum goal that the student will write an essay about the economy of a particular country. Generally, goals should address a student's unique needs across the content areas and should link to the standards so that a student has the foundation or precursor skills and strategies needed to access and progress in the curriculum.

### **Step B: How Far By When?**

From information in the present levels of performance, the Committee has identified which need areas must be addressed and where the student is currently functioning in each of those areas. The next step is to identify what the focus of special education instruction will be over the course of the upcoming year. The annual goals will guide instruction, serve as the basis to measure progress and report to parents and serve as the guideposts to determine if the supports and services being provided to the student are appropriate and effective.

An annual goal indicates what the student is expected to be able to do by the end of year in which the IEP is in effect (i.e., the period beginning with placement and ending with the next scheduled review by the Committee). The annual goal takes the student from his/her present level of performance to a level of performance expected by the end of the year.

To be measurable, an annual goal should, in language parents and educators can understand, describe the skill, behavior or knowledge the student will demonstrate and the extent to which it will be demonstrated.

#### Examples:

- *One year from now, Jim will write 10 sentences with correct punctuation.*
- *Terry will ask questions about the instructions or materials presented to ensure comprehension.*
- *Tom will use a datebook for appointments and assignments.*
- *Terry will solve multi-step word problems.*
- *Brianna will stand at least two feet away from the other person while conversing.*
- *Lisa will walk 10 feet independently.*
- *Mackenzie will speak in complete sentences.*
- *Ron will point independently to pictures described.*
- *Jose will use word prediction software to write essays.*

Terms such as "will improve," "will increase," and "will decrease" are not specific enough to describe what it is the student is expected to be able to do in one year. To be measurable, a behavior must be observable or able to be counted. In general, it is recommended that goals describe what the student will do, as opposed to what the student will not do.

Example: *"The student will ask for a break from work" versus "The student will not walk out of the classroom without permission."*

### **Step C: Determine Short-term instructional objectives**

For each annual goal, the IEP must include short-term instructional objectives or benchmarks. The instructional objectives or benchmarks must include evaluative criteria, evaluation procedures and schedules to be used to measure progress toward the annual goal.

Short-term objectives and benchmarks should be general indicators of progress, not detailed instructional plans, that provide the basis to determine how well the student is progressing toward his or her annual goal and which serve as the basis for reporting to parents.

Generally, one annual goal would not include both short-term objectives and benchmarks. Whether short-term objectives or benchmarks are used for a particular annual goal is at the discretion of the Committee.

Short-term objectives are the intermediate knowledge and skills that must be learned in order for the student to reach the annual goal. Short-term objectives break down the skills or steps necessary to accomplish a goal into discrete components.

For example, the sequential steps that one student must demonstrate in order for him to reach the annual goal to "remain in his reading class for the entire period and ask for help when the reading work is difficult for him" are as follows:

*Grant will be able to identify what upset him after a behavioral disruption.*

*Grant will be able to state the physical signs he is feeling when reading work gets difficult and leads to a behavioral disruption.*

*Grant will raise his hand for assistance when he begins to experience those physical signs.*

#### **Step D: Determine Benchmarks**

Benchmarks are the major milestones that the student will demonstrate that will lead to the annual goal. Benchmarks usually designate a target time period for a behavior to occur (i.e., the amount of progress the student is expected to make within specified segments of the year).

Generally, benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward the annual goals. For example, benchmarks may be used for this same student for this annual goal as follows:

*By November, Grant will remain in his reading class for 15 minutes without disruptions.*

*By February, Grant will remain in class for 25 minutes without disruptions.*

*By April, Grant will remain in his reading class for 35 minutes without disruption.*

*By June, Grant will remain in his reading class for 45 minutes without disruption.*

#### Writing short-term instructional objectives and benchmarks

The following template may assist in the writing of short-term objectives or benchmarks:

*Student will (do what) (to what extent) - (over what period of time) or (by when) as evaluated through \_\_\_\_\_ on the following schedule: \_\_\_\_\_.*

Examples:

- S. will wait his turn in group games for 3/5 turn-taking activities over three consecutive days as evaluated through teacher charting of the targeted behavior every 4 weeks.*
- K. will highlight and/or underline important concepts in reading materials on 4 out of 5 trials over a two-week period as evaluated through corrected work in class every 2 months.*

- *By December, J. will initiate his class work when prompted by the teacher within 3 minutes over 10 consecutive trials as evaluated by structured observations of the targeted behavior once a month.*
- *L. will use appropriate phrases to request toys or activities during free play on 5 trials over a 2-week period as evaluated by structured observations every 8 weeks.*
- *D. will wait until all directions are received before beginning activities or assignments as evaluated through teacher charting of the targeted behavior every 4 weeks.*
- *By January, M. will independently remove himself from the situation on all occasions when he is teased by peers during recess as evaluated quarterly by daily self-monitoring checklists.*

Short-term objectives or benchmarks: The short-term objectives or benchmarks derive from the annual goals but represent smaller, more manageable learning tasks a child must master on the way to achieving the goals. The purpose of short-term objectives and benchmarks is to enable families, children, and teachers to monitor progress during the year and, if appropriate, revise the IEP consistent with the child's instructional needs. They describe how far the child is expected to progress toward the annual goal and by when. In most cases, at least two objectives or benchmarks should be written for each annual goal. Progress on each short-term objective or benchmark should be documented.

Short-term objectives generally break the skills described in the annual goal into discrete components. Benchmarks describe the amount of progress the child is expected to make in a specified segment of the year. Benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals.

Objectives and benchmarks must be measurable; they must use language that will allow a count of what a child does (i.e., The child will write, The child will read). Do not use phrases such as: "The child will understand," or "The child will appreciate").

### **Step E: Determine the Evaluative criteria**

Evaluative criteria identify how well and over what period of time the student must perform a behavior in order to consider it met. How well a student does could be measured in terms such as:

- frequency (e.g., 9 out of 10 trials)
- duration (e.g., for 20 minutes)
- distance (e.g., 20 feet)
- accuracy (90% accuracy)

The period of time a skill or behavior must occur could be measured in terms such as:

- number of days (e.g., over three consecutive days)
- number of weeks (e.g., over a four week period)
- occasions (e.g., during Math and English classes, on six consecutive occasions)

### **Step F: Determine Evaluation**

#### Procedures to Measure the Student's Progress

Evaluation procedures identify the method that will be used to measure progress and determine if the student has met the objective or benchmark. An evaluation procedure must provide an objective method in which the student's behavior will be measured or observed.

*Examples: structured observations of targeted behavior in class; student self-monitoring checklist; written tests; audio-visual recordings; behavior charting; work samples.*

## **Step G: Determine the Evaluation**

### Schedules to Measure the Student's Progress

Evaluation schedules state the date or intervals of time by which evaluation procedures will be used to measure the student's progress toward the objective or benchmark. It is not a date by which the student must demonstrate mastery of the objective.

*Examples: by March 2003, in three months, every four weeks, at the end of the term, quarterly*

Short-term objectives and benchmarks should include the following three components to ensure that they can be evaluated:

**Objective Criteria** that enable progress to be monitored and allow for determination of the point at which the objective has been accomplished, such as:

- *95% accurate*
- *fewer than 5 times per day*
- *50 correct responses in one minute*
- *4 out of 5 trials correct on three consecutive days*

### **Evaluation Procedures to be used, such as:**

- *teacher observation*
- *written performance*
- *oral performance*
- *criterion referenced tests*
- *parent report*
- *observation*
- *time sample*
- *teacher-made tests*

### **Schedules to determine how often the objective will be measured, such as:**

- *one-two week*
- *twice a week*
- *once a month*
- *six weeks*
- *nine weeks*
- *each semester*
- *annually*

Some examples of possible short-term objectives are listed below. Each objective has numbers corresponding to the three components: (1) objective criteria, (2) evaluation procedure and (3) schedules.

*To read a 300 word article in the newspaper (1) in two minutes with 95% accuracy (2) as observed and recorded by the resource teacher (3) once a week.*

*To create (1) fewer than 5 disruptions per day for three consecutive days (2) as observed and recorded by the teacher's paraprofessional (3) each day.*

*To achieve (1) 95% accuracy (2) on a teacher made spelling test of seventh grade words as checked by the resource teacher (3) on a weekly basis.*

*To compose three-paragraph themes comprised of fifteen or more sentences using a word processing program with a spell checker (1) with 80% or better accuracy in the use of spelling, punctuation and grammar over 5 consecutive trials (2) as recorded by the resource teacher (3) weekly.*

#### **Step H: Determine How Progress Toward Annual Goals will be Measured**

In accordance with the procedures, methods and schedules to measure a student's progress toward the annual goals, school personnel need to establish a reporting and recording system that ensures that a student's progress is objectively assessed. This information is necessary for reporting progress to parents and for the Committee to review the student's IEP. While reporting progress to parents may require more than a data recording form, Attachment 3 provides a supplemental form, as shown below, for school personnel to use to track each student's progress toward meeting the annual goals.

#### **Questions and Answers about Annual Goals**

##### **Q: For each identified present level of performance, must there be annual goals?**

**A:** Yes--For each identified present level of performance, there must be at least one annual goal specified. These goals and subsequent objectives form the basis for the curriculum and specially designed instruction provided to the student. They are, therefore, written in terms of what the student will achieve. They should not be written in terms of what a parent or service provider will provide to the student.

Annual goals state the anticipated achievement expected within a 12 month period of time, although they can be written for a shorter period. In developing annual goals the present level of educational performance must be considered. Annual goals must not be a restatement of the present levels of performance. Yet anyone reviewing the IEP should be able to clearly determine the direct relationship between the two.

*Measurable annual goals, including benchmarks or short-term objectives, are critical to the strategic planning process used to develop and implement the IEP for each child with a disability. Once the IEP team has developed measurable annual goals for a child, the team (1) can develop strategies that will be most effective in realizing those goals and (2) must develop either measurable, intermediate steps (short term objectives) or major milestones (benchmarks) that will enable parents, students, and educators to monitor progress during the year, and if appropriate, to revise the IEP consistent with the student's instructional needs.*

*The strong emphasis on linking the educational program of children with disabilities to the general curriculum is reflected in 300.347(a)(2), which requires that the IEP include: a statement of measurable annual goals, including benchmarks or short term objectives, related to (i) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and (ii) meeting each of the child's other educational needs that result from the child's disability. (Federal Register, Friday, March 12, 1999, Question 1, p. p. 12471).*

**Q: Must the measurable annual goals address all areas of the general curriculum or only those areas in which the student's involvement and progress are affected by his/her disability?**

A: Areas of the general curriculum that are not affected by the student's disability do not need to be specifically addressed in the IEP. Annual goals should address areas of the general curriculum that are directly affected by the student's disability. Accommodations and modifications may be needed for the student to participate in other areas of the general curriculum.

The school district.... is not required to include in an IEP annual goals that relate to areas of the general curriculum in which the student's disability does not affect the child's ability to be involved in and progress in the general curriculum. If a child with a disability needs only modifications or accommodations in order to progress in an area of the general curriculum, the IEP does not need to include a goal for that area; however, the IEP would need to specify those modifications or accommodations.

School districts often require all children, including children with disabilities, to demonstrate mastery in a given area of the general curriculum before allowing them to progress to the next level or grade in that area. Thus, in order to ensure that each child with a disability can effectively demonstrate competencies in an applicable area of the general curriculum, it is important for the IEP team to consider the accommodations and modifications that the child needs to assist him or her in demonstrating progress in that area. (Federal Register, Friday, March 12, 1999, Question 4, p.12472)

**Q: What are short term objectives or benchmarks? – Remember short term objectives or benchmarks are required ONLY for those students who take alternate assessments aligned to alternate achievement standards**

A: Short term objectives or benchmarks are measurable, intermediate steps between an individual's present level of performance and the annual goal. Objectives should be based on a logical breakdown of the annual goal and reflect advancement toward that goal. They therefore must be provided for each area in which present levels of performance and annual goals have been stated..... *each annual goal must include either short-term objectives or benchmarks. The purpose of both is to enable a child's teacher(s), parents and others involved in developing and implementing the child's IEP, to gauge, at intermediate times during the year, how well the child is progressing toward achievement of the annual goal. IEP teams may continue to develop short term instructional objectives that generally break the skills described in the annual goal down into discrete components. The revised statute and regulations also provide that, as an alternative, IEP teams may develop benchmarks, which can be thought of as describing the amount of progress the child is expected to make within specified segments of the year. Generally, benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals. An IEP team may use either short term objectives or benchmarks or a combination of the two depending on the nature of the annual goals and needs of the child. (Federal Register, Friday, March 12, 1999, Question 1, p. 12476).*

**Q: Can short term objectives or benchmarks be changed without initiating another IEP meeting?**

A: No. If either a parent or the school district believes that a required component of the student's IEP should be changed, the school district must conduct an IEP meeting if it believes that a change in the IEP may be necessary. (Federal Register, Friday, March 12, 1999, Question 20, p. 12471). Since short term objectives, benchmarks, and annual goals are required components of the IEP, a meeting must be held with all required team members if any of these are going to be changed. The team will then make the needed changes in the IEP and thus a new IEP will have been developed. There is no such thing as an addendum to an IEP allowed under IDEA.

Primary Source: National Association of Special Education Teachers:  
<http://www.naset.org/760.0.html>

## SMART IEP GOALS

Specific; Measurable; Attainable; Results-oriented; Time-bound

SMART Stands For	What That Means	Example of a Non-SMART IEP Goal	Example of a SMART IEP Goal
<i>Specific</i>	The goal is specific in naming the skill or subject area and the targeted result. Details matter!	Adam will be a better reader.	Adam will be able to read a passage orally in a grade-level book at 110–130 words per minute with random errors.
<i>Measurable</i>	The goal is stated in a way that your child's progress can be measured. That can be done using standardized tests, curriculum-based measurements or screening.	With the aid of a calculator, Emma will be able to solve math problems.	With the aid of a calculator, Emma will be able to solve math problems that involve the computation of fractions and decimals, with 75 percent accuracy.
<i>Attainable</i>	The goal represents progress that is realistic for your child.	Jackson will write at grade level, with no errors in spelling or punctuation.	Jackson will write a paragraph with at least 5 sentences each greater than 8 words, with no more than 2 errors in spelling and punctuation.
<i>Results-oriented</i>	The goal clearly lays out what your child will do to accomplish it.	During small group activities Dana will have good eye contact with others.	During small group activities Dana will look at the speaker of the group 90 percent of the time, in 4 out of 5 opportunities.
<i>Time-bound</i>	The goal includes a time frame in which your child will achieve it, with the right supports and services. It also states when and how often progress will be measured.	Jeremy will be able to orally explain class vocabulary words, with 90 percent accuracy, on 8 out of 10 tries. His progress will be measured through a language assessment.	By May 15, Jeremy will be able to orally explain class vocabulary words, with 90 percent accuracy, on 8 out of 10 tries. His progress will be measured through a monthly language assessment.

Information provided by Andrew M.I. Lee

# **Adaptations vs. Modifications in Special Education**

*by Dr. Nesa Sasser*

Special education students may need adaptations and modifications to help them learn. The terms “adaptations” and “modifications” have specific meanings in special education. Adaptations make provisions for special education students to adapt to the learning environment without modifying course curriculum standards. However, special education students who receive modifications are allowed to have the curriculum fit their individual needs and teachers are able to evaluate them on different grading scales than general education students. Both adaptations and modifications aid special education students in their learning.

## **Adaptations or Accommodations**

Adaptations are also referred to as accommodations. The Access STEM website reports that accommodations are used when there are alterations of environment or use of equipment allowing students to gain access to content or to complete assigned tasks. Accommodations, for example, allow students to respond by computer texts or sign language, have extended time for assignments or provide text in large print. Because accommodations only alter the environment and not what is taught, teachers utilize the same grading scales as they do for students without learning disabilities.

## **Modifications**

Modifications for students who have been diagnosed with a learning disability do change the standards of the instruction and how students are evaluated. These students are not expected to master the same academic content as general education students in the same grade level. The Smart Kids with Learning Disabilities website reports that teachers, for example, can modify a student's curriculum by assigning projects instead of written reports and by rewording high level questions in simpler language.

## **Test Accommodations and Modifications**

Modifications on assessments are made for students who do not have extensive cognitive disabilities, have access to grade level instruction and are not likely to reach grade level proficiency in the same time frame as their classmates. In a 2010 study by the National Dissemination for Students with Disabilities, researchers found that testing adaptations are divided into four categories called modes. Presentation mode allows for larger fonts or placing fewer items on a page. Response mode allows for the use of lined paper or for students to respond in sign language or by computer texts. Setting mode allows for students to test in small groups. Timing mode allows students to have extended time on test if needed. Test accommodations have to be included on the student's Individual Education Plan prior to testing.

## **Legal Implications**

The Individuals with Disabilities Education Act mandates that all students with disabilities be afforded with a free and appropriate public education. After 2004, the No Child Left Behind Act did not permit modifications on state and national assessments, but teachers can continue to make modifications on classroom instruction assignments. Teachers, in making modifications, are allowed to ask fewer questions on assignments or allow students to work at lower grade levels by providing challenging work to students that meet their academic levels in reading comprehension and math.



# Standards-Based IEPs: What You Need To Know

## At a Glance

- Standards-based IEPs are based on academic state standards.
- A Standards-based IEP can help students stay on track for their grade.
- Some critics disagree with this type of IEP.

In recent years some states have begun using a type of IEP called a standards-based IEP. Standards based IEPs are based on academic state standards. State standards describe what students are expected to learn in every subject, in every grade.

## Traditional IEPs

A traditional IEP starts by focusing on a student's learning and social-emotional strengths and challenges. Using evaluation and test results, the IEP team develops a clear picture of the student's present levels of academic achievement. The IEP team then sets instructional goals for the child to develop the areas of need.

But there's often no direct connection between these goals and the general education curriculum. As a result, with the traditional IEP, a child could achieve his annual goals and still not reach grade level. This can set up students in special education to fall further behind over the years.

## Standards-Based IEPs

The standards-based IEP takes a different approach. It determines how a student is currently performing compared to what he is expected to be doing based on grade-level academic standards. Then it sets IEP goals to help close that gap.

Standards-based IEP assumes that students should be working towards doing grade-level work and will make progress if they get the right support and services. Even severely disabled students, whose cognitive abilities may make it difficult for them to ever fully operate at grade level, will be exposed to grade-level content with a standards-based IEP. This way there is still a progression through the years toward grade-level performance.

## The Benefits of Standards-Based IEPs

Many educational advocates are in favor of this approach. The belief is that a standards-based IEP better helps children stay on track for their grade.

Standards-based IEPs can help everyone - special education teachers, general education teachers, parents, and other IEP team members - get on the same page. They encourage the team to discuss what the state expects kids in the grade to learn and where your child may fall short. The team can then work together to figure out what your child needs to catch up to his peers.

As a key member of your child's IEP team, you will have a clearer understanding of how your child is doing compared to the state standards. Is your child a year behind in math, for instance, but on target in social studies? The standards-based IEP will help spell that out. It also may help you understand what you and the school can do to make it easier for your child to learn fourth grade math, for instance.

## The Downside of Standards-Based IEPs

Some people criticize the use of educational standards to set IEP goals. They say this approach ignores a student's individual needs and abilities. If a student's academic skills are

far below grade level, a standards-based IEP must be carefully written. For example, an eighth grade student reading at a second grade level will need lots of support. Critics tend to be most concerned about students with significant cognitive disabilities.

### **Key Takeaway**

A Standards-based IEP compares a student's present level of performance to grade level expectations. This type of IEP creates instructional goals that are designed to close the achievement gap. If you don't think a standards-based IEP is right for your child, discuss your concerns with the IEP team.

*This information on standards based IEPs is from: <https://www.understood.org/en/school-learning/special-services/ieps/standards-based-ieps-what-you-need-to-know>*

### **Some Differences between a Traditional IEP and a Standards-Based IEP**

<b>Traditional IEP</b>	<b>Standards-Based IEP</b>
Focused on acquiring basic academic, access, and /or functional skills	Directly tied to the state's content standards
Little relationship to a specific academic area or grade-level expectations	Both the student's present level of academic achievement and functional performance (PLOP) and the annual IEP goals are aligned with and based on state's grade-level standards

### **Some Benefits of a Standards-Based IEP:**

- Links the IEP to the general education curriculum
- Provides positive directions and goals for intervention
- Identifies specific content critical to a student's successful progress in the general education curriculum
- Inclusive environment with common language and curriculum
- Consistency across schools and districts
- Encourages higher expectations for students with disabilities

## **Guidance for Developing Standards Based IEPs**

This document presents a seven-step process for developing IEPs that are aligned with state academic grade-level content standards. Each step is followed by guiding questions for the IEP team to consider in making data-based decisions. This process can help school personnel to: (a) consider each student's strengths and needs to develop goals focused on closing the gaps between the student's levels of academic achievement and grade-level standards; and (b) use data to make decisions, including selecting the most appropriate assessment option.

Prior to developing IEPs, all IEP team members, including parents, need to be familiar with the general education curriculum. In order to make informed decisions about each student's strengths and needs, the IEP team should consider how the student is performing in relation to the state's grade-level content standards for the grade in which the student is enrolled.

The seven major steps that educators can take to develop a standards-based IEP are:

**Step 1: Consider the grade-level content standards for the grade in which the student is enrolled or would be enrolled based on age.**

Ask: What is the intent of the content standard? What is the content standard saying that the student must know and be able to do?

**Step 2: Examine classroom and student data to determine where the student is functioning in relation to the grade-level standards.**

Ask: Has the student been taught content aligned with grade-level standards? Has the student been provided appropriate instructional scaffolding to attain grade-level expectations? Were the lessons and teaching materials used to teach the student aligned with state grade-level standards? Was the instruction evidence-based?

**Step 3: Develop the present level of academic achievement and functional performance.**

Describe the individual strengths and needs of the student in relation to accessing and mastering the general curriculum.

Ask: What do we know about the student's response to academic instruction (e.g., progress monitoring data)? What programs, accommodations (i.e., classroom and testing) and/or interventions have been successful with the student? What have we learned from previous IEPs and student data that can inform decision making? Are there assessment data (i.e., state, district and/or classroom) that can provide useful information for making decisions about the student's strengths and needs (e.g., patterns in the data)?

Consider the factors related to the student's disability and how they affect how the student learns and demonstrates what he or she knows.

Ask: How does the student's disability affect participation and progress in the general curriculum? What supports does the student need to learn the knowledge and attain the skills to progress in the general curriculum? Is the student on track to achieve grade-level proficiency within the year?

**Step 4: Develop measurable annual goals aligned with grade-level academic content standards.**

Ask: What are the student's needs as identified in the present level of performance? Does the goal have a specific timeframe? What can the student reasonably be expected to accomplish in one school year? Are the conditions for meeting the goal addressed? How will the outcome of the goal be measured?

**Step 5: Assess and report the student's progress throughout the year.**

Ask: How does the student demonstrate what he/she knows on classroom, district and state assessments? Are a variety of assessments used to measure progress? How will progress be reported to parents?

**Step 6: Identify specially designed instruction including accommodations and/or modifications needed to access and progress in the general education curriculum.**

Ask: What accommodations are needed to enable the student to access the knowledge in the general education curriculum? What accommodations have been used with the student and were they effective? Has the complexity of the material been changed in such a way that the content has been modified?

**Step 7: Determine the most appropriate assessment option.**

Ask: What types of assessments are offered in my state? What types of responses do different state assessments require? What are the administrative conditions of the assessment? (i.e., setting, delivery of instructions, time allotted, etc.) What accommodations are allowed on the assessment(s)? Are the accommodations approved for the assessment also used in the classroom? Has the student received standards-based, grade-level instruction? Was the instruction evidence based? What is the student's instructional level? How different is the student's instructional level from the level of typical peers? Can the student make progress toward grade-level standards in the same timeframe as typical peers? (If no, consider modified academic achievement standards) What can be learned from the student's previous state assessment results? Can the student demonstrate what he/she knows on the assessment option under consideration?

Additional guidance on this topic may be found in a Dear Colleague Letter at:  
<https://www2.ed.gov/policy/speced/guid/idea/memosdcrltrs/guidance-on-fape-11-17-2015.pdf>

If your South Carolina student will have a standards-based IEP it will be important to familiarize yourself with the state standards. These standards may be found on the SC Dept of Ed website (<http://ed.sc.gov/instruction/standards-learning/>) and specifically:

**English Language Arts standards by grade level:** <http://ed.sc.gov/instruction/standards-learning/english-language-arts/support-documents-and-resources/ela-standards-by-grade-level/>

**Mathematics:** <http://ed.sc.gov/instruction/standards-learning/mathematics/standards/scccr-standards-for-mathematics-final-print-on-one-side/>

**Science:** [http://ed.sc.gov/scdoe/assets/file/agency/ccr/Standards-Learning/documents/South\\_Carolina\\_Academic\\_Standards\\_and\\_Performance\\_Indicators\\_for\\_Science\\_2014.pdf](http://ed.sc.gov/scdoe/assets/file/agency/ccr/Standards-Learning/documents/South_Carolina_Academic_Standards_and_Performance_Indicators_for_Science_2014.pdf)

**Biology:** [http://ed.sc.gov/scdoe/assets/file/agency/ccr/Standards-Learning/documents/2005\\_BIOLOGY\\_Standard\\_B-5.pdf](http://ed.sc.gov/scdoe/assets/file/agency/ccr/Standards-Learning/documents/2005_BIOLOGY_Standard_B-5.pdf)

**Social Studies:** <http://ed.sc.gov/scdoe/assets/file/agency/ccr/Standards-Learning/documents/FINALAPPROVEDSSStandardsAugust182011.pdf>

**Health Education:** <http://ed.sc.gov/scdoe/assets/file/agency/ccr/Standards-Learning/documents/2009HealthEducationStandards.pdf>

*This standard is in revision and had its first reading before the state board of education in June 2017, the second reading was "To Be Determined" at the time of the update to this Parent Manual. The revision as read before the state board:*

[http://ed.sc.gov/scdoe/assets/File/South\\_Carolina\\_Health\\_and\\_Safety\\_Education\\_Standards\\_SBE\\_First\\_Reading\\_Approved\\_061317.pdf](http://ed.sc.gov/scdoe/assets/File/South_Carolina_Health_and_Safety_Education_Standards_SBE_First_Reading_Approved_061317.pdf)

Informative further reading on Health Education can be found at:  
<http://www.scstatehouse.gov/code/t59c032.php>

**Physical Education:** <http://ed.sc.gov/instruction/standards-learning/physical-education/standards/>

## Transition Goals in the IEP

### IDEA's Definition of Transition Services

Any discussion of transition services must begin with its definition in law. IDEA's definition of transition services appears at §300.43. It's rather long but see it in its entirety first, and then we'll discuss it in parts.

#### §300.43 Transition services.

(a) Transition services means a coordinated set of activities for a child with a disability that—

(1) Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

Following are the IDEA's provisions at §300.320(b) regarding what must be included in a student's IEP no later than when that student turns 16 (**13 in South Carolina**):

(b) **Transition services.** Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

Breaking the provisions at §300.320(b) into their component parts is a useful way to see what needs to be included, transition-wise, in the student's IEP. For example, consider:

*Postsecondary goals must be...Appropriate, measurable*

*Postsecondary goals must also be based on...Age-appropriate assessments*

*Transition assessment considers ...Training, education, employment, independent living skills, where appropriate*

*Transition services include...Courses of study*

*Transition services for a student are needed...To assist the student in reaching postsecondary goals*

### **What are the legal requirements in IDEA for transition?**

**Student Notification and Participation:** IDEA requires that for students, beginning no later than age 14, (**age 13 in South Carolina**) one of the purposes of the annual meeting will always be a discussion of transition service needs. Beginning at least by age 16, the discussion will focus upon planning for needed transition services. The school shall invite a student of any age with a disability to attend the IEP meeting if the purpose of the IEP meeting will be the consideration of transition services. This may include discussing what the student wants for his or her future, what needs or challenges are perceived as barriers to reaching student goals, and what accommodations and supports will support student efforts. This reflects the importance of self-determination for the student in conjunction with the shared responsibility of agencies and personnel in attaining the student's long-and short-term goals. If the student does not attend the IEP meeting, the public agency shall take other steps to ensure that the student's preferences and interests are considered.

**Parent Notification and Participation:** Parents must be notified that the purpose of the IEP meeting will be to develop a statement of transition services needs for their son or daughter, who is also invited to attend the meeting. Beginning at age 16, or younger, if appropriate, this notification must also include any other agencies that will be invited to send a representative. Ensuring that parents are informed in advance gives them an opportunity to prepare for discussion about the future. Informing parents that their child will also be invited provides them with the opportunity to talk with their child prior to the actual meeting. With an understanding that outside agencies may be invited, families can begin to think about what services they may need, want, and how to include additional community members.

**Agency Notification, Participation, and Responsibility:** IDEA also requires that the school invite a representative of any other agency that is likely to be responsible for providing or paying for transition services. This reflects the value of long-term, child-centered coordination and shared responsibility. School staff need to be knowledgeable about the services and policies of community agencies in order to invite the appropriate people. Some of the possible agencies may include: vocational rehabilitation, employment and training, mental health, mental retardation/ developmental disabilities, social security, housing, recreation, and others relevant to the individual's needs and preferences.

If an agency does not attend, the school shall take other steps to obtain the participation of the agency in the planning of transition services. If the agency fails to provide the transition services described in the IEP, the school must reconvene the IEP team to identify alternative strategies to meet those objectives. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for transition services that they would otherwise provide to students with disabilities who meet their eligibility criteria. The financial responsibility for meeting a student's transition goals

are not meant to apply solely to the education system, but also to the agencies that the IEP team involves in meeting the transition objectives set out in the IEP.

**Content of the IEP:** IDEA final regulations state the importance of three core concepts:

- The involvement and progress of each student with a disability in the general education curriculum;
- The involvement of parents and students, together with general and special education personnel, in making decisions to support each student; and
- The preparation of students with disabilities for employment and other post school outcomes.

**The actual IEP document includes:**

- present level educational performance—may include information as it relates to post school goals and information from families, employers, and others;
- statement of transition service needs (age 14)—generally based on such factors as transition assessment, environmental barriers, and future adult goals;
- statement of needed transition services (age 16)—may include instruction, related services, community experiences, the development of employment and other postschool adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluation;
- annual goals—generally based on long-term future adult goals (using assessment information and adult goals);
- short-term objectives or benchmarks—are measurable and represent steps to meet annual goals;
- statement of interagency responsibilities—generally includes information about who will provide needed transition services outside of the local education agency;
- statement of participation in state and district-wide tests—describes the modifications in the administration of these tests that the student will need. If a test is not appropriate for the student, the IEP must state why the test is not appropriate and how the student will be tested instead; and
- list of special education and related services—to be provided to or on behalf of the child, including supplementary aids and services, modifications to the educational program, and supports for school personnel, such as training or professional development, that will benefit the student.

### **Checklist of Questions to Ask**

NSTTAC is the National Secondary Transition Technical Assistance Center, an OSEP-funded project whose expertise is secondary transition. As part of its work, NSTTAC has developed extensive training materials to help states collect data about the transition services they provide to youth with disabilities (called Indicator 13). Those materials are also useful in providing a close look at the type of transition information to include in a student's IEP.

NSTTAC's materials include a checklist of questions to ask, which are adapted here for use by IEP teams as they plan a student's transition services and craft statements to include in the student's IEP.

- Is there a measurable postsecondary goal or goals for the student?
- Can the goal(s) be counted?
- Does the goal(s) occur after the student graduates from school?

- Are the postsecondary goals based on an age-appropriate transition assessment?
- Are there annual IEP goals that reasonably enable the child to meet the postsecondary goal(s) or make progress toward meeting the goal(s)?
- Are there transition services (including courses of study) in the IEP that focus on improving the academic and functional achievement of the child to facilitate his or her movement from school to post-school?
- Do the transition services listed in the IEP relate to a type of instruction, related service, community experience, development of employment and other post-school adult living objectives (and, if appropriate, acquisition of daily living skills), and provision of a functional vocational evaluation?
- Are representatives of other agencies invited (with parent consent or the student's) to IEP meetings when transition services are being discussed that are likely to be provided or paid for by these other agencies?

NSTTAC also provides real-life examples that are as illuminating as they are helpful, especially since examples are included for three key domains of transition planning:

- education/training,
- employment, and
- independent living.

### **Matching Transition Services to the Postsecondary Goals and the IEP Goals**

Transition services are determined by the combination of a student's stated postsecondary goals, corresponding IEP goals, and what he or she needs, support-wise, in order to move toward achieving those goals. By definition, transition services can include:

- Instruction;
- Related services;
- Community experiences;
- The development of employment and other post-school adult living objectives;
- If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. [§300.43(a)(2)]

The IEP team's task is to identify and specify the transition services that a student will receive in order to support him or her in reaching the shorter-term IEP goals and the longer-term postsecondary goal.

For the valuable resources available through the Technical Assistance Projects through the Office of Special Education Programs visit:

National Secondary Transition Technical Assistance Center (NSTTAC) visit the National Technical Center on Transition: <http://transitionta.org/>

National Center on Secondary Education and Transition: <http://www.ncset.org/default.asp>



## Fact Sheet: Equity in IDEA

December 12, 2016

The U.S. Department of Education today made available to the public final regulations under Part B of the Individuals with Disabilities Education Act (IDEA), aimed at promoting equity by targeting widespread disparities in the treatment of students of color with disabilities. The regulations will address a number of issues related to significant disproportionality in the identification, placement, and discipline of students with disabilities based on race or ethnicity. The Department is also releasing a new Dear Colleague Letter addressing racial discrimination.

"Children with disabilities are often disproportionately and unfairly suspended and expelled from school and educated in classrooms separate from their peers," said U.S. Secretary of Education John B. King Jr. "Children of color with disabilities are overrepresented within the special education population, and the contrast in how frequently they are disciplined is even starker."

King added, "Today's new regulations and supporting documents provide the necessary guidance and support to school districts and build upon the work from public education advocates and local leaders who believe, like we do, that we need to address racial and ethnic disparities in special education. This important step forward is about ensuring the right services get to the right students in the right way."

In order to address those inequities, IDEA requires states to identify districts with "significant disproportionality" in special education—that is, when districts identify, place in more restrictive settings, or discipline children from any racial or ethnic group at markedly higher rates than their peers.

Children of color—particularly African-American and American Indian youth—are identified as students with disabilities at substantially higher rates than their peers. It is critical to ensure that overrepresentation is not the result of misidentification, including both over- and under-identification, which can interfere with a school's ability to provide children with the appropriate educational services required by law. It is equally important to ensure that all children who are suspected of having a disability are evaluated and, as appropriate, receive needed special education and related services in the most appropriate setting and with the most appropriate discipline strategies employed.

This rule sets a common standard for identifying significant disproportionality in representation of students within special education, segregated school settings, and in receipt of disciplinary actions and ensures that school districts where disproportionality is found carefully review their policies and practices to determine root causes and whether changes are needed. The final rule ensures that school districts explore and address situations where the cause of significant disproportionality is due to under-identification of a group as well as over-identification.

President Obama's *My Brother's Keeper Task Force* identified restoring equity for students with disabilities as a key priority, because there are lasting impacts on children when they are misidentified, including them being taught in classrooms separate from their peers and subjected to inappropriate disciplinary action. Today's announcement delivers on that commitment.

## **A Standard Approach**

The final regulations establish a standard approach that States must use in determining whether significant disproportionality based on race or ethnicity is occurring in the state and in its districts. In 2013, the Government Accountability Office (GAO) issued a report finding that, because states currently use a wide variety of methodologies for examining their districts, few states take action to address significant disproportionality; in fact, as the GAO found, only two to three percent of all districts nationwide are identified as having significant disproportionality, and some states' methodologies for identifying districts for disproportionality were constructed in such a way that the GAO found districts would likely never be identified. Accordingly, GAO recommended that the Department require that all states adopt a standard approach to identify racial and ethnic disparities. With these final regulations, all states will use the same methodology, which will allow for more accurate comparisons within and across states.

## **Focusing on Discipline**

In addition to requiring a standard methodology, the regulations shine a spotlight on disparities in the discipline of students with disabilities on the basis of race or ethnicity by requiring states to examine districts for significant disproportionality in their disciplinary practices. Specifically, the regulations clarify that States must address significant disproportionality in the incidence, duration, and type of disciplinary actions, including suspensions and expulsions, using the same statutory remedies required to address significant disproportionality in the identification and placement of children with disabilities.

## **Addressing the Root Causes of Disproportionality**

In order to eliminate the racial and ethnic disparities that are the focus of these regulations, districts must identify and address the root causes of significant disproportionality. Accordingly, the final regulations clarify requirements for the review and revision of policies, practices, and procedures when significant disproportionality is found. Districts will be required to identify and address the factors contributing to significant disproportionality as part of comprehensive, coordinated early intervening services (CEIS). In addition, new flexibilities in the use of CEIS will further help districts identified with large disparities in addressing the underlying causes of the disparity.

## **Providing Support for Districts to Take Action**

The Department understands that districts need support to effectively address significant disproportionality, and these final regulations provide that support through additional flexibilities in the use of CEIS. Prior to these final regulations, districts identified as having significant disproportionality were not permitted to use their required 15 percent set aside for CEIS in order to serve students with disabilities, even if the district had identified racial disparities in the discipline and placement of children with disabilities. Likewise, CEIS funds could not be used to serve preschool children. Now, with these final regulations, districts identified as having significant disproportionality will have the flexibility to use their CEIS set aside to assist students with disabilities and preschool children with and without disabilities.

All children who require special education services should be appropriately identified and supported. At the same time, no child should be inappropriately identified for special education services, segregated from his or her peers, or disciplined more frequently or

harshly simply because they are a student of color with a disability. These regulations will help ensure that the promise of IDEA is fulfilled without regard to race or ethnicity.

The final regulations incorporate changes to the Department's initial proposals from the comments we received in many ways, including:

- Better addressing how the risk ratio applies to small districts; under the final regulations;
- States need not calculate risk ratios for any racial or ethnic group that does not meet minimum cell or n-sizes set by the state;
- Explicitly prohibiting the use of quotas or of artificially reducing the number of children identified as children with disabilities; and
- Clarifying that states have flexibility not to identify significant disproportionality in districts that make reasonable progress in lowering risk ratios for two prior consecutive years.

Meanwhile, the Office for Civil Rights (OCR) is also releasing a new policy document to support educators and administrators as they work to identify students' need for special education. This new policy document was created to remind states, school districts, and public schools of their legal obligation to prevent discrimination on the basis of race in special education. OCR's enforcement experience suggests both over-identification and under-identification based on race are occurring in schools.

"All students deserve access to the world-class education federal civil rights laws demand," said Catherine E. Lhamon, assistant secretary for civil rights. "The Department will continue its work with school communities to safeguard the rights of our students with disabilities, students of color, and all students to ensure educational equity."

Specifically, the Dear Colleague Letter explains the Title VI requirement that students of all races and national origins have equitable access to general education interventions and to a timely referral for an evaluation for disability under the IDEA or Section 504; and that students of all races and national origins be treated equitably in the evaluation process, in the quality of special education services and supports they receive, and in the degree of restrictiveness of their educational environment.

The letter outlines how to avoid racial discrimination in the referral for disability evaluation, the evaluation process itself, and the provision of special education. It also provides ten illustrative examples that provide further guidance on those processes. A copy of this letter can be found on-line at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-racedisc-special-education.pdf>

## Adult Education & Special Education General Q & A

**May students with disabilities who qualify for special education services receive these services in an adult education program?** According to 24 S.C. Code Ann. Regs. §43-259 (Supp. 2002) and the federal adult education provisions in the Workforce Investment Act, membership in adult education programs is limited to individuals who are eighteen years of age or over and have left the elementary or secondary school, except when the local school board assigns students of less than eighteen years of age who are not officially in membership in a regular school. Therefore, a student with a disability cannot retain enrollment in his or her regular school and enroll in an adult education program at the same time. The student must either receive special education and related services exclusively through his or her regular school or withdraw from enrollment in the regular school and enroll in the adult education program.

**What should an adult education program do if a student who was previously identified as having a disability enrolls in the adult education program?** The adult education program should always contact the programs for students with disabilities if a student who was previously identified as having a disability enrolls in the adult education program. The school district is still responsible for providing a free and appropriate program for students with disabilities enrolled in any program in the district.

**What should be done if a student enrolled in an adult education program has not been previously identified as a student with a disability, but is suspected of having a disability that may require special education and related services?** A student, under the age of twenty-two, who was not previously identified as a student with a disability and is suspected as having a disability and needing special education and related services must receive a complete evaluation by the school district. The evaluation must be used to assist in determining if the student has a disability in one of the thirteen categories under the Individuals with Disabilities Education Act (IDEA) and if the student needs special education and related services in order to receive a free and appropriate public education. Under the Child Find requirements in §300.125 of the IDEA regulations, all students, ages three through twenty-one, who are suspected of needing special education and related services must be located, identified, and evaluated at no cost to the parent or student. Students who have graduated with a regular state high school diploma or who are over the age of twenty-one and have aged out of the special education program are not eligible for any services under the IDEA.

When a student enrolled in the adult education program is suspected of having a disability and needing special education, the adult education program should contact the district's programs for students with disabilities.

Adult education programs and programs for students with disabilities should work collaboratively to ensure that these students receive the appropriate special education and related services where they are enrolled. Both programs are a part of the school district, and the school district is responsible for ensuring that all students with disabilities receive a free and appropriate public education under the IDEA, regardless of where the student is enrolled. Therefore, just as students with disabilities cannot be compelled to enroll in adult education programs in order to receive services, students cannot be required to withdraw from adult education programs on the basis of a disability.

**Are the requirements for an adult education program the same as for a regular school program for a student with a disability?** When a student enrolled in an adult education program meets the eligibility criteria for a program of special education, the services provided through the adult education program must meet all of the IDEA requirements, including the requirements for teacher certification, procedural safeguards, and individualized education programs (IEPs). The student must receive special education services on the same basis as any student with a disability who is regularly enrolled in a school district. This applies to students under the age of twenty-two who were previously identified as having disabilities before enrolling in an adult education program and those who were identified after enrolling in an adult education program.

**What funds are available for students with disabilities enrolled in the adult education program?** Because adult education programs are considered a part of the school district, under the reporting guidelines for special education funding, the school district can continue to count the student for funding under the IDEA. The student may also be counted for funding purposes under the adult education program. The student cannot, however, be counted for funding purposes under the Education Finance Act. If the student is reevaluated and the IEP team determines that the student no longer qualifies for special education and related services, the student can be dismissed from the special education program. No special education funding will be available for a student who is dismissed from the special education program.

**How are appropriate services determined for a student with a disability?** The student's IEP team is responsible for determining the appropriate special education and related services that must be provided by the school district. An adult education representative must always be a part of the IEP team when decisions are made regarding how special education services will be provided in an adult education program.

**May a student with a disability be removed for disciplinary purposes from an adult education program?** If the student still meets the eligibility requirements for special education and has not "aged out of the program, he or she still retains all rights as a special education student under the IDEA and the SBE regulations. The adult education program is a part of the school district; therefore, the student's rights follow him or her into the adult education program.

**Is it permissible for all IEPs to be changed to Section 504 plans prior to students being permitted to enroll in an adult education program?** No. All decisions must be made on an individualized basis by the IEP team. It is never permissible for decisions to be made on a group basis. Unless the student has been reevaluated and determined to no longer qualify as a student with a disability in need of special education and related services, this student must continue to have an IEP. If a student has been reevaluated and determined to no longer need special education and related services, a Section 504 plan may be appropriate.

**May a student with a disability be required to remain in the regular high school program in order to receive special educational services?** No. Students with disabilities cannot be required to remain in the regular high school program in order to receive special educational services, nor can they be compelled to enroll in an adult education program in order to receive special education services.

**May a student be dismissed from an adult education program if a disability is diagnosed after enrolling in the program?** No. Students with disabilities cannot be compelled to withdraw from an adult education program on the basis of a disability. When a

student enrolled in an adult education program meets the eligibility criteria for a program of special education, the services provided in the adult education program must meet all of the state and federal requirements, including those related to teacher certification, procedural safeguards, and IEPs.

**Is a GED the equivalent of a regular high school diploma in terms of determining whether a student with a disability can return to school?** No. The SDE's Office of General Counsel has determined that a GED, although considered to be an equivalency diploma, does not end the responsibility of the school district to provide a student with a disability with a FAPE. If a student with a disability has received a regular state high school diploma, a school district would not be required to permit him or her to attend school.

**What role does the adult education representative play in the IEP process?** The adult education representative is an equal member of the IEP team and must be knowledgeable of all of the programs available within the adult education program. He or she should be prepared to participate in the determination of whether an individual student could appropriately participate in the adult education program.

**What information and/or materials need to be prepared or discussed in the IEP meeting by the adult education representative?** Should the previous IEP used by the student while in the high school setting be provided to the adult education representative prior to the IEP meeting? It may be helpful for the school district to have a planning meeting prior to the actual IEP meeting to assist all participants, including the adult education representative, in learning more about the needs of the student who may be placed in the adult education program. On a case-by-case basis, it should be determined if the previous IEP should be provided to all of the participants. This does not need to be an "across-the-board" policy.

**May an adult education director refuse to admit students with disabilities?** No. This would constitute discrimination on the basis of a disability and as such would not be permitted by Section 504 of the Rehabilitation Act of 1973. An individual determination of whether the adult education program is appropriate for a specific student with a disability must be made by the IEP team.

**Must the previous IEP for a student with a disability be rewritten before being used in the adult education program?** The IEP team must meet to review the IEP and determine any revisions that may need to be made.

**May a former special education student be removed from the adult education program for behavioral issues?** It may be possible if the student was properly dismissed from a special education program. If the student dropped out of school without being properly dismissed from a special education program, however, the discipline procedures described in the IDEA regulations will apply. If the student was properly dismissed from the special education program, then the student would be subject to the same disciplinary procedures as any other student. If, however, it is suspected that the student may now qualify again as a student with a disability in need of special education and related services, then the disciplinary procedures described in the IDEA regulations could apply. Refer to Section 300.527 of the IDEA regulations and the district's director of special education with respect to protections for children not yet eligible for special education and related services.

**Who is responsible for writing the IEP, defining and measuring annual goals, short-term objectives, and support services?** How is the potential cost of these services

determined and paid? The IEP team is responsible for the development of the IEP and for ensuring that appropriate services are provided to the student. It is a district decision with respect to how resources are allocated to pay for the services.

**What type expectations or demands can an adult education program place on a student with a disability who has an IEP?** What about a student who has a Section 504 plan and who is age twenty-two or older? For a student of legal school age, an individualized determination must be made by the IEP team regarding the goals and objectives and services in the IEP. For a student who is above the legal school age and who has a Section 504 plan, the Section 504 team must determine what is needed in order for the student to have access to the adult education program.

**May a student of legal school age with a disability in an adult education program participate in school district activities and programs?** Yes. Students enrolled in an adult education program are still the responsibility of the school district and may participate in school district activities and programs on the same basis as students without disabilities in the school district.

**Is it possible for a student who is enrolled in adult education to refuse special education services?** The IEP team should ensure that the student has all of the information he or she needs to understand the necessity for special education services. The IEP team must make all decisions with respect to a student who has been determined to be a student with a disability through the age of twenty-one who needs special education and related services. The student must be invited to participate as an equal member of the IEP team. A school district may not permit a student who continues to qualify for special education services to sign him- or herself out of the special education program unless he or she can be properly dismissed from special education. The three ways a student can be properly dismissed are through being reevaluated or aging out or graduating with a high school diploma (and therefore no longer eligible for special education services from the high school). An IEP team, using reevaluation procedures, may determine that a student could be properly dismissed from special education. They could determine that a Section 504 plan would be appropriate since the student will be in an environment with more individualized attention.

**Must parents be invited to the IEP meeting for a student who is over the age of eighteen and enrolled in adult education?** All rights of the parents must be transferred to the student upon his or her reaching the age of majority (eighteen years old). If the student has been determined to be incompetent in accordance with state laws, the parent obtains a power of attorney, or the student signs a waiver provided by the school district/agency stating the parent may continue to be accorded all rights under the IDEA, the rights shall not be transferred. The student may, however, revoke the power of attorney or the waiver at any time. All notices, however, under the IDEA should be sent to the parent unless the student is independent and not financially dependent on the parents. The parents may be invited by the school district to an IEP meeting as persons who have knowledge or expertise regarding the student.

If the student is still considered a dependent under IRS rules (living at home and dependent upon the parent for support) the parent has the right to receive copies of all notices provided to the student, attend IEP meetings, and access the educational records. If a student is not dependent upon his or her parent, the student is the educational decision-maker and the parent has no rights. The student would decide if the parent would be involved in educational decisions.

# Adult Students with Disabilities Educational Rights Consent Act (Consent Act)

*Provided by: The Protection and Advocacy System for South Carolina*  
E-mail: [info@pandasc.org](mailto:info@pandasc.org) / Website: [www.pandasc.org](http://www.pandasc.org)

## P&A Fact Sheet

### Background

Under the Individuals with Disabilities Education Act of 2004 (IDEA), a student who is eligible for special education services is entitled to a free and appropriate public education between the ages of 3 and 21.<sup>1</sup> At the age of 18, all parental rights under IDEA transfer to the student unless the student has been determined incompetent.<sup>2</sup> This gives the adult student many important rights and protections under IDEA that the parents previously held. However, some students with severe disabilities may not be able to participate in their educational process. The IDEA provides a special rule for those students. The special rule says:

- If there is a procedure under state law for deciding that a student who is over age 18 lacks the ability to provide consent for educational rights and has not been declared incompetent, then,
- The state must establish procedures to appoint the parent (or another appropriate person if the parent is not available) to represent the educational interests of the adult student while he or she is in school.<sup>3</sup>

In June of 2016, South Carolina enacted the Adult Students with Disabilities Educational Rights Consent Act (Consent Act). This new law provides procedures for complying with the special rule.<sup>4</sup> This Fact Sheet explains the Consent Act.

### With The Passage Of The Consent Act, What Options Does A Student Have When Turning 18?

#### Option 1 – All Rights Transfer to the Student

Just like before passage of the Consent Act, most students with disabilities will be able to act independently and consent to their own educational programming.

#### Option 2 – Student Makes Decisions with Support and Assistance (Supported Decision Making)

The Consent Act notes that the student has the right to have an adult of his choice support the student in making education decisions. Supported decision making is simply an informal way to seek advice and assistance when making a decision—like asking friends and family what they think about a course of action.

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<sup>1</sup> 20 USC § 1412(a)(1)(A); 34 CFR § 300.101

<sup>2</sup> 20 USC § 1415 (m); 34 CFR § 300.520.

<sup>3</sup> 34 CFR § 300.520(b); *see* 20 USC § 1415 (m)(2)

<sup>4</sup> S.C. Code §§ 59-33-310 to 59-33-370



### Option 3 – Delegation of Rights

A student with the capacity to do so may also sign a power of attorney and delegate his or her rights to an agent (such as a parent). The SC Department of Education is required to develop a special form for appointing an agent for making educational decisions. Students may use that form or a power of attorney for education.

### Option 4 - Certification of an Educational Representative

A student who is unable to communicate his wishes, interests, or preferences in respect to his educational program may have an educational representative certified to act on his behalf. The process is outlined in detail below.

### Option 5 – Guardianship of the Student

If a student is incapacitated, the parents or other appropriate person may seek guardianship of the adult child through the Probate Court process. The Consent Act does not apply if the student has a court appointed guardian. For more information on guardianship and alternatives to guardianship, see information on the website of the SC Supreme Court:

Guardianship: Frequently Asked Questions from a Caregiver or Potential Guardian:

<http://www.judicial.state.sc.us/selfHelp/FAQsFromACaregiver.pdf>

Guardianship: Frequently Asked Questions from a Ward:

<http://www.judicial.state.sc.us/selfHelp/FAQsFromAWard.pdf>

Alternatives to Guardianship in SC:

<http://www.judicial.state.sc.us/selfHelp/FAQsAlternativesToGuardianshipSC.pdf>

## **What Is The Process For The Appointment Of An Educational Representative?**

### Step 1 – A Medical Examination

The student first needs to have a medical examination. The examination must be done by one of the following medical professionals:

- Physician
- Nurse practitioner
- Physician's assistant
- Psychologist
- Psychiatrist

The medical professional must examine the student and certify that the student is incapable of communicating, with or without reasonable accommodations, the student's wishes, interests, or preferences regarding his or her educational program. The licensed medical professional may not be an employee of the school district.

### Step 2 – The Medical Professional Must Certify in Writing that the Student Cannot Communicate

The Certification may be informal, but it must include the following information:

- Date of the examination
- Basis for the determination that the student is not able to communicate his or her wishes
- Whether the inability to communicate is likely to last until age 21

### Step 3 – Send the Letter to the Superintendent of the School District, or Other Designated School Official

It does not matter who mails the certification, but once the school district receives the certification, the district is required to notify the student in writing that a professional has certified that he or she is incapable of communicating and an educational representative will be designated to represent him or her. The student must be informed that he or she may challenge the designation of the educational representative. If the student challenges the certification of an educational representative, then the school district may not rely upon the educational representative for any purpose. A challenge can be made at any time.

### Who Will Serve As The Educational Representative?

The Consent Act lists the following priorities for who is to serve as an educational representative:

- Custodial parent/adult spouse
- Adult brother or sister
- Grandparent
- Other adult relative
- Surrogate parent designated by the school district

### What Can The Educational Representative Do?

The Educational Representative has the authority to consent to educational services and participate in the development of the educational program, similar to a parent's role prior to a student turning 18. The representative does not have the authority to remove a student from educational services. The decisions made by the Educational Representative must be based upon a determination of the student's preferences to the extent they can be determined. If the preferences cannot be determined, then the decisions must be based upon what is in the student's best interest.

### How Can The Authority Of An Educational Representative End?

The authority of the Educational Representative may end as follows:

- When the school district receives a challenge to the certification
- When the student is no longer eligible for special education services
- When the Probate Court issues a guardianship order which terminates the authority of the Educational Representative

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This publication provides legal information, but is not intended to be legal advice. The information was based on the law at the time it was written. As the law may change, please contact P&A for updates. This publication is funded in part by the U.S. Department of Health and Human Services (Administration on Intellectual and Developmental Disabilities and the Substance Abuse and Mental Health Services Administration), and by the U. S. Department of Education (Rehabilitation Services Administration). It does not necessarily represent the official views of the funding authorities.

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June 2016 - Education

## Sample Certification Letter from a Medical Professional

[Date]

Superintendent A. B. Jones  
School District #1  
[Street Address]  
Jolly Good, SC

Re: [Student's Name]

Dear Superintendent Jones:

I am a licensed [physician, nurse practitioner, physician's assistant, psychologist, psychiatrist]. On [insert date of examination], I examined [Student's Name]. [Student's Name] is incapable of communicating, with or without reasonable accommodations, [his/her] wishes, interests, or preferences regarding [his/her] educational program. The reason for this determination is based upon [insert relevant diagnosis and conditions like being non-verbal and unable to use a communication device due to palsy or other condition]. [Student's name]'s inability to communicate is likely to last until after age twenty-one.

Sincerely,

[Medical Professional's Signature]

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## Sample Letter Challenge of Certification

[Date]

Superintendent A. B. Jones  
School District #1  
[Street Address]  
Jolly Good, SC

Re: [Student's Name]

Dear Superintendent Jones:

I am challenging the certification by a medical professional that I am unable to communicate, with or without reasonable accommodations, my wishes, interests, or preferences regarding my educational program. I am able to communicate my wishes, interests, and preferences regarding my educational program. Please do not use an educational representative for any purpose.

Sincerely,

# Transportation Services

Transportation is one of the most important services a school district is required to provide to students with disabilities under federal and state special education laws. This information focuses on the federal requirements regarding transportation and whether or not your school district is in compliance with those laws. Individual state laws vary, to interpret whether the laws and case law are applicable to your facts and situation, you should always consult an attorney.

## 1. What laws govern the transportation of students with disabilities?

Individuals with Disabilities Education Act (“IDEA”): explains at 20 U.S.C. § 1401(26)(A) that “transportation” is a related service under the law for students identified with a disability under the law and explains that:

- The term “related services” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

The IDEA implementing regulations located at 34 C.F.R. § 300.34(a), further define “related services,” stating:

- General. 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, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

34 C.F.R. § 300.34(c)(16) of the implementing regulations states that the definition of transportation includes:

- Travel to and from school and between schools
- Travel in and around school buildings
- Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

**Section 504 of the Rehabilitation Act of 1973:** The pertinent portion of the law states that the school district must provide non-academic and extracurricular services in such a manner to afford handicapped students an equal opportunity for participation in such services and activities. Non-academic and extracurricular services and activities include transportation.

## **2. Are disabled students entitled to transportation?**

In general, if a school district provides transportation for general education students, then it must provide transportation for special education students as well, no matter to which location the student is assigned.

If a school district does not provide transportation services to general education students, the issue becomes a little trickier. The IEP Team must decide on an individualized basis whether the special education student requires transportation as a “related service” in order to receive a free appropriate public education (“FAPE”). If the special education student requires transportation as a related service, the school district must provide it regardless of whether it provides transportation for general education students.

## **3. Can I choose the type of vehicle in which my child is transported?**

It is generally the school that decides what type of vehicle it will use to transport your child with special needs. Vehicles can include minibuses, cars, minivans, and even taxicabs. Unless there is an issue with Least Restrictive Environment, parents generally don’t have a say in the choice of vehicle decision.

## **4. Can I request that the vehicle providing the transportation have specialized equipment?**

One of the biggest issues that arise is air-conditioning for disabled students. Climate-controlled transportation is not explicitly required under the IDEA. However, if an IEP team determines that a child needs climate-controlled transportation to receive special education services, related services, or both, and the child’s IEP specifies that such transportation is necessary, the school district must provide this special transportation at no cost to the parents. Similarly, climate-controlled transportation is not required under section 504 of the Rehabilitation Act of 1973, as amended (Section 504) unless a child with a disability has an identified need for this transportation. See 34 CFR Part 104.

However, the transportation of nondisabled children in climate-controlled buses, while children with disabilities are transported in separate buses that are not climate-controlled, might raise issues of disability discrimination under Section 504.

## **5. If a child with a disability spends a significant amount of time being transported to and from school, as well as to and from another location to receive special education and related services, is the child entitled to receive additional school time to make up for the time lost in transportation?**

Neither IDEA nor the implementing regulations address the issue of the length of a school day. Determining the length of a school day is a decision left to the state department of education. However, IDEA defines school day as any day, including a partial day, that children are in attendance at school for instructional purposes.

Additionally, school day has the same meaning for all children in school, including both those with and without disabilities. In general, a school day for a child with a disability should not be longer or shorter than a school day for general education students. However, if a child’s IEP Team determines a child needs a shorter or extended school day in order to receive FAPE, then appropriate modifications should be incorporated into the IEP. However, these modifications must be based on the unique needs of the child, as determined by the IEP team, and not solely based on the child’s transportation time.

## **6. What do I do if my child is on a school bus way too long every day?**

This is something that should be brought to the attention of the IEP team. The length of the child's ride to and from school can negatively impact a child. Many states have laws establishing a maximum travel time. Contact your state department of education to determine the applicable state law. The federal laws do not specifically address length of travel time. However, under Section 504 and IDEA, discrimination and question of FAPE arguments could be raised based on the distance the facility is from the home or whether general education students are subjected to lengthy bus rides.

### **A few more questions answered:**

**Who decides if a child needs transportation services?** A child's IEP team, which includes the parents, decides whether a child needs transportation services. This is based on assessment. The school will arrange transportation if the IEP team decides that a child's disability prevents him or her from:

- using the same transportation as children who don't have disabilities
- going to and from school in the same way as children who do not have disabilities.

**A child's IEP includes transportation as a related service. Will the parent have to pay for this?** No. The school must pay the cost of transportation services included in an IEP.

**Do all students with disabilities have the right to transportation?** No. Only students with disabilities who need transportation services and have them included in the IEP receive them. If transportation services are not in a child's IEP, the child will be treated like all other children.

**Do most children with disabilities need special transportation?** No. Most children with disabilities are able to use the same transportation system as their classmates who don't have disabilities. Sometimes just adding special equipment or aides to school buses is all that is required for a student with a disability

**My son goes to private school. Does he still have the right to transportation?** It depends. Yes, if the IEP team placed your son in private school in order to receive special education and determined that he needed transportation based on his disability. It would then be written into his IEP, and transportation would be provided. However, if you placed your son in private school as a matter of personal choice, the rules are different. Talk to your local special education department for the answer.

## **Specific to South Carolina: ARTICLE 5. - TRANSPORTATION REGULATIONS**

### **43-80. Operation of Public Pupil Transportation Services.**

(Statutory Authority: S.C. Code Ann. Sections 59-5-60, 59-67-20, and 59-67-410 (1990) and S.C. Code Ann. Section 59-67-570 (Supp. 1998))

**Z.** Transportation will be provided either on state-owned buses or by contract between the State Department of Education and the school district, whichever is most economical to the State.

The following procedure shall be used in requesting transportation:

1. State-Owned Buses--State-owned buses will be assigned when the number of eligible students (usually minimum of 6) live within an area to make a bus route feasible from a time and mileage standpoint. School district officials shall submit a map and route description to the designated representative of the State Department of Education to justify assignment of

the bus. Maps and descriptions will be submitted annually in the same manner as for regular bus routes.

2. Contract Transportation--Contract transportation will be limited to pupils who cannot be transported efficiently by state-owned buses. The following procedures will be used in requesting contract transportation.

- The State Department of Education will be notified of the name of the pupil, location of residence, and school to which such pupil(s) is to be assigned. If it is determined that the pupil or pupils can not be transported on a bus already assigned to the district or if the number of pupils is insufficient to justify an additional bus, then, a contract will be signed between the school district and the parent or other individuals for transportation.
- Contracts between the school district and parents or other individuals to transport one child will be based on a rate per mile as determined by the State Department of Education and approved by the State Board of Education for each 90 school days. If more than one student is transported, the contract may be used on the rate per vehicle or passenger mile for the actual number of miles traveled.
- When it is in the best interest of the State, contracts may be written for transporting students who live within 2 miles of the school. The State Board of Education shall establish the funding limitation on the basis of a designated amount of dollars per student for 90 school days.
- The maximum payment for transportation for any one pupil shall not exceed the amount established annually by the State Board of Education for each 90 school days unless a special exception is approved by the State Board of Education.
- All proposed contracts must be approved by the State Department of Education prior to commencing transportation. Reimbursement will be from the date of approval.
- Contract transportation will not be approved if transportation on state-owned buses is more cost effective or productive except when otherwise required by the student's Individual Education Plan. Exceptions may be made in extreme cases upon written recommendation of the affected pupil's licensed medical doctor and the school district and upon approval by the State Department of Education.

AA. Transportation will be provided only during the regular school term not to exceed 180 school days.

BB. Transportation on state-owned buses or by contract of pupils attending multi-district programs or programs conducted by agencies other than the public schools, will be provided only if the home district has received approval of "another facilities agreement" from the State Department of Education. This approval must be received prior to commencing transportation. The home district is responsible for securing contracts for transportation routes and for the requisitioning of funds.

CC. Persons contracting to provide transportation must have insurance coverage at least equal to that carried on state-owned buses as required by Section 59-67-710 of the Code of Laws of South Carolina, as amended.

DD. Reimbursement to the district for contracts shall be made at the end of each 90 school days. Request for reimbursement shall be submitted on a form furnished by the State Department of Education. The request for reimbursement shall be pro-rated if pupil attends less than 90 school days.

# The Seven Deadly Sins That Can Be Committed By School Districts

*Compiled by Melinda Jacobs*

1. Failing to implement the IEP
  - Legally-binding contract (provision of services)
  - No excuses for not implementing
  - No harm no foul
2. Failure to try something new
  - Peer reviewed research requirement
  - Teacher training
3. Fear of confrontation
  - Don't back down when you're right
  - Collaborate
  - Parental tactics can lead to a denial of FAPE
4. Failure to think outside the box
  - Label does not drive placement
  - It is always wrong to decide services based on administrative convenience, scheduling concerns, or teacher preference
5. Failure to consider parental input
  - This is the cardinal sin (predetermination)
  - School-based personnel MUST consider all parental requests
  - This includes parent's experts
  - Consideration does not meet LEA has to agree
6. Failure to keep up with research
  - Peer-reviewed research requirement
  - Not a mine is better than yours
  - Doesn't raise FAPE standard
7. Failure to monitor student progress
  - Collect data on student progress
  - Ask when and how data will be collected and reported, or teacher preference

*Melinda Jacobs is an attorney in private practice who has worked in the field of special education law since 1985. Since 1996, she has exclusively represented school systems in special education matters pursuant to the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, and related laws. Ms. Jacobs formerly served as an attorney in the Office of Special Education Programs for the Tennessee Department of Education and as Associate Publisher for Education and Disability Publications for LRP Publications. This information is provided as part of comprehensive training conducted by Ms. Jacobs.*



## Dispute Resolution Options in Detail

The South Carolina Department of Education (SCDE) provides adult students receiving special education services, parents of students with disabilities receiving special education services, local educational agencies (LEAs) and state operated programs (SOPs), with the following dispute resolution options. Documents and information on the dispute resolution options are available on the SCDE's website at: <http://ed.sc.gov/districts-schools/special-education-services/parent-resources/dispute-resolution-information/>

### Ombudsperson

The initial step toward special education dispute resolution at the state level begins in the Office of Special Education Services (OSES) Ombudsperson office. The SCDE Office of Special Education Services (OSES) employs an Ombudsperson (with a toll-free line **1-866-628-0910**) that parents can call to ask questions regarding the laws and regulations pertaining to a specific concern. The Ombudsperson also assists in resolving informal complaints by acting as an intermediary between parents and LEA or SOP administrators.

The OSES Ombudsperson can make direct contact with the school district/LEA, or SOP, communicating with the family, organizations and/or agencies involved to address concerns related to a student's special education eligibility and special education programming.

- The Ombudsperson offers general assistance by sharing information regarding applicable state and federal special education regulations as well as available dispute resolution options.
- The OSES Ombudsperson serves as an impartial third party who listens to all sides of the issues and seeks appropriate special education processes and positive student outcomes.

### Facilitated Individualized Education Program (FIEP) Team Meeting

The South Carolina Department of Education (SCDE) Office of Special Education Services (OSES) provides informal dispute resolution assistance to families and schools as they address concerns related to programming for students with disabilities. This assistance includes providing facilitators, when requested, to assist with the individualized education program (IEP) process. Facilitation is available at no cost to parents and school districts and is a voluntary process. Both parties must agree that it would be valuable to have a neutral person, the facilitator, participate in an IEP team meeting to assist the team in discussing issues and reaching consensus.

*When is IEP facilitation appropriate?*

In most situations, the IEP team is able to reach agreement about the identification, evaluation, educational program, placement, and overall provision of a free appropriate public education (FAPE) for a student with a disability.

However, parents or a district may wish to consider requesting IEP facilitation when they have:

- concerns about communication and trust among IEP team members;
- apprehensions about the next IEP team meeting; or
- difficulties reaching consensus on important aspects of an IEP.

### *What is the role of the facilitator?*

The IEP facilitator assists in the development of an appropriate IEP by:

- assisting in maintaining open communication among team members;
- addressing conflicts and disagreements that may arise during the meeting;
- helping to clarify points of agreement and disagreement; and
- keeping the IEP team, and the meeting process on task.

### *Who are the facilitators?*

Facilitators are members of the education community who are experienced and knowledgeable in special education related issues. They are trained in facilitation and conflict resolution, but are not employees of the school district or SCDE.

### *The Facilitated IEP Team Meeting*

The facilitated IEP team meeting begins and ends with member agreement. The facilitator explains the overall process and their role as facilitator, obtains team agreement on the agenda, group norms, and meeting outcomes, and ends the meeting with a team agreed upon plan of action. The facilitation process addresses the specific areas of concern noted by the family and/or district and may be used for any type of IEP team meeting including initial, annual, special review, or reevaluation meetings.

### *Who do I contact; and how do I get started?*

A request for facilitation can be made by contacting the SCDE Facilitated IEP Team Meeting Program Coordinator and completing a Facilitated IEP Team Meeting Request Form. This form may be accessed on the SCDE website at:

**<https://scde.formstack.com/forms/fieprequestform>**

You may also request a copy of the form from your local school district special education services office.

The completed form can be submitted electronically or by mail to the SCDE.

South Carolina Department of Education  
Office of Special Education Services  
1919 Blanding Street, Columbia, SC 29201  
Phone: 803-734-8224

## **Mediation**

In mediation, parents and school personnel sit down with an impartial third person called a *mediator* and talk openly about the areas where they disagree, in an effort to reach an agreement.

Mediation provides a positive, less adversarial approach to resolving disputes between parents and school systems. With the assistance of a mediator, the parties involved in the dispute can communicate openly and respectfully about their differences as they work toward reaching an agreement. The decision-making power resides with the participants in mediation.

The district or agency must make sure that someone attends the meeting who has the authority to make final decisions and bind the district or agency. A parent may choose to have a friend or advocate attend the mediation session. While there is nothing in the IDEA that prohibits a parent or public agency from having an attorney attend the mediation, the presence of an attorney could contribute to a potentially adversarial atmosphere that may not necessarily be in the best interests of the child.

The IDEA requires that the mediation process meet the following conditions:

- mediation must be voluntary on the part of both parties;
- mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other right under Part B of IDEA;
- mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques;
- the state must select mediators on a random, rotational, or other impartial basis;
- the state must bear the cost of the mediation process;
- an agreement reached by the parties must be set forth in a written mediation agreement; and
- discussions that occur during the mediation process must be confidential.

The discussions during mediation may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the beginning of the mediation.

### **State Complaint**

A state complaint may be filed by parents, an organization, or a person who is not related to the child. State complaints must describe what requirement of IDEA the school has violated, the facts that support the allegation, and the dates the violation(s) occurred. The submitted state complaint must also be signed.

Each state education agency (SEA) must develop a model form to assist parents and other parties in filing a State complaint. However, using the model form to file a complaint is not required. Another form or document may be used so long as the form or document includes the content required for filing a State complaint. The person filing the complaint must provide a copy of the complaint to the Office of General Council (OGC) and to the district or local agency or state operated program.

The school system must be given the opportunity to respond to the state complaint, including making a proposal to resolve the complaint.

The SEA must resolve the complaint within 60 calendar days, with limited exceptions. The OGC will issue a written decision that addresses each of the allegations in the state complaint and includes the reasons for the final decision.

If the OGC finds that the school system has failed to provide appropriate services, the OGC will address the failure, including corrective action (such as compensatory services or monetary reimbursement), if appropriate to address the needs of the child.

### **Due Process**

When due process is used parents and the school present evidence before an impartial third person (called a hearing officer). The hearing officer decides how to resolve the problem based upon that evidence and the requirements of the IDEA.

#### *Filing a due process complaint*

Filing a due process complaint is the first step toward obtaining a hearing. The complaint must include specific information:

- the child's name;
- the address where the child resides;
- the name of the school the child is attending;

- a description of the conflict; and
- a proposed resolution of the conflict, to the extent known and available to the person filing the complaint.

The information contained in the request for a hearing must be kept confidential. The party requesting the due process hearing must provide a copy of the request to the local educational agency (LEA) and forward a copy to the OGC. If the request does not have all of the required information the LEA may ask the hearing officer to dismiss the request.

#### *Resolution meeting*

Within 15 days, the LEA must convene a resolution meeting (unless the parties agree to use mediation or waive the resolution meeting). The purpose of the meeting is to give the parties the opportunity to resolve the issues in the due process complaint without holding a due process hearing.

If the resolution meeting does not succeed in resolving the dispute, the parties proceed to a due process hearing where an impartial, trained hearing officer hears the evidence and issues a hearing decision.

#### *The due process hearing*

During this hearing, each party has the opportunity to present their views in a formal legal setting, using witnesses, testimony, documents, and legal arguments that they believe are important for the hearing officer to consider. Since the due process hearing is a legal proceeding, a party will often choose to be represented by an attorney.

Within 45 days of the resolution period expiring, a final decision must be reached in the hearing and a copy of that decision mailed to each of the parties, unless the hearing officer grants a specific extension of this time period at the request of either party.

The hearings are conducted in accordance with the IDEA and federal regulations. If the parent or the LEA/SOP do not agree with the hearing officer's decision, they can appeal to the SCDE, which will conduct an impartial review of the hearing and the hearing officer's decision. If a party does not agree with the SCDE's decision on the appeal, they can go to court. If a due process hearing is requested, the OGC ensures that a resolution session takes place in accordance with federal law.

#### *Expedited hearing request & resolution meeting*

This is a special type of due process complaint/ hearing request available only in certain situations that relate to a student's discipline and placement and it may be filed by a parent or school district. It is used when parents disagree with a school district's discipline-related decision that affects their child's placement, or whether the child's behavior is related to his or her disability. A school district may use this process if it believes that a child's behavior could be dangerous to the child or others. The outcome or desired result is a written decision with findings of fact and conclusions of law, which may order the child to be provided with a specific educational placement. A formal record of the hearing (a written or electronic transcript) must be made and provided to the parent. The decision is appealable in state or federal court and the prevailing party may attempt to recover attorneys' fees in a separate court action.

For more information and a comparison chart on dispute resolution visit:

**<http://www.cadreworks.org/>**

## Section 4

### BEHAVIOR

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# When Your Child Has Challenging Behavior

## 5 Facts Every Family Should Know

1. All behavior is a form of communication. Everybody communicates through behavior. An infant may cry when she is hungry or wet, just like an adult may yawn when he is bored at work. Adults and children are communicating something through their behavior during every moment in every day, even if they are not aware of it. A child's problematic or inappropriate behavior is a sign that he is upset and that something is not right.
2. There is always a reason for problem behavior. Children sometimes have trouble communicating, because they may not know the words to describe how they are feeling or what to do in a difficult situation. Thus children engage in challenging behavior to serve a purpose. That purpose may be getting someone's attention, stopping an activity, or gaining sensory pleasure - but there is always a reason behind the behavior.
3. There can be many reasons behind one specific behavior. Children with challenging behavior are sending adults the message that something is not right or that their needs are not being met. There could be many reasons for a specific behavior, such as being hungry, scared, hurt, sad or angry. Some children have a particularly hard time knowing how to tell adults they are angry, so they act out in ways that get them into trouble. Other children may engage in behavior that seems destructive because they enjoy the physical sensation, for example punching things or pulling threads from clothing. Sometimes children feel unsafe or out of control, so they take inappropriate action over the things they do control, like being able to kick or hurt someone. A child who has tried several times to communicate to adults about what she needs, but whose needs remain unmet, will often use problem behavior as a way of sending a very loud message.
4. Adults can learn to understand and interpret children's challenging behavior. Since children often express what they need through behavior, many adults face the challenge of figuring out the meaning behind the child's behavior. All children, but especially those who display challenging behavior, need the consistency of a reliable and loving adult who will provide guidance, especially during difficult times. Just as it is important to find meaning in children's behavior, it is equally important for adults to be aware of the meaning in their own behavior. Children learn a lot through the messages that adults send every day.
5. Children's challenging behavior can be reduced with support, not punishment. Once adults understand what children are communicating through their behavior, they can respond better. When children feel respected and have their needs met, there is no longer a reason to use challenging behavior to communicate. Yelling at or punishing a child for a behavior may stop the behavior for the moment, but it does not give the child support or provide alternate ways to act in difficult situations. When adults use punishment, they are sending the message that anger is a good way to solve problems. When adults help children find positive ways to communicate their needs to others, children learn important social and problem-solving skills that will help them throughout their life.

## Factors that Contribute to Challenging Behavior

To better understand what a child *may* be communicating through challenging behavior, it is important for adults to play detective and gather information. Think about when, where and with whom the challenging behavior occurs. Notice any patterns that occur. Think carefully about your child's day at school, home and other places you tend to see

challenging behavior. See if *you* can find any patterns to your child's behavior by asking:

- Is *my* child avoiding something, some place, or someone?
- Does *my* child like the way this behavior (for example hand flapping or spinning) feels?
- Is *my* child uncomfortable, hungry, tired, or not feeling well?
- Is *my* child having a reaction to medication or food?
- Is *my* child angry, sad, anxious, or scared?
- Is *my* child confused, bored, or frustrated?
- Does my child want to get away from something or someone?
- Does my child want to get something?

Many adults find it helpful to take note of what happens directly before and directly after the challenging behavior occurs. For example: does your child get easily frustrated, even when she's working on something she likes to do? If so, maybe she does not understand the instructions or the steps she needs to follow for the project to succeed. Are you paying attention to your child only after her challenging behavior occurs? If so, maybe a few minutes of "together time" before your child heads off to school, playgroup, or other activities could prevent future challenging behavior. Start thinking about whether the circumstances before and after the challenging behavior support the child in a positive way.

### **8 Ways to Reduce Challenging Behavior**

After you have identified what triggers challenging behavior in your child, you can use that information to respond more positively to your child's needs. Here are some tips for how to get started:

1. **Change the Setting:** Change the environment, activity, or people involved, so your child feels supported. For example, if your child becomes over-stimulated when playing games with her friends, you might recommend she avoid multiple distractions ("Why don't you turn off the TV while you're playing your game?") or try a different activity (like coloring or playing outside).
2. **Respond Calmly:** Respond to the situation calmly and without your own anger - adults may need quiet time too. If your child's behavior has made you angry, take a few minutes to calm down before deciding how to respond.
3. **Teach Alternate Behaviors:** Teach your child alternate and more socially appropriate ways of expressing what he wants or needs. For example, if your child fights over sharing toys with friends or siblings, teach him the process of borrowing ("Can I play with your puzzle for a little while?") and bartering ("I'll loan you my book if I can play with your puzzle.") Model this behavior for him by showing respect for his possessions.
4. **Offer Choices:** Offer choices and opportunities for your child to have more control over her environment. For example, if your child is a fussy eater, ask her what she'd like to eat, provide her with options ("Would you like a peanut-butter or tuna-fish sandwich?"), or make her part of the process ("Why don't you help me cook dinner/pick out groceries?").
5. **Notice the Positive:** Notice positive behavior when it occurs and provide genuine praise. For example, "That was very nice of you to let your brother play with your toy." This is sometimes called "catch him/her being good".
6. **Be Consistent:** Make sure there are consistent and predictable routines. "We wash our face, brush our teeth, and put on our pajamas every night before we go to bed."
7. **Avoid Surprises:** When there is a change in a routine or schedule, prepare your child



ahead of time so he knows what to expect. For example, "Mommy and Daddy are going out tonight, so we won't be able to read you your bedtime story. But why don't we pick out a book together for us to read tomorrow night?"

8. **Have Fun:** Make sure there is joy and fun in your child's life every day. Many parents find it helpful to play with their children before they have to do housework or errands. Think of what brings a smile to your child's face and make time each day to smile together.

### **What to Do When Challenging Behavior Persists**

If the challenging behavior continues or the behavior is severe to begin with, you may want to consider using an approach called Positive Behavior Support. Positive Behavior Support focuses on creating supportive environments for children that reflect their individual preferences, interests, needs, and strengths.

Speak to your child's teacher, school psychologist or pediatrician to locate a specialist who is trained and experienced in Positive Behavior Support. This professional will work closely with you and other caretakers in your child's life to conduct a Functional Behavior Assessment (FBA). The FBA is used to identify the purposes of your child's behavior and to develop an individualized support plan for him. Important people in your child's life will want to play an active role in developing and implementing the plan to make sure that the approach used to support him is consistent across people and settings.

### **What is Positive Behavior Support**

Positive behavior support (PBS) involves changing situations and events that people with problem behaviors experience in order to reduce the likelihood that problem behaviors will occur and increase social, personal, and professional quality in their lives. It is an approach that blends values about the rights of people with disabilities with a practical science about how learning and behavior change occur. PBS is a set of research-based strategies used to increase *quality of life* and decrease problem behavior by teaching new skills and making changes in a person's environment. PBS is now used in many different situations and settings and with different types of social challenges. Children with and without disabilities participate in the PBS process in schools, at home, and in community settings. In school settings, PBS strategies are used to build a positive climate and include all students, not just children who may engage in more serious problem behavior. Adults with disabilities are actively involved in PBS team processes regardless of their age and where they live and work.

### **Comprehensive Intervention.**

The team that forms around a child or adult in order to create a PBS plan should represent all of the situations and settings that are part of the person's life. Information that is gathered from a functional behavioral assessment helps this team develop and implement behavioral intervention plans that are *positive, proactive, educative, and functional*. PBS plans include a number of interventions that can be implemented across situations and settings. These interventions include: 1) proactive strategies for changing the environment so triggering events are removed, 2) teaching new skills that replace problem behaviors, 3) eliminating or minimizing natural rewards for problem behavior, and 4) maximizing dear rewards for appropriate behavior. A hallmark of PBS planning is emphasis on improving overall lifestyle quality (relationships, activities, health) as an integrated part of behavior support.

### **Lifestyle Enhancement**

PBS focuses not only on reducing behavior problems, but on enhancing a person's overall quality of life. Outcomes include lifestyle improvements such as participation in community life, gaining and maintaining satisfying relationships, expressing personal preferences and making choices, and developing personal competencies. Such improvements in quality of life are facilitated by establishing a positive long-range vision with the individual and his/her family (e.g., through person-centered planning) and establishing natural supports through effective teamwork.

### **Functional Assessment**

The cornerstone of PBS is the design and use of functional (behavioral) assessment to understand what maintains an individual's problem behavior. Individuals engage in a behavior because it is functional; it helps them acquire some form of reinforcement (e.g., they get something desirable or pleasant, or they avoid something undesirable or unpleasant). A person may engage in problem behavior because circumstances in both the internal and/or external environment (i.e., antecedents, setting events) trigger or 'set the stage' for behavior to occur. Functional assessment is a process for identifying the events that trigger and maintain problem behavior. This process involves information gathering through record reviews, interviews, and observations and the development of summary statements that describe the patterns identified. Primary outcomes of the functional assessment process include:

- A clear description of the problem behaviors
- Events, times, and situations that predict when behaviors will and will not occur (i.e., setting events)
- Consequences that maintain the problem behaviors (the function)
- Summary statements or hypotheses
- Direct observation data to support the hypotheses

### **The Functional Behavioral Assessment**

Functional behavioral assessment (FBA) is a process used to develop an understanding of a child's challenging behavior. The goal of the FBA is to identify the function of the child's behavior—the reason or purpose why a child behaves as he/she does in specific situations. The process involves collecting information through the use of direct observations, interviews, record reviews (e.g., school and/or medical records, lesson plans, individualized education plans), and behavior rating scales. This information is used to understand patterns of the child's challenging behavior—the ecological events or conditions that increase the likelihood of challenging behavior (i.e., setting events), what happens before the behavior occurs (i.e., triggers or antecedents), what the behavior looks like (i.e., the behavior), and what happens after the challenging behavior occurs (i.e., consequences). Once collected, the information is analyzed to determine the specific function or purpose of the challenging behavior—whether it occurs in order for the child to obtain something (e.g., attention, object, activity) or to escape something (e.g., demands, activities, social interactions). The process is complete when there is enough information that will lead to the development of hypotheses or summary statements that represent the behavior support team's best guess or prediction as to what conditions reliably predict the occurrence of the child's challenging behavior.

(Carr et al., 1994; O'Neil et al., 1997; Hieneman et al., 1999).

## Aggressive Behavior and Violence

Aggressive behavior is common among youth, especially young children.

However, families and health professionals can take steps to help reduce violence and aggression. Some examples: Stay calm, praise positive behavior, and work with the child's health professional.

Examples of physical aggression:

- Biting
- Hitting
- Kicking

Examples of verbal aggression:

- Saying “no” to parents’ or teachers’ rules
- Screaming or shouting
- Using foul language

The anger or frustration of toddlers is usually *reactive* or impulsive in response to something that has happened to them, such as having a toy taken away. As children grow and develop more advanced language, social skills, and planning ability, *proactive* or planned aggressive behavior may become more common.

Aggressive behaviors that cause damage to objects or harm people or animals are considered violent behaviors. Not all violence comes from physical aggression; verbal aggression can also cause harm.

### Children with Developmental Disabilities

Most children with developmental disabilities are not any more violent or aggressive than other children. However, some children may feel a lot of frustration related to their developmental disability. This frustration is sometimes shown through aggression or even self-harming behaviors, such as banging their head or cutting their skin.

Other children have conditions that are more directly connected to aggressive behavior. For example, children with oppositional defiant disorder are often annoyed and angry, and they argue with adults in order to gain control.

There are many reasons children with developmental disabilities may have aggression problems. It is important to remember that everyone has times when they get frustrated or angry, and children should be taught that frustration is normal. It is best to try to understand the reasons behind the aggression and violence. Knowing this will help parents and health professionals work toward reducing the problems; teaching the child ways to cope with frustration should be part of this plan.

### What Can We Do?

#### Parents

There is no single way to reduce aggression and violence in all children. Some things to consider are the child's age, their disability, and goals for the family. Here are some ways parents can try to create an environment in which violence and aggression are less common.

- Walk the talk! Do not use aggression or violence yourself.
- Do your best to keep your home life calm, supportive, and respectful.
- If your child is acting aggressively, reinforce alternative or competing behaviors. For example, have a drawing pad handy, or play a game that requires your child's calm attention, such as "eye spy".
- Be sure to praise good behavior immediately and often.
- Help your child articulate his or her feelings. Talking through their emotions helps children of all ages.
- Work with your child to develop strategies to calm him or her when he or she feels scared, angry, or frustrated.
- For some children, it is best to explain consequences for misbehavior ahead of time. It is important that the child understands the consequences before they are enforced.
- Once you have set up consequences, enforce them! If bad behavior is not addressed regularly, it may continue or even get worse.
- Notice when and where your child is most aggressive or violent, and try to avoid those places.
- Tell your child's healthcare providers as many details about your child's behavior as possible. He or she will be able to offer tips and work with you to develop a plan.

### **Health Professionals**

Health professionals help reduce or prevent aggression and violent behaviors. Depending on the child, here are some of the more common ways:

- Direct therapy at symptoms that are causing the most impairment or the most impairing diagnosis (e.g., attention-deficit/hyperactivity disorder, aggression, or compulsions).
- Offer alternative training and other programs that help caregivers reduce aggression in their daily routine.

### **Helpful Resource Links:**

**Technical Assistance Center on Social Emotional Intervention for Young Children (TACSEI):**

<http://challengingbehavior.fmhi.usf.edu/index.htm>

**Positive Behavior Interventions and Supports:**

<https://www.pbis.org/>

**Substance Abuse and Mental Health Services Agency:**

<https://www.samhsa.gov/>

# A Systematic Approach to Behavioral Intervention

## Observations

Observation, whether anecdotal or systematic, *is* the foundation of the functional behavior assessment process. In its simplest form, observation is a means of describing a child's behavior at any given moment-what the behavior looks like and how often it occurs, as well as its length and *intensity*. Behavior can be observed either anecdotally or systematically.

Anecdotal behavioral observations are informal in nature-they might include notes taken while observing a child's performance during playtime, a parents' recollection of his/her child's behavior earlier in the day, scatter plots (i.e., charts used to record whether or not a child's behavior occurred across activities, routines, or time periods), or Antecedent-Behavior- Consequence analyses. In either case, there *is* no specific type of measurement procedure used to document the child's behavior.

In contrast, systematic behavioral observations are more structured and controlled-a trained observer would either physically sit in the same room and watch the child or use a videotape recorder to tape the child's behavior.

Regardless of which type of behavior observation technique is used, it is critically important to conduct as many observations as possible so that the child's behavior support team can be reasonably confident that the data obtained is both accurate and reflective of the child's typical behavior. The rule of thumb is that unless the child's behavior is dangerous to him/herself or others, the more observation data the better.

## Antecedents

Antecedents are the conditions that immediately precede the occurrence of the child's behavior. Antecedents include the specific times of day, settings, people, and activities that either occur or are present before the child exhibits challenging behavior. For example, if a 3- year-old child is found to have repeated tantrums whenever it is time to play at the water table, the direction to play at the water table might be an antecedent to the child's challenging behavior.

## Behavior

The term "behavior" refers to the child's challenging behavior-what the child is doing (i.e., what it looks like), how often the behavior occurs, the length of the behavior's occurrence, and the intensity of the behavior (e.g., the severity of a tantrum, the impact of the child's striking hits another child).

## Consequences

Consequences refer to the events that immediately follow the occurrence of the child's challenging behavior. Examples of consequences include the attention paid by an adult in response to the child's behavior, as well as the activities and objects the child either escapes or has access to as the result of the behavior.

## Setting Events

Setting events are ecological events or conditions (e.g. lack of sleep, change in routine, noisy environment, crowds, allergies, illness, etc.) that increase the likelihood that challenging behavior may occur. Setting events may continue to affect children's behavior even when an effective plan has been working for some time. A team may

decide to collect data on setting events and see if they have a relationship to the problem behavior. Those data collection forms are individually developed and tailored to the specific circumstance of the child and the team's feeling about what factors may influence a child's problem behavior.

### **Antecedent-Behavior-Consequence Analyses**

Antecedent-behavior-consequence (A-B-C) analyses are used to determine patterns in the occurrence of the antecedents, behaviors, and consequences that relate to the problem behavior. A-B-C analyses are often quite useful in developing initial hypotheses or summary statements of the child's challenging behavior. In addition to A-B-C analyses, the team may use a data collection card to collect A-B-C information. Carr and his colleagues (1994) suggest using context cards - cards used to describe the general context, interpersonal context, behavior problem, and social reaction regarding the child's challenging behavior.

Context cards are helpful because they prompt the observer to consider the broader context that may relate to problem behavior. In addition, the collection of data on a card facilitates the easy analysis of the data. Once there are several completed cards, the observer or team member can sort the cards by perceived function of the behavior. This method of segmenting observations and collecting multiple observations is very easy for team members to use and understand.

### **Interviews**

The functional assessment interview offers an efficient method for getting information on the circumstances that relate to the child's problem behavior. An interview is used to ask a family member or caregiver specific questions about the child's challenging behavior, such as what the behavior looks like, when it occurs, and what happens before and after the behavior occurs. As with behavioral observations, as much interview information should be collected as possible with the child's parents, siblings, teachers, etc. Once collected, interview data is a useful tool for a team when attempting to identify patterns that may predict the function of the child's challenging behavior.

### **Behavior Rating Scales and Other Tools**

In addition to direct observations, interviews, and records reviews (e.g., school and/or medical records, lesson plans, individualized education plans), behavior rating scales and other types of checklists offer an additional means of obtaining information about the context in which a child engages in challenging behavior. Broad in variety, behavior rating scales are questionnaires typically used to describe a specific set of behaviors (e.g., inattention, hyperactivity, social skills). Other rating scales are used to measure a child's preferences, developmental milestones, academic performance/benchmarks, or medication side effects.

Although behavior rating scales have many uses, they are most effective when used to compare the perceptions of people, such as parents, teachers, and other persons familiar with an individual child. Another effective use of behavior rating scales is to demonstrate progress toward goals (e.g., administering the same rating scale before and after an intervention is conducted). When used in either fashion, behavior rating scales provide a unique source of information that is potentially valuable to a team.

### **Function**

One of the most helpful things to keep in mind in working with young children is the

realization that each and every behavior has a purpose - an underlying reason for why it occurs. Once the function or purpose of a behavior is identified, it is then possible to design interventions directly targeting the underlying reason for why it occurs.

Defined by context and pattern, functions of behavior are determined by understanding the events that occur before and after the behavior occurs-the patterns and chains of events that consistently occur when a child demonstrates challenging behavior. In most cases, the function of a child's challenging behavior is either to obtain or get something or to escape or avoid something.

### **Types of Behavior Functions**

#### **To avoid...**

- Sensory Stimulation (pain and discomfort)
- Attention (adults and peers)
- Demands
- Tasks or activities
- People
- Activities

#### **To obtain...**

- Sensory stimulation (internal)
- Attention (adults and peers)
- Objects and materials
- People
- Activities
- Help

### **Do's & Don'ts of Functional Assessment:**

#### **Do:**

- Use several different types of data-review records and permanent products, conduct interviews and observations, use rating scale checklists.
- Interview the people who know the child best-parents, teachers, paraprofessionals, peers, siblings, friends of family.
- Be aware of the child's environment. Remember that even subtle things such as changes in seating location, time of day, or lighting all have the potential to influence the child's behavior.
- Consider the problem relative to the child's skills - Is it a "can't do" or a "won't do" problem? 1) Does the child have a grasp of the skills required to complete the task? 2) Does the child have the skills but is not choosing to use them for some reason?
- Consider the impact of tasks & activities upon the child's behavior. Pay attention to the types of responses required (e.g., verbal vs. nonverbal, written vs. oral). Review any relevant curricular materials.
- Observe the child as much as possible. The more information that is collected, the more valid and accurate the assessment.
- Describe the child's behavior as thoroughly as possible (i.e., who, what, when, where, why).
- Observe the child at different times of day.

- Get the feedback of others-make functional assessment a team effort! This helps ensure both an accurate assessment and identification of good intervention strategies
- Be respectful. Keep in mind that people sometimes feel uncomfortable by being observed.

Don't:

- Make it too obvious that the child is being observed (this may change his/her behavior).
- Be disorganized. Keep complete notes with full names of people, dates, etc. This will help collect data that is more accurate and valid.
- Forget to observe the child during both structured (e.g., during lessons) and unstructured activities (e.g., transitions, lunch).
- Give up, especially when a child reacts to an intervention plan. Oftentimes, this is a direct indication that the intervention plan is working. Be consistent and make decisions with data that is collected over a period of time.
- Forget to consider the potential influence of the child's eating and sleeping patterns (e.g., night terrors, food allergies, whether or not the child had breakfast earlier in the day).
- Ignore the influence of cultural factors- some behaviors are considered more socially acceptable in some cultures than others.
- Assume the purpose of a child's behavior holds true across settings (i.e., what may be true in one setting may not be true in another).
- Forget to identify the child's strengths and preferences (knowing these makes intervention much more successful).
- Just attend to issues surrounding when the behaviors occur - remember that it is just as important to learn about when the behaviors DO NOT occur.
- Get discouraged! It often takes time to correctly identify the function or purpose of a child's behavior.

### **What is A Positive Behavioral Plan?**

After collecting and analyzing enough information to identify the likely function of a student's behavior, the IEP team, of which parents are extremely important members, must develop a positive behavioral intervention plan. The behavioral plan will include, when appropriate, (1) strategies, including positive behavioral interventions and supports; (2) program modifications; and (3) supplementary aids and services that may be required to address the problem behavior.

When danger signals arise, (for example, a child receives in-school suspensions, is sent out of the classroom frequently because of behaviors, or runs the risk of being punished in school) the student's behavior should be addressed with an in-depth behavioral assessment, known as a functional behavioral assessment (FBA). The FBA should yield a number of recommendations for the IEP team to study and act on. From this assessment, the team determines, on a very individual basis, when the behaviors happen, what triggers the behaviors, how to reduce the triggers, and what strategies will be used



to help the student use more productive behaviors. This plan is the behavioral intervention plan (BIP).

The IDEA makes it clear that serious behavioral issues for students with disabilities require a behavioral assessment. All interventions must be documented, including which ones worked and which were not successful. This approach pinpoints common problems and starts a child on the road to behavioral competency. By documenting and systematically addressing behavioral issues, the IEP team can develop a relevant and useful plan to help the student achieve more competence with behaviors.

### **Meeting to Address Problem Behavior**

#### **What Should Be Done Prior to a Behavioral Planning Meeting?**

All members of the IEP team should be aware of the current state of the student's behavior, the specific problems with the behavior, and the issues the meeting will address. The reasons for the discipline referrals should be presented in objective terms before possible interventions are discussed. Parents are often shocked to find the number and magnitude of their child's problems.

#### **What Should Happen in a Behavioral Planning Meeting?**

During the behavioral planning meeting, team members should share information gathered from observations and from the functional behavioral assessment. Parents play an important role on the IEP team during this process. Parents know their child and can offer invaluable information as the team develops the intervention plans.

During the behavioral planning meeting, the IEP team should consider the student's behavioral strengths and deficits. This meeting is not designed to blame the student. Rather, it is an opportunity for all team members to take responsibility for designing a remediation plan. Parents and educators should bring to this planning meeting as much information about the student as possible, including his or her likes and dislikes and any other information that will help the team design plan that will support the student in choosing more appropriate behaviors.

During the meeting, the team should address the setting events or antecedents. These are the things that happen before the behavior occurs. For example, the problem behavior may occur only in the hallways but not in other places in the school. In addition, the IEP team should determine the consequences that are maintaining the problem behaviors and the possible reasons for (functions of) the behavior. After sharing this information, the team makes a "best guess" about the function of the behavior.

After identifying the reason for the behavior, the team should develop a plan to intervene. This plan should include positive supports to encourage the student to use more appropriate behaviors to meet the same need. For example, if the student is having problems only in the hallways and the team has determined that the reason for this behavior is an attempt to get attention from a certain teacher, then the intervention plan may include providing some of that teacher's time when the student displays appropriate behaviors. Team members must develop a very specific definition of the behaviors they want the student to perform and what the specific consequences are for the performance of these behaviors.

Educators and parents should discuss the behaviors that have been observed, such as yelling or running in the hallways, in objective terms. That is, how often or how long

does the behavior occur and in what context? The expected behaviors should be defined in clear and precise terms.

Phrases such as "has to learn responsibility" or "does not act responsibly" do not describe behavior. Descriptions such as "turns in homework every morning" and "walks quietly in the halls without coming in contact with others" are more appropriate terms to use when discussing behaviors.

The team members should share all the information gathered and use that information to develop a plan. Each component of the plan should be discussed, along with such questions as "what happens if he walks without touching others but is yelling?" The plan should be very clear about what supports are offered to the student, what exactly is expected of the student and adults, and who is responsible for implementing the plan. This will ensure that all members of the team understand the expectations and the appropriate responses. The FBA and the development of the BIP involve a systematic problem-solving process that can be used at home or school. Sometimes the process is simple and quickly leads to a solution.

Other times, the process is more involved, and developing a plan that works takes longer. The idea behind a BIP is to support the student by examining the reasons for his or her behaviors and supporting the student in choosing more appropriate behaviors. This responsibility falls to all members of the IEP team. A well thought out plan includes teaching new behaviors and positively reinforcing appropriate behaviors and other members need to keep in mind that a behavioral planning meeting is designed similar supports.

### **When Physical Restraint Is Considered**

*(Recommendations and opinions contained in this section are made by the Family Resource Center's Project REST: Restraint: Efficacy, Safety, & Training)*

Physical Restraint and/or Seclusion refer to techniques used to control or suppress the movement of a student to ensure the safety of that student and any others in the immediate area. Physical Restraint and/or Seclusion do not focus on skill development or education; these methods only reduce immediate danger, and if used inappropriately or excessively may seriously harm a student. We support statewide legislation, policies and procedures to guide the appropriate use and subsequent reporting of Physical Restraint and/or Seclusion in public schools.

Effective approaches to problem behavior consist of two components. The first, and most important, component is Positive Behavior Support (PBS). PBS is a proactive and preventative approach to problem behavior that emphasizes skill development and does not rely on coercion or punishment to change behavior. In essence, PBS engineers environments to foster and sustain socially acceptable behavior in ways that make problem behavior irrelevant, ineffective, and inefficient. PBS reduces the likelihood of problem behavior by developing a comprehensive multi-component support plan. The second component is crisis management, which may include the use of Physical Restraint and/or Seclusion. The uses of these methods, however, are reactive approaches to problem behavior because they occur after the behavior. The only purpose of Physical Restraint and for Seclusion is to protect the safety of the student and others in the environment during an episode of aggressive or violent behavior. Using these methods reduces the likelihood that someone will get hurt during the occurrence

of problem behavior.

Positive Behavior Support (PBS) and crisis management are both necessary aspects of behavior management. Together they comprise a seamless response to problem behavior that focuses mainly on skill development but also includes a safety net to ensure that no one gets hurt while the skill development component is being refined. We advocate the use of PBS because it is the most effective approach to reducing problem behavior; we also understand that Physical Restraint and/or Seclusion may be a necessary aspect of a crisis management plan.

Positive Behavior Support (PBS) and crisis management plans both need to be developed and individualized to reflect the unique characteristics and situations of each student. There is no "one size fits all" behavior support plan or crisis management approach. Each must be implemented consistently according to a predetermined plan that reflects the best interests of the student. PBS and crisis management do not work when people fail to effectively plan for an episode of problem behavior. *In fact, responding without a plan may increase the severity of problem behavior during an episode and may even increase the severity and frequency of future episodes.*

### **Acceptable Use of Restraint in Schools**

Restraint of a student most often refers to a set of proven techniques used by school personnel during *extraordinary circumstances in order to secure the safety of the child and/or those persons who cannot otherwise escape harm.*

### **Unacceptable Use of Restraint in Schools**

The holding of a student for any length of time with a purpose or intent other than providing safety, comfort or support should be considered as avoidable and a misapplication of restraint. Physically restraining a student as a means of discipline, to force compliance, or for the convenience of a caregiver is an unacceptable practice.

In order to assure issues of restraint have been reviewed by the IEP Team an addendum may be added to the Behavior Intervention Plan. The addendum to the IEP could address:

- The types of crisis intervention that may be used
- Risk factors that must be considered
- Training status of those who might be applying physical restraint
- How an incidence of restraint will be reported to the parent

If physical restraint is used on a student during behavior crisis, documentation should be created to record such details as:

- The time of the event and the setting conditions
- A description of the incident
- The people involved in the restraint
- What interventions occurred during the incident & before restraint was used
- A description of the threat of danger to the student or others
- What type of restraint was used

### **Prohibited Uses of Physical Restraint & Seclusion (R&S)**

R&S should not be conducted by untrained staff or by staff unfamiliar with the student involved.

R&S should not be used as a punitive form of discipline. Only in crisis situations during which the student poses a physical threat to self or others should lead to consideration of R&S. The following events should not lead to R&S: profanity, noncompliance, refusal to complete work, verbal threats without intent or means, and similar non-emergency situations.

R&S may not be used in a manner that is medically contraindicated for the student involved. It is the responsibility of the school to seek medical information and inform staff in a manner consistent with law and best practices.

R&S should not interfere with adequate supervision of the student, healthy physical functioning (breathing, circulation, sensation, etc.), or the student's ability to communicate. It is important to note that for students who use sign language or communication devices, it may be necessary to adapt the R&S approach employed.

R&S should not exceed the minimum force and minimum time necessary to address the emergency and return all in the environment to safety. The R&S procedure itself should not produce additional risks (beyond the emergency itself) for the student and others in the environment. The following are examples of excessive force: slapping, paddling, kicking, activities or positions that cause physical pain, unpleasant sprays, dehydration, hunger, toileting restrictions, ridicule, humiliation, emotional trauma, etc. Documentation should clearly identify a time-line of the event.

Medically prescribed restraint procedures employed for the treatment of a physical disorder or for the immobilization of a person in connection with a medical or surgical procedure shall not be used as a means of R&S.

### **Recommendation for Documentation after an Incident of Physical Restraint/Seclusion**

If Physical Restraint and/or Seclusion are used, a written report should be submitted within one day to school administration. The school principal or designee shall attempt to make verbal contact with the legal guardian to report the incident as soon as possible *but no later than the end of the day* that Physical Restraint and/or Seclusion were used. Additionally, a written report shall be mailed, E-mailed, or faxed to the legal guardian within twenty-four hours following the use of Physical Restraint and/or Seclusion and a copy placed in the student's confidential file.

It is recommended that each report include:

1. the student's name, the date of the report, the name of the person filing the report, the date of the incident, and the beginning and ending times of the incident;
2. a description of the activity in which the student was engaged immediately preceding the use of Physical Restraint and/or Seclusion;
3. a description of de-escalation interventions used prior to the implementation of Physical Restraint and/or Seclusion;
4. a description of the incident and/or student behavior that resulted in Physical Restraint and/or Seclusion (including a clear account of how the behavior endangered the child or another individual);
5. the location of the Physical Restraint and/or Seclusion;
6. a description of the Physical Restraint and/or Seclusion technique(s) used;

7. a log of the student's behavior during Physical Restraint and/or Seclusion, including a clear description of how the intervention ended;
8. a description of any injuries (to students, staff, or others) or property damage;
9. the name(s) of the school personnel administering the Physical Restraint and/or Seclusion, the name(s) of school personnel who participated in monitoring or supervising the administration of Physical Restraint and/or Seclusion, and the names of school personnel responsible for assessing the student's mental and physical well-being after the incident of Physical Restraint and/or Seclusion;
10. the date, time, and nature of initial contact with the legal guardian regarding the current event.

No more than three incidents of Physical Restraint and/or Seclusion should occur prior to a formal review of the student's Individualized Education Program (IEP), including an assessment of the current Functional Assessment and/or Behavior Intervention Plan (BIP) or to develop a BIP if none is in place. Furthermore, if any single restraint or seclusion intervention lasts more than 15 minutes, a certified staff person trained in the use of Physical Restraint and/or Seclusion shall evaluate the situation. The purpose of this evaluation shall be to ascertain that appropriate procedures are followed and to minimize future use of physical restraint and/or seclusion. The results of the evaluation shall be committed to writing and copies of this shall be placed into the student's temporary student record.

## **Fact Sheet: Restraint and Seclusion of Students with Disabilities**

*Issued by the US Department of Education - Office for Civil Rights*

### **What Is the Dear Colleague Letter on Restraint and Seclusion?**

The guidance letter and series of questions and answers, issued by the Department of Education's Office for Civil Rights (OCR) on December 28, 2016, inform school districts how the use of restraint and seclusion may result in discrimination against students with disabilities in violation of Federal laws that prohibit disability discrimination, including Section 504 of the Rehabilitation Act of 1973 (Section 504).

### **Why did OCR Issue this Guidance?**

According to the Department's Civil Rights Data Collection CRDC, during the 2013-14 school year, students with disabilities were subjected to mechanical and physical restraint and seclusion at rates that far exceeded those of other students. The existence of this disparity raises a question as to whether school districts are imposing restraint or seclusion in discriminatory ways. In addition, OCR continues to see in investigations legal violations in schools' use of restraint and/or seclusion for students with disabilities. OCR is issuing the guidance to help educators, parents, students, and other stakeholders better understand Section 504, and how the use of restraint or seclusion may run afoul of the law.

### **What does Federal law require school districts to do for students with disabilities?**

The guidance explains that Section 504 requires a school district to provide students with disabilities an equal opportunity to participate in the educational program and to provide a free appropriate public education (FAPE) to each student with a disability. To meet the FAPE requirement, school districts must evaluate any student who needs, or whom the district has reason to believe needs, special education or related services because of a

disability. A student's behavioral challenges, such as those that lead to an emergency situation in which a school believes restraint or seclusion is a justified response could be a sign that the student actually has a disability and needs special education or related aids and services in order to receive FAPE. When a student exhibits behavior that interferes with the student's education, or the education of other students, in a manner that would reasonably cause a teacher or other school personnel to believe or suspect that the student has a disability, the school district must evaluate the student.

### **Can the use of restraint or seclusion deny a student's receipt of Section 504 FAPE?**

Yes. A school's use of restraint or seclusion may have a traumatic impact on a student, such that even if she were never again restrained or secluded, she might nevertheless have new academic or behavioral difficulties that, if not addressed promptly, could constitute a denial of FAPE. That traumatizing effect could manifest itself in new behaviors, impaired concentration or attention in class, or increased absences, any of which could, if sufficiently severe and unaddressed, result in a denial of FAPE for that student. The repeated use of restraint or seclusion in school could deny a student's receipt of FAPE in another way. Consider a student with a disability who engages in behavior in response to which the school secludes him for extended periods and on multiple occasions. While secluded, the student does not receive educational instruction or services. Cumulatively, the school's repeated use of seclusion with that student could result in the school's failure to comply with the Section 504 team's decision about the regular or special education, related aids and services, or supplemental services and modifications that the student needs, or the appropriate setting in which to receive those services, and therefore may constitute a denial of FAPE. Where the school determines that not all of the student's educational needs are being met, the school must (1) determine the extent to which additional or different interventions or supports and services, including positive behavioral interventions and supports and other behavioral strategies, may be needed; (2) determine if current interventions and supports are being properly implemented; (3) ensure that any needed changes are made promptly; and (4) remedy any denial of FAPE that resulted from the school's prior use of restraint or seclusion.

### **Does the parent or guardian of a student with a disability have a right to discuss the impact of restraint or seclusion on their child's access to FAPE?**

Yes. Section 504 requires that school districts establish and implement a system of procedural safeguards for parents or guardians to appeal district actions regarding the identification, evaluation, or educational placement of students with disabilities who need or are believed to need special education or related services. The school district must tell parents and guardians about this system, notify them of any evaluation or placement actions, allow them to examine their child's records, afford them an impartial hearing with opportunity for parent or guardian participation and representation by counsel, and provide them a review procedure.

### **How Can I Get Help From OCR?**

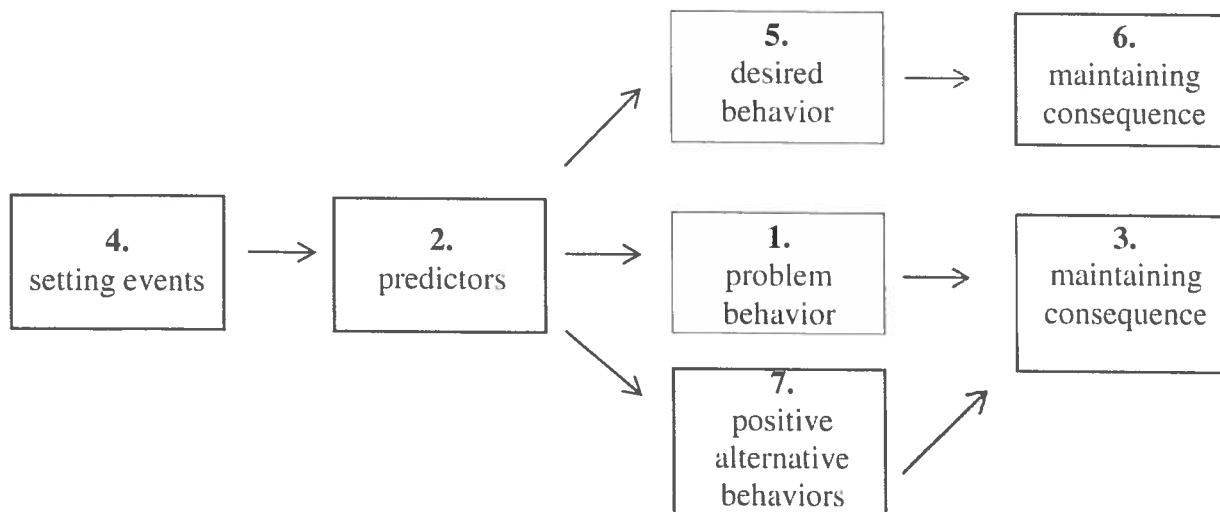
With questions or for more information, including technical assistance on civil rights compliance, please contact the U.S. Department of Education's Office for Civil Rights (OCR) customer service team at 1-800-421-3481 (TDD 1-800-877-8339) or [ocr@ed.gov](mailto:ocr@ed.gov) or visit OCR's website at [www.ed.gov/ocr](http://www.ed.gov/ocr).

## Competing Behavior Model

The competing behavior model helps to provide a link between functional assessment information and developing a positive behavioral support plan. This model is based on the logic that many different behaviors, some more appropriate than others, may serve the same function (i.e., produce the same reinforcing event). When a positive alternative behavior (i.e., a replacement skill) provides the same type of consequence that problem behaviors produce, the likelihood that a person will use the alternative behavior increases. This is especially true if the positive alternative is easier, or somehow more efficient, than problem behaviors. The problem behaviors are replaced by alternatives that successfully compete.

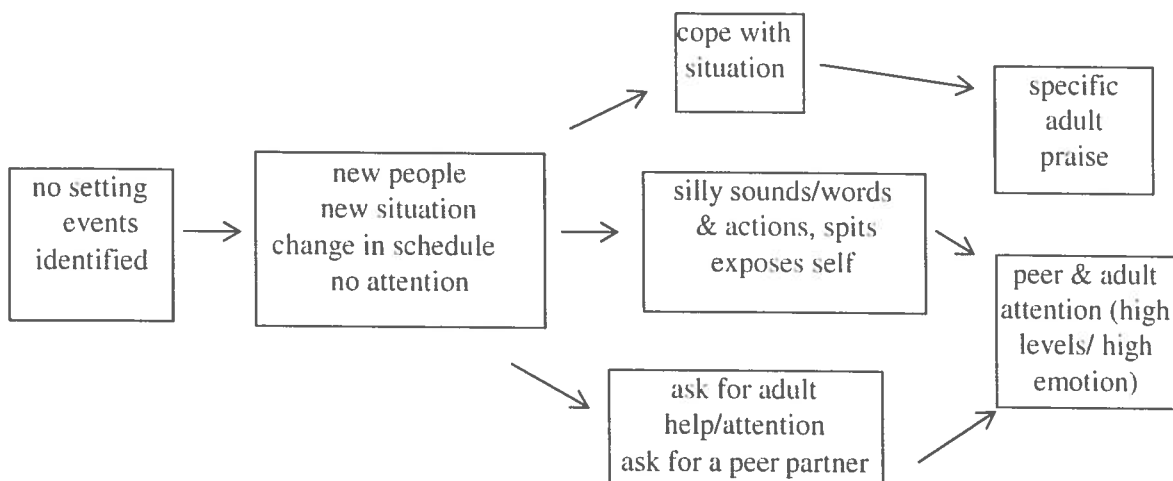
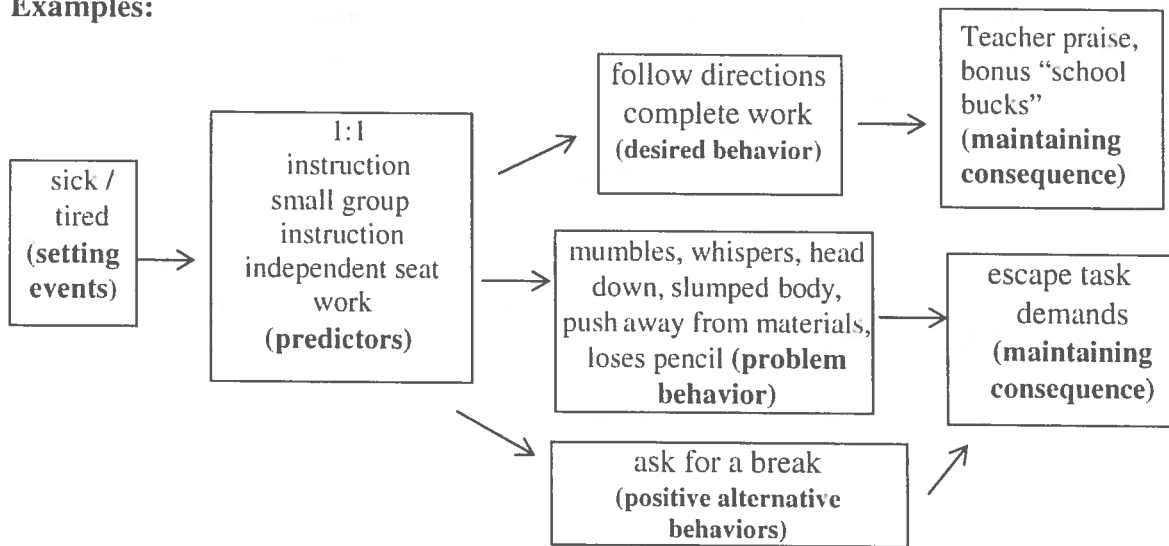
The competing behavior model involves seven steps. The first four steps represent a four-part summary statement (or hypothesis) that results from a functional behavioral assessment (FA). These first four parts are: (1) the **problem behaviors**, (2) **predictor events** (immediate antecedents) for problem behaviors, (3) the **maintaining consequence** of problem behaviors, and (4) **setting events** relevant to occurrence of problem behaviors. Once these core elements of the FA summary statement are identified, support planners should determine (5) the **desired behavior** in the situation (i.e., what behavior(s) do you really want the person to do?) and (6) the **maintaining consequence** for the desired behavior.

Typically, the desired behavior leads to a maintaining consequence that is different from the consequence produced by problem behavior. Finally, they select (7) a **positive alternative behavior** (replacement skill) that will produce the same maintaining consequence as problem behavior. These seven parts result in a diagram (see below) that is then used for identifying and selecting possible behavior support procedures.



The basic idea in developing a support plan based on the competing behaviors model is to make problem behaviors irrelevant (there is no need to do them), inefficient (there are easier behaviors to engage in), or ineffective (problem behaviors no longer work to produce the desired outcome). Support planners identify procedures that will promote and strengthen the links between predictors, positive desired and alternative behaviors, and their maintaining consequences, and procedures that reduce or weaken the links between predictors, problem behaviors, and their maintaining consequences. To promote performance of desired behaviors, support planners must ensure that these behaviors have been taught, and that they produce adequate maintaining consequences (reinforcers) when they occur. To increase the use of positive alternative behaviors, an acceptable replacement behavior must first be identified, and then systematically taught. When this positive alternative behavior occurs, it must produce the same consequence that maintains the problem behaviors. To compete successfully with problem behavior, the positive alternative behavior must be more efficient in producing the desired maintaining consequence than the problem behaviors that it is replacing.

### Examples:





## **Frequently asked questions:**

- 1. Can a person have more than one problem behavior summary statement, and, therefore, need more than one competing behavior model developed?** Yes. A competing behavior model should be completed for each summary statement that results from the functional assessment.
- 2. What if we do not know the setting events?** Behavior support planning can still occur and be effective if relevant setting events are not known. Typically, connections with the individual's personal life help to identify relevant setting events for a problem behavior. Observations across living settings, and conversations with people who know the person with problem behavior well, may help to identify and understand the setting events that may contribute to the person's problem behaviors.
- 3. What is the difference between desired and positive alternative behaviors? Aren't they both just appropriate, positive behaviors?** The main difference is in the consequences that these behaviors produce (i.e., their maintaining consequences). The maintaining consequences delivered for "desired behavior" are different from the consequences that maintain problem behavior. Because they produce different consequences, desired behaviors successfully compete with problem behaviors only when the consequences for desired behaviors are stronger (more powerful) than the consequences for problem behaviors. Positive alternative behaviors should result in the same maintaining consequences as problem behaviors. Because they produce the same consequences, alternative behaviors serve as acceptable replacement behaviors for problem behaviors. Alternative behaviors will be used if they are easier to do or more efficient than problem behaviors.
- 4. Does using the competing behaviors model to identify positive alternative behaviors guarantee that problem behaviors will disappear for good?** No. First remember that you may need to teach and prompt an alternative behavior to get it to occur and be reinforced. Also, if alternative behavior does not work or stops working (i.e., is no longer reinforced), then problem behaviors may return, especially if they continue to produce desired outcomes for the person.

## **Other resources:**

- Horner, R. H., Albin, R. W., Sprague, J. R., & Todd, A. W. (2000). Positive behavior support. In M. E. Snell & F. Brown (Eds.), Instruction of students with severe disabilities (5<sup>th</sup> Edition) (pp. 207-243). Upper Saddle River, NJ: Prentice-Hall.
- Horner, R. H., Sugai, G., Todd, A. W., & Lewis-Palmer, T. (2000). Elements of behavior support plans: A technical brief. Exceptionality, 8(3), 205-216.
- O'Neill, R. E., Horner, R. H., Albin, R. W., Sprague, J. R., Storey, K., & Ewton, J. S. (1997). Functional assessment and program development for problem behavior: A practical handbook. Pacific Grove, CA: Brooks/Cole.

*Permission to reproduce this document is granted. Acknowledgement is given to the Rehabilitation Research and Training Center on Positive Behavioral Support*

# IDEA Regulations: DISCIPLINE

This document prepared by the US Department of Education addresses significant changes from preexisting regulations to the final regulatory requirements regarding discipline procedures in the Individuals Education Improvement Act of 2004.

## IDEA Regulations

### **1. Adds a new authority for school personnel to consider unique circumstances.**

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of 34 CFR 300.530, is appropriate for a child with a disability who violates a code of student conduct. [34 CFR 300.530(a)J (20 u.s.c. 1415(k)(1)(A)]

### **2. Expands removal authority for special circumstances related to serious bodily injury.**

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child: carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a State educational agency (SEA) or a local educational agency (LEA); knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; or, *has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.* [34 CFR 300.530(9)(1)-(3)] [20 U.S.C. 1415(k)(1)(G)(i)-(iii)] Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code<sup>2</sup>. [34 CFR 300.530(i)(3)J 20 u.s.c. 1415(k)(7)(D)]

<sup>2</sup>18 U.S.C. 1365(h)(3) states that the term "serious bodily injury" means bodily injury which involves- (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

### **3. Retains previous authority for immediate short-term removals.**

School personnel under 34 CFR 300.530 may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 34 CFR 300.536). [34 CFR 300.530(b)(1)] (20 U.S.C. 1415(k)(1)(B)]

### **4. Retains authority for long-term removals for behavior that is not a manifestation of the disability.**

For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to 34 CFR 300.530(e), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in 34 CFR 300.530(d) (services). [34 CFR 300.530(c)J (20 U.S.C. 1415(k)(1)(C)]

**5. Clarifies when services are required during disciplinary removals, the provision of such services and who makes the determination regarding services and interim alternative educational settings.**

A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a child without disabilities who is similarly removed. [34 CFR 300.530(d)(3)]

After a child with a disability has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under 34 CFR 300.530(d) (services). [34 CFR 300.530(b)(2)]

A child with a disability who is removed from the child's current placement pursuant to 34 CFR 300.530(c) (a disciplinary change in placement for more than ten consecutive school days where the behavior is determined not to be a manifestation of the disability) or (g) (a removal for special circumstances related to drugs, weapons or serious bodily injury) must:

- Continue to receive education services, as provided in 34 CFR 300.101(a) (free appropriate public education (FAPE) requirements), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. [34 CFR 300.530(d)(1)J (20 u.s.c. 1415(k)(1)(D))]

After a child with a disability has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under 34 CFR 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in 34 CFR 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. [34 CFR 300.530(c)(4)]

If the removal is a change of placement under 34 CFR 300.536, the child's IEP Team determines appropriate services under 34 CFR 300.530(d)(1). [34 CFR 300.530(d)(5)]

The services required by 34 CFR 300.530 (d)(1), (d)(3), (d)(4), and (d)(5) may be provided in an interim alternative educational setting. [34 CFR 300.530(d)(2)]

The child's IEP Team determines the interim alternative educational setting for services under 34 CFR 300.530(c) (a disciplinary change in placement for more than ten consecutive school days where the behavior is determined not to be a manifestation of the disability), (d)(5) (a removal that is a change of placement), and (g) (a removal for special circumstances related to drugs, weapons or serious bodily injury). [34 CFR 300.531] [20 u.s.c. 1415(k)(2)]

**6. Specifies when the LEA must give notice.**

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR 300.504. [34 CFR 300.530(h)] [20 U.S.C. 1415(k)(1)(H)]

## **7. Establishes a new standard for manifestation determinations.**

Within ten 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 LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct in question was the direct result of the LEA's failure to implement the IEP.

The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either 34 CFR 300.530(e)(1)(i) or (1)(ii) was met. [34 CFR 300.530(e)(1) and (2)] [20 U.S.C. 1415(k)(1)(E)]

If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in 34 CFR 300.530(e)(1)(ii) was met, the LEA must take immediate steps to remedy those deficiencies. [34 CFR 300.530(e)(3)]

## **8. Adds a new provision when there is a determination that the behavior was a manifestation of the disability.**

If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child or, if a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and except as provided in 34 CFR 300.530(9), return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan. [34 CFR 300.530(f)] [20 u.s.c. 1415(k)(1)(F)]

## **9. Retains a definition of change of placement and clarify that the public agency makes a case-by-case determination of whether a specific pattern of removals meets the definition.**

For purposes of removals of a child with a disability from the child's current educational placement under 34 CFR 300.530 through 300.535, a change of placement occurs if:

- The removal is for more than ten consecutive school days; or
- The child has been subjected to a series of removals that constitute a pattern:
  - Because the series of removals total more than ten school days in a school year;
  - Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings. [34 CFR 300.536]

**10. Retains and revises the standard for a public agency's basis of knowledge for children not determined eligible for special education and related services.**

A child who has not been determined to be eligible for special education and related services under Part B of the IDEA and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in Part B if the public agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

- The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, *or a teacher of the child*, that the child is in need of special education and related services;
- The parent of the child requested an evaluation of the child pursuant to 34 CFR 300.300 through 300.311; or
- The teacher of the child, or other personnel of the LEA, expressed specific concerns *about a pattern of behavior demonstrated by the child directly* to the director of special education of the agency *or to other supervisory personnel of the agency*. [34 CFR 300.534(a) and (b)J (20 U.S.C. 1415(k)(5)(A) and (B)J

**11. Establishes exceptions to the public agency's basis of knowledge for ineligibility or refusal of consent to evaluation or services.**

A public agency would not be deemed to have knowledge under 34 CFR 300.534(b) if the parent of the child has not allowed an evaluation of the child pursuant to 34 CFR

300.300 through 300.311 or has refused services under Part B of the IDEA; or the child has been evaluated in accordance with 34 CFR 300.300 through 300.311 and determined to not be a child with a disability under Part B of the IDEA. [34 CFR 300.534(c)] [20 U.S.C. 1415(k)(5)(C)]

**12. Retains hearing rights related to disciplinary removals.**

The parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR 300.530 and 300.531, or the manifestation determination under 34 CFR 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to 34 CFR 300.507 and 300.508(a) and (b). [34 CFR 300.532(a)J [20 U.S.C. 1415(k)(3)(A)]

**13. Establishes the authority of the hearing officer.**

A hearing officer under 34 CFR 300.511 (impartial due process hearing) hears, and makes a determination regarding an appeal under 34 CFR 300.532(a) (disagreements regarding disciplinary removals and placement and manifestation determinations are subject to a hearing).

In making the determination under 34 CFR 300.532 (b)(1), the hearing officer may:

- Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 34 CFR 300.530 or that the child's behavior was a manifestation of the child's disability; or
- Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer

determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

The procedures under 34 CFR 300.532(a) and (b)(1) and (2) may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. [34 CFR 300.532(b)J (20 u.s.c. 1415(k)(3)(B)]

#### **14. Establishes procedures for an expedited hearing.**

Whenever a hearing is requested under 34 CFR 300.532(a) (related to disciplinary removals), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 CFR 300.507 and 300.508(a) through(c) and 300.510 through 300.514, except as provided in 34 CFR 300.532(c)(2) through(4).

The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within ten school days after the hearing. Unless the parents and LEA agree in writing to waive the resolution meeting described in 34 CFR 300.532(c)(3)(i), or agree to use the mediation process described in 34 CFR 300.506:

- A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
- The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

A State may establish different Stat&-imposed procedural rules for expedited due process hearings conducted under 34 CFR 300.532 than it has established for other due process hearings, but, except for the timelines as modified in 34 CFR 300.532(c)(3), the State must ensure that the requirements in 34 CFR 300.510 through 300.514 are met.

The decisions on expedited due process hearings are appealable consistent with 34 CFR 300.514. [34 CFR 300.532(c)] [20 u.s.c. 1415(k)(4)(B)]

#### **15. Addresses the child's placement pending a disciplinary hearing decision.**

When an appeal under 34 CFR 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in 34 CFR 300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise. [34 CFR 300.533][20 u.s.c. 1415(k)(4)(A)]

### **IF A CHILD IS NOT RECEIVING SPECIAL EDUCATION SERVICES IS S/HE ENTITLED TO THESE IDEA PROTECTIONS?**

Maybe. Some students who have not been identified as having a disability should be treated like students who receive special education services for purposes of discipline.

Even after being subject to discipline, a child may argue that he or she has a disability and is entitled to protection under IDEA. The child will be given IDEA protection (and the right to a free and appropriate public education) if the school knew or had reason to know that the child had a disability before the child was involved in the alleged incident. Under the law, a school district knew or should have known that the child had a disability if, before the conduct occurred:

- The parent of the child wrote to the child's teacher or to supervisory or administrative personnel of the school district, expressing concern that the child was in need of special education and related services;
- The child's parent requested an evaluation of the child; or
- The child's teachers or other school personnel have expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the special education director or other supervisory school personnel.

Exception- a school is not deemed to have known that the child is a child with a disability if

- The parent of the child has refused to allow a child to be evaluated;
- The parent of the child has refused special education services; or
- The child was previously evaluated and it was determined that the child was ineligible for special education and related services.

If the school is "deemed to have knowledge" of the child's disability, the child is immediately entitled to IDEA protections, including the right to an education while facing discipline, and, if the parent requests an evaluation to determine the child's eligibility for special education services, it must be completed in an "expedited" manner.

## **Questions and Answers on Disciplining Students with Disabilities**

### **What are the options available to a school district in addressing discipline related issues presented by students with disabilities?**

In order to maintain safety and discipline in schools, school districts must be able to discipline all students, including students with disabilities. Recognizing that fact, Congress specifically addressed discipline in the reauthorization of the Individuals with Disabilities Education Act (IDEA). Whenever a school district believes that a student's educational program or placement needs to be reviewed and/or revised, the individualized education program (IEP) and placement may be amended following normal IDEA procedures. Disciplinary and behavioral concerns, as always, may be addressed through this process.

The IDEA regulations provide three other options related to disciplining students with disabilities.

1. Section 300.520: School personnel are permitted to order a change in the placement of a student with a disability to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten school days, to the extent such alternatives would be applied to students without disabilities. This section is interpreted as an express legislative intent to codify existing law as set forth in *Honig v. Doe*, 484 U.S. 305 (1988).
2. Section 300.520: School personnel are permitted to order a change in placement to an appropriate interim alternative educational setting for the same amount of time that a nondisabled student would be subject to discipline, but for not more than forty-five days if,
  - (a) the student carries a weapon to school or to a school function under the jurisdiction of a state or local educational agency; or
  - (b) the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a state or local educational agency.
3. Section 300.521: An impartial due process hearing officer is permitted to order a change of placement to an appropriate interim alternative educational setting for not more than forty-five days if the school district believes that maintaining the current placement of a student with a disability is substantially likely to result in injury to the student or to others. School districts may also seek a court order in an effort to have the student removed.

Note: SC Code Ann. Section 59-63-220 provides that no administrator has the authority to suspend a student (nondisabled or disabled), from a teacher's class or from the school for more than ten days for any one offense and for not more than thirty days in any one school year.

### **What is a disciplinary change of placement?**

A change of placement occurs when the student is removed for more than ten consecutive school days or when the student is subjected to a series of removals that constitute a pattern because they add up to more than cumulative school days in a school year, and because of factors such as the length of the removal, the total amount of time the student is removed, and the proximity of the removals to one another.

### **Are there specific actions that a school district is required to take during suspensions of ten school days or less?**



There are no specific actions required by either state or federal law that a school district must take during this time period. If the school district believes, however, that further action to address the misconduct and prevent future misconduct is needed, it is advisable to use this period of suspension for this purpose. For example, appropriate school officials may convene a meeting to review the student's current IEP to determine whether implementation of a behavioral intervention plan (BIP) would be appropriate or whether an existing BIP adequately addresses his or her needs. If the current BIP does not adequately address the student's needs, this would be an opportune time to revise the plan so that it is ready for implementation upon his or her return to the school setting. If long-term disciplinary measures are being considered, this time should be used to convene an appropriate group to determine whether the misconduct was a manifestation of the student's disability.

**Must educational services be continued during the removal of a student with a disability from his or her educational placement for ten school days or less?**

There is no requirement that a free and appropriate public education (FAPE) be provided when a student is removed during the first ten school days in a school year. There is also nothing in state law, the IDEA, or the regulations; however that would prevent the provision of a FAPE during the first ten days of suspension.

Beginning on the eleventh cumulative day in a school year that a student with a disability is removed from school, school personnel in consultation with the student's special education teacher, must make the determination regarding the extent to which services are necessary. The services must be provided in a manner that enables the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of his or her IEP.

**What is a Manifestation Determination Review (MDR)?**

A review of the relationship between a student's disability and the behavior that the student has engaged in that is subject to a disciplinary action. The review must be conducted by the IEP team and other qualified personnel in a meeting.

During a review the team must consider all relevant information in terms of the behavior subject to the disciplinary action, including evaluation and diagnostic results, observations of the student, and the student's IEP and placement. Then determine that in relationship to the behavior subject to the disciplinary action, the student's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement.

The team must also determine that the student's disability did not impair the student's ability to understand the impact and consequences of the behavior or to control the behavior that is the subject of the disciplinary action.

**Is a MDR necessary before a student with a disability can be removed from his or her current educational placement for a short-term (ten school days or less) during a school year?**

Although there is nothing in federal or state law that prevents the school district from conducting a manifestation determination review for all short-term removals, a manifestation determination review is not necessary unless the removal will result in a change in the student's placement. The manifestation determination review must be

conducted as soon as possible, but in no case later than ten schooldays after the date when the decision is made to take an action that results in a change in the student's placement.

A change of placement occurs when the student is removed for more than ten consecutive school days or is subjected to a series of removals that constitute a pattern. A pattern is established when the number of school days that the student is removed add up to more than ten cumulative school days in a school year and because of factors such as the length of the removals, the total amount of time the student is removed, and the proximity of the removals to one another.

**When must a functional behavior assessment be conducted?**

Not later than ten business days after removing a student with a disability for more than ten total school days in a school year the school district must convene an IEP team meeting to develop a functional behavior assessment (FBA), if one has not already been conducted. Although a FBA is not required prior to the first ten days of suspension, if further disciplinary action is contemplated during this period, we encourage school districts to review, as soon as possible, the circumstances that lead to the student's removal and whether further steps should be taken to address the misconduct in the IEP or BIP.

**What must a school district do before suspending a student with a disability from school for more than ten school days if the removal will constitute a change of placement?**

Not later than the date on which the decision is made to suspend a student with a disability for more than ten school days in a manner that constitutes a change in placement, the parents must be notified of the decision and provided their procedural safeguards. Within ten business days after this decision a FBA must be conducted and a BIP implemented. If prior to the suspension a FBA was conducted and a BIP designed, the IEP team shall review the plan and consider whether the student was provided services in accordance with the IEP and BIP. In some instances, the IEP team may need to modify the existing plan to address the problem behavior if one or more team members believe that modifications are necessary.

Additionally, before a student with a disability can be suspended for more than ten school days in a manner that constitutes a change in placement, a school district must determine whether the student's misconduct was a manifestation of his or her disability. In accordance with Section 300.523, the manifestation determination must take place as soon as possible, but in no case later than ten school days after the decision to take the action is made. This determination must be made by a group of persons knowledgeable about the student.

**What must a school district do prior to expelling a student with a disability?**

Not later than the date on which the decision is made to seek expulsion, the parents must be notified of the decision and provided their procedural safeguards. Within ten business days after this decision to seek expulsion for a student with a disability, a FBA must be held and a BIP implemented. If a FBA was previously conducted and a BIP designed prior to the suspension, the IEP team shall review the plan and consider whether the student was provided services in accordance with the IEP and BIP. In some instances, the IEP team may need to modify the existing plan to address the problem behavior, if one or more team members believe that modifications are necessary.

Additionally, before a student with a disability can be expelled, a school district must determine whether the student's misconduct was a manifestation of his or her disability. In accordance with Section 300.523 the manifestation determination must take place as soon as possible, but in no case later than ten schooldays after the decision to take the action is made. The IEP team and other qualified personnel must conduct this determination.

**What is the next step if it is determined that the student's misconduct was not a manifestation of the disability and the school district wants to expel or suspend the student from school in a manner that constitutes a change in placement?**

If an appropriate group of persons determines that the student's behavior was not a manifestation of his or her disability, the school district may expel or suspend the student from school in a manner consistent with the discipline of a nondisabled student. Because this is a change in placement, the parents must receive immediate notification of the disciplinary decision and all procedural safeguards before the proposed change takes effect. This written notice must include, among other matters, the determination that the student's behavior was not a manifestation of his or her disability and the basis for that determination; an explanation of applicable procedural safeguards, including the parent's right to initiate an expedited due process hearing to challenge the manifestation determination; and the right to appeal an adverse decision.

**What if it is determined that the student's behavior was a manifestation of the disability?**

If an appropriate group determines that the student's behavior was a manifestation of his or her disability, the student's placement cannot be changed, except via the IEP team process. The team should review the student's current educational placement to determine whether he or she is receiving appropriate instructional and related services in the current placement. They should also consider whether other strategies should be implemented for the student, as well as for teachers and other personnel who work with the student, if appropriate. The IEP team can assess whether a more restrictive environment is necessary and change the placement, if determined appropriate.

School personnel can also go before an impartial due process hearing officer (not employed by the school district) and prove "*beyond a preponderance of the evidence*" that the student's behavior is "*substantially likely to result in injury to the child or others*" and request an injunction to place him or her in an interim alternative educational setting for up to forty-five calendar days. The school district also has the option of seeking a court order (Honig injunction) at any time to remove the student from school and place him or her in an interim alternative educational setting for up to forty-five calendar days.

**Must educational services be continued for a student with disabilities who has been expelled or whose placement has been changed as a result of suspensions?**

Section 300.121 requires that a FAPE be provided to all students with disabilities, including students whose placements have been changed for disciplinary reasons. Services, including both instructional and related, must be provided in a manner consistent with the student's IEP. The IEP team will need to review the student's IEP to appropriately address his or her change of placement. *Any* additional behavioral strategies or interventions will also need to be added. The IEP must be reasonably calculated to provide an educational benefit and allow the student to progress in the general curriculum.

**If a student with a disability, identified under Section 504 but not the IDEA, is expelled or suspended for ten school days or more within a given school year, must educational services be continued?**

Students with identified disabilities under Section 504, just as under the IDEA, may be expelled or suspended from school for more than ten school days only for behavior that is not a manifestation of the student's disability. The nondiscrimination provisions of Section 504, however, have been interpreted to not require a continuation of educational services during periods of expulsion or suspension.

**How do the disciplinary provisions of the IDEA and the regulations apply to students with disabilities who bring weapons to school?**

If a student with a disability carries a weapon on school property or to a school function under the jurisdiction of a state or local educational agency, school personnel may order a change in the placement of the student to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than forty-five calendar days. This change of placement may be imposed before any determination of whether the behavior was a manifestation of the student's disability. The participants of the student's IEP team must select the interim alternative educational setting. The student returns to the regular placement on the forty-sixth day, unless additional steps are taken to extend the removal.

If the school district wants to change the student's placement for more than forty-five days, they can review the current placement with the parent and the IEP team and determine whether a more restrictive setting is needed. School personnel can also ask an impartial due process hearing officer or court to extend the change of placement for an additional forty-five day period on the basis of the belief that a return of the student to his or her current placement is substantially likely to result in injury to the student or to others.

The school district also has the option of proposing to expel the student for the remainder of the school year if a student without a disability would be subject to an expulsion for the same offense. The IEP team, however, must first determine whether the behavior was a manifestation of the student's disability. All of the other procedures set forth above for pursuing a long-term suspension must also be followed.

**How do the disciplinary provisions of the IDEA and the regulations apply to students with disabilities who knowingly possess or use illegal drugs or sell or solicit the sale of a controlled substance while at school?**

If a student with a disability knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a state or local educational agency, school personnel may order a change in the placement of him or her to an appropriate interim alternative educational setting for the same amount of time that a student without a disability would be subject to discipline, but for not more than for forty-five days. The IEP team must convene and determine the interim alternative educational setting. The student returns to regular placement on the forty-sixth day, unless additional steps are taken to extend the removal.

The school district also has the option of proposing to expel the student for the remainder of the school year. The IEP team, however, would first have to determine whether the behavior was a manifestation of the student's disability. All of the other procedures for pursuing a long-term suspension would also have to be followed.

**Can a school district report a crime committed by a student with a disability to the authorities?**

Nothing prohibits reporting a crime committed by a student with a disability to the authorities. This option should not be used by a school district to circumvent responsibilities under the IDEA or in a discriminatory manner. If reporting a crime, copies of the student's special education and disciplinary records must be transmitted for consideration to the proper authorities.

Copies of a student's special education records may be transmitted only to the extent that such a transmission is permitted under the Family Educational Rights and Privacy Act (FERPA). FERPA permits the disclosure of special education and disciplinary records only with the prior written consent of the parent or a student aged eighteen or older, or under one of the exceptions to the consent requirements. For example, disclosure may be permitted when made in compliance with a lawfully issued subpoena or court order, if the school makes a reasonable attempt to notify the parent of the order or subpoena in advance of the compliance. Disclosure is also allowed in connection with an emergency, and knowledge of the information is necessary to protect the health or safety of the student or other individuals. State law can also create exemptions.

**Is there any responsibility to provide educational services to students with disabilities who have been arrested and are in the county detention center awaiting trial?**

Yes. Qualifying inmates are entitled to a FAPE while incarcerated. Although the school district where the detention center is located is responsible for providing a FAPE to students with disabilities being held in a detention center, legitimate detention center interests must be taken into account. The IEP must be modified to the extent possible, with a view toward striking the appropriate balance necessary to vindicate both penological and educational interests to the extent those interests can be brought together.

**What are the requirements that an interim alternative educational setting must meet to be deemed an appropriate setting?**

Any interim alternative educational setting must enable the student to continue to progress in the general curriculum and to continue to receive the services and modifications, including those described in the current IEP, that will enable him or her to meet the goals set out in the IEP, and must include services and modifications designed to address the behavior so that it does not recur.

**Can a student with a disability be subjected to placement in an interim alternative educational setting more than once during a given school year?**

Yes. The regulations do not prohibit a student with a disability from being subjected to more than one placement in an interim alternative educational setting in any given school year. A student may be placed in an interim alternative educational setting for up to forty-five days for possessing illegal drugs on school grounds in the fall, for up to another forty-five days for bringing a weapon to school in the spring, and then extended for another forty-five days because of the substantial likelihood of causing injury to self or others.

**What happens if the parent objects to the decision that the student's behavior was not a manifestation of his or her disability?**

If the student's parent objects to the team's decision that the behavior was not a manifestation of his or her disability, the parent has the right to initiate an expedited impartial due process hearing to challenge the manifestation determination. If the student's parent initiates an expedited impartial due process hearing in connection with the decision and the behavior does not involve weapons or drugs, *stay-put* applies and the student must remain in his or her current educational placement until the completion of all proceedings. If the parent and school can agree on an interim placement, the student would be entitled to remain in that placement until the completion of all proceedings.

If the behavior involves weapons or drugs, school personnel may order a change in the placement of the student with a disability to an appropriate interim alternative educational setting pending the completion of the hearing or for up to forty-five days. The IEP team must convene and determine the interim alternative educational setting.

**What if a student who was not previously identified as a student with a disability violates the school disciplinary code?**

A student who has not been previously determined eligible for special education and who has violated any rule or disciplinary code can assert the protections of the IDEA if the district knew or should have known that he or she was a student with a disability before the behavior occurred. If the district did not have prior knowledge, the student may be subjected to the same disciplinary measures as students without disabilities.

If a request is made for an evaluation of the student during the disciplinary period, the evaluation must be conducted in an expedited manner. Expedited evaluations in South Carolina must be completed within twenty-five calendar days. If the student is determined to be a student with a disability, the district shall provide special education and related services except that pending the results of the evaluation, the student remains in the educational placement determined by school authorities.

**What are the criteria for determining whether a district knew or should have known that the student was a student with a disability before the behavior occurred?**

A district is deemed to have knowledge if:

1. The parent or the student has expressed a concern in writing to school personnel that the student is in need of special education or related services;
2. The behavior or performance of the student demonstrates the need for such services;
3. The parent of the student has requested an evaluation of the student; or
4. The teacher of the student, or other school personnel, has expressed concern about the behavior or performance of the student to the director of special education or to other personnel of the district.

A school district would not be deemed to have knowledge if, as a result of receiving the above information, the school district conducted an evaluation and determined the student was not eligible under the IDEA or determined that an evaluation was not necessary. The school district must also have provided the student's parents notice of its determination.

**Are suspensions from a school bus counted the same as an out-of-school suspension?**

Suspensions from transportation may constitute a day of suspension from school if transportation is a related service mandated by the IEP. If transportation is a related

service, an alternative method of transportation must be provided for the student during the period of suspension.

The Office for Civil Rights (OCR) also considers suspensions from transportation to be a suspension from school if the student is unable to get to school because of the transportation suspension. This is regardless of whether transportation is set forth in the IEP as a related service.

**Are in-school suspensions counted the same as an out-of-school suspension?**

An in-school suspension would not be considered the same as an out-of-school suspension as long as the student is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive the services specified in his or her IEP and continue to participate with nondisabled students to the extent they would have in his or her current placement. If the student is placed in a separate setting without these provisions or sent home and held responsible for getting or making up assignments on his or her own, not provided the supports and services set forth in his or her IEP, and not afforded the opportunity to continue to appropriately progress in the general curriculum, this would be considered the same as an out-of-school suspension. In-school suspensions and portions of exclusion days that amount to out-of-school suspensions are days that must be included in determining whether a student has been removed for more than ten cumulative school days or subjected to a change of placement.

**If a school district has an alternative school that serves nondisabled students who have received long-term suspensions or been expelled, must the school district allow students with disabilities to attend?**

School district policies that allow alternative schools to serve nondisabled students who have received long-term suspensions or been expelled, but do not admit disabled students who have received change of placement suspensions or been expelled are discriminatory. Such policies are discriminatory against disabled students, in violation of Section 504. If however, the district can show that they have another program that is appropriate and would allow a special education student to have all of the *necessary* services and instruction and effectively progress in the general curriculum in the same manner as if they were in the regular education setting, they may be able to avoid noncompliance. Any benefits that a similarly situated nondisabled student receives at the alternative school have to be available to the disabled student in this other setting. If the alternative school allowed participation in physical education, home economics, typing, or auto mechanics and these courses were appropriate for a special education student, the school district would have to make the same benefits available to the student with a disability, either at the alternative school or some other setting. The alternative school or other setting must also provide any instructional or related services in the student's IEP.

Barbara A. Drayton, Esquire Deputy  
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## **Alternative Schools: Questions and Answers**

### **Can an alternative school or a school district take the position that students with disabilities cannot attend an alternative school?**

No. Students with disabilities may not be denied access to alternative schools. Decisions regarding placement in an alternative school for these students must be made on an individualized basis if the student is otherwise qualified. School district policies that allow alternative schools to serve nondisabled students who have been removed from their regular school setting for disciplinary reasons or any other reason, but do not admit students with disabilities who have been removed for the same type of disciplinary infractions are discriminatory. Such policies are discriminatory against students with disabilities in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504). If, however, the school district can show that they have another program that is appropriate and would allow a special education student to have all of the necessary services and instruction and effectively progress in the general curriculum in the same manner as if they were in the regular education setting, they may be able to avoid noncompliance with Section 504. Any benefits that a similarly situated nondisabled student receives at the alternative school must be available to the student with a disability in this other setting. If the alternative school allows participation in physical education, home economics, typing, or auto mechanics and these courses are appropriate for a special education student, the school district must make the same benefits available to the student with a disability, either at the alternative school or some other setting. The alternative school must also provide any instructional or related services in the student's IEP.

### **Must alternative schools and programs allow students with disabilities to continue to participate in the general curriculum?**

Yes. Alternative schools and programs must allow a student with a disability who was previously participating in the general curriculum to continue to do so as set forth in his or her individualized education program (IEP).

### **Who can determine whether a student with a disability may be placed in an alternative school or program?**

This determination must be made by the IEP team. The student's IEP team must determine the appropriate amount of special education and related services that the student must receive and determine how the services will be delivered. This cannot be a unilateral decision made by school district personnel at either the student's regular school or the alternative school. It must be an IEP team decision. All of the necessary information regarding the student must be transferred to the alternative school in order to provide the continued services. The Individuals with Disabilities Education Act (IDEA) explicitly requires the continuation of a free and appropriate public education (FAPE) for students with disabilities who are removed from their regular settings.

### **What least restrictive environment (LRE) considerations must be made by the IEP team?**

When the IEP team recommends a removal to the alternative school, they must determine whether the LRE requirements under federal and state law have been appropriately considered. Will maintaining the student's regular placement be disruptive and significantly impair the ability to meet the needs of the student and others in the classroom? Were



supplementary supports and services implemented prior to proposing a change in placement?

**Must alternative schools and programs provide all of the necessary accommodations and modifications, as well as related services, supplementary aids and services needed for a student with a disability to benefit from the educational program?**

Yes. The alternative school and program must adhere to all of the requirements as set forth in the IEP. Failure to provide all of the required services listed on the IEP would be a major violation of the IDEA. Services must be available at the alternative school that enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in his or her IEP. All IEPs and behavioral intervention plans (BIPs) must be carried out in the alternative school. The student is still entitled to the provision of any related services included in his or her IEP. A FAPE includes the continued provision of special education and related services in accordance with all state standards.

Personnel at the alternative school who will be providing services to the student must be made aware of their responsibilities in providing the student a FAPE. The state curriculum standards must be incorporated into instruction and the students must continue to participate in statewide and district-wide assessment. Students who are age-eligible must receive appropriate transition services.

If the IEP of a student who is attending an alternative school or program includes transportation as a related service, must the transportation continue to be included? If transportation is provided in the student's IEP as a related service, then the student continues to be entitled to transportation services at the alternative school. In some cases, although it is not in the IEP, a denial of transportation would prevent the student from attending the alternative school and from benefiting from his or her educational program. In these instances, the Office for Civil Rights (OCR) might determine that a failure to provide transportation would exclude the student from school and violate Section 504, although it is not in the IEP.

**May an alternative school or program serve as an interim alternative educational setting?**

Yes. An alternative school or program may serve as an interim alternative educational setting if the alternative school or program allows the child to continue to participate in the general curriculum and to continue to receive the services and modifications, including those described in the student's current IEP that will enable the child to meet the goals set out in the IEP. Services and modifications designed to address the behavior so that it does not recur must be included.

**Is it necessary to revise the IEP for a student who is placed in an alternative school or program?**

In instances where the IEP for a student with a disability can be implemented as written in the alternative school or program, there is no need for the IEP team to revise the IEP and placement. If, however, the student's current IEP cannot be implemented as written in that setting, the IEP team must develop an appropriate program for the child. In revising the IEP, if there is a significant reduction in the amount of services, this constitutes a change in placement.

**Is it a change in placement to place a student with a disability in an alternative school or program?**

If the recommendation for enrollment in the alternative school is for disciplinary reasons and is for more than ten school days, then this may be a removal that amounts to a change in placement, if the program offered at the alternative school is substantially different from that offered through the student's regular placement. If the alternative school offers the same program that the student would receive in his or her regular placement, then this may be a change in location rather than a change in placement. If the student will not receive the opportunity to enroll in the same type classes, extracurricular activities, and other activities as in his or her regular placement, then the removal is a change in placement.

If a removal to the alternative school is a change in placement, then the student has certain procedural and due process rights that must be adhered to by the school district or you risk violating the IDEA, Section 504, and the Americans with Disabilities Act of 1990 (ADA). If a student's rights are violated under these federal laws, the school district leaves itself vulnerable to charges of violating the student's civil rights.

If the removal to the alternative school is a change in placement for disciplinary reasons, an FBA must be conducted and a BIP implemented, unless the IEP team has already completed these steps. If a FBA was conducted and a BIP previously implemented, then the IEP team must review the BIP to determine if additional modifications are necessary. A manifestation determination review must then be held as required in 34 C.F.R. § 300.523.

If the behavior is related to the student's disability, the student may not be legally removed to an alternative school, unless the parent consents to the change in placement. The parent cannot be threatened or coerced into agreeing to the removal. If the parent does not consent to the removal, the student must be allowed to remain in his or her regular placement or the school district has to initiate a due process hearing in order to effect the removal.

If the behavior is determined to be unrelated to the student's disability, then the student may be removed to the alternative school, if a nondisabled student would be subjected to the same kind of punishment for the same type offense. If the student's parent objects to the finding that the behavior was unrelated to the disability, then the parent is entitled to an expedited due process hearing on the issue, which must be completed within twenty-five calendar days. Stay-put takes effect until the due process hearing officer, who cannot be employed by the school district, has rendered a decision. Unless the parent agrees to a different placement, the student will remain in his or her regular placement while the hearing and decision are pending. (See 34 C.F.R. § 300.526)

If the IEP can be implemented as written, this would simply constitute a change in location and not a change in placement. The IEP team must determine if the IEP revisions constitute a change in placement. It is clear that anytime there is a change of any significance in the IEP, a change of placement has occurred. If there is a change in placement, informed parental consent must be obtained. Section 504 requires that prior to any significant change in placement, an evaluation must be conducted. Although this evaluation is not required under the IDEA, the determination of whether an evaluation is needed should be made by the IEP team. In the event the IEP team determines that the alternative school or program is the appropriate LRE for a student but the IEP will be implemented as written, no informed parental consent is required.

**Under what other circumstances would informed parental consent not be required when placing a student in an alternative school or program?**

Informed parental consent would not be required when weapons or drugs are involved, when there is a removal by a hearing officer or the Court in an instance where a student is substantially likely to cause harm to self or others, or in the event the student is expelled.

**Are students with disabilities in an alternative school or program subject to the same discipline policies as students without disabilities?**

This is a determination of the IEP team and must be discussed during the IEP meeting.

**What are the certification requirements for personnel in an alternative school?**

There is no flexibility to relax professional standards for personnel at the alternative school. State certification standards are still in effect. If a student was previously served in a self-contained class for students with learning disabilities or a self-contained class for students with emotional disabilities, then the certification standards for personnel delivering instruction at the alternative school are the same as the standards in the regular setting.

How do the requirements of Section 504 of the Rehabilitation Act of 1973 impact alternative schools?

The Office for Civil Rights (OCR) has the responsibility under Section 504 and its implementing regulations to require that recipients of federal financial assistance, including funding through the U. S. Department of Education, not discriminate against persons on the basis of their disabilities. Again, therefore, school districts that have established alternative schools and programs may not exclude students with disabilities. To do so would constitute a violation of Section 504. Students with disabilities are entitled to the benefits of alternative schools and programs in the same manner as students without disabilities.

**What training should be provided for teachers at alternative schools or programs?**

These teachers should receive all of the training provided in other schools in the district, including how to make appropriate referrals to programs for students with disabilities under both the IDEA and Section 504. Training in the development and implementation of behavioral assessments and behavioral intervention plans required by the IDEA should also be provided.

**What are some of the potential pitfalls in providing services to students with disabilities in alternative schools?**

It is critical to adhere to federal and state requirements for serving students with disabilities throughout the process to avoid substantive and procedural violations. The most common problems include the following pitfalls:

- failing to follow proper procedures to remove the student,
- failing to appropriately implement IEPs,
- failing to provide related services,
- failing to provide transition planning,
- failing to provide appropriately certified teachers,
- failing to provide individual educational planning,
- failing to provide sufficient materials and supplies to implement the IEPs,
- failing to provide a grading system that is consistent with the regular program,
- failing to transfer credits when the student transfers back to the regular program,
- failing to develop a plan to transition the student back into the regular placement, and
- failing to appropriately address the behaviors that caused the student to be transferred.

*State Department of Education, Office of Exceptional Children*

## Reporting Crimes

### **Do IDEA's discipline procedures allow school systems to report crimes that are committed by children with disabilities?**

Yes, they do, and that's the focus of this article, which looks at the section of IDEA's disciplinary procedures called "referral to and action by law enforcement and judicial authorities," found at §300.535 and reproduced at the bottom of the page, for your convenience.

IDEA makes clear that schools are *not* prohibited from reporting a crime committed by a child with a disability to appropriate authorities. Similarly, the law does not prevent State law enforcement and judicial authorities from exercising their responsibilities. The agency reporting the crime must ensure that copies of the special education and disciplinary records are transmitted for consideration by the appropriate authorities—however, only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA), a Federal law that protects the privacy of children's education records. As the Department explains:

Under FERPA, personally identifiable information (such as the child's status as a special education child) can only be released with parental consent, except in certain very limited circumstances. Therefore, the transmission of a child's special education and disciplinary records... without parental consent is permissible only to the extent that such transmission is permitted under FERPA. (71 Fed. Reg. 46728)

### **IDEA's Regulations at §300.535**

#### **§300.535 Referral to and action by law enforcement and judicial authorities.**

(a) ***Rule of construction.*** Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) ***Transmittal of records.*** (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

## South Carolina Department of Juvenile Justice Education Services

The South Carolina Department of Juvenile Justice (DJJ) is a state cabinet agency, and by law, it is also a treatment and rehabilitative agency for the state's juveniles. DJJ is responsible for providing custodial care and rehabilitation for the state's children who are incarcerated, on probation or parole, or in community placement for a criminal or status offense. The goal at DJJ is to protect the public and reclaim juveniles through prevention, community programs, education, and rehabilitative services in the least restrictive environment possible.

All of the educational entities of the SC Department of Juvenile Justice School System are organizations that provide education and treatment services in residential settings in South Carolina for adjudicated youth. South Carolina Department of Juvenile Justice (SCDJJ) provides these services to every county in the state and serves students according to the mandates of the judicial systems in the respective counties. The district is charged with serving a very fluid and transient population of youth in 15 separate sites.

Schools are in session year-round (enabling students to make up absences and close learning gaps). DJJ's school district has no local tax base, relying exclusively on state (EFA is calculated at 70%) and federal funding. Classes are geared to meet the individual needs of each student.

The DJJ school district is responsible for all educational programs operated by the agency, including those in private provider programs and alternative school sites in community residential placement facilities.

Juveniles committed to DJJ can earn either a high school diploma or a GED. DJJ's school district also offers students 10 Career and Technology Education (CATE) courses, extensive special education services, the nation's first Army JROTC and Communities in Schools (CIS) programs in a juvenile correctional facility setting, media centers, career guidance counselors. DJJ operates its own independent school district. The school district consists of one long-term facility and three regional evaluation centers, one detention center and ten satellite programs. These school sites provide education for approximately 700 students in grades 6-12. All schools provide basic academic classes and courses necessary to earn a high school diploma. The General Equivalency Development (GED) Program is also provided for juveniles selected as appropriate candidates.

The Department of Juvenile Justice School District participates each year in the statewide testing program. The High School Assessment Program (HSAP) which enables students grade 10 and above to earn a high school diploma is administered three times a year. The End of Course Education Program (EOCEP) tests are also administered three times a year to students eligible. The Palmetto Assessment of State Standards (PASS) test is administered to students in grades 6 - 8.

**Regional Evaluation Centers/Detention Center:** Juveniles, by law, are required to continue their education when they are sent to one of DJJ's three regional evaluation centers or our pre-trial Detention Center in Columbia. The curriculum at these centers is aligned with the South Carolina Curriculum Standards and is designed to maintain the juveniles' eligibility for required attendance and credits towards promotion and graduation.

Currently, DJJ's three regional evaluation centers include the Coastal Evaluation Center in Ridgeville; the Midlands Evaluation Center in Columbia; and the Upstate Evaluation Center in Union. The educational component in the regional evaluation centers serves both the family court (in its efforts to evaluate juveniles) and the students themselves.

**JROTC Program:** Established in 1993 as the nation's first Junior ROTC Program in a juvenile correctional setting, DJJ's JROTC program serves both boy's and girls at DJJ's Birchwood School in Columbia. The mission of the program is to "motivate young people to become better citizens" and teach leadership, discipline, and life skills that will serve students throughout their high school and adult lives. The program is a cooperative effort between DJJ's school district and the U.S. Army.

**DJJ's Communities in Schools (CIS) School:** Communities in Schools is a national program that educates struggling, at-risk youth by providing a one-on-one relationship with a caring adult, a safe place to learn and grow, and a marketable skill upon graduation.

**Career and Technology Education (CATE):** The focus of career education is to develop a system that is structured for all students. This system integrates schools and workplaces, academic and career and technology learning, and secondary and post-secondary education and links educators, students, parents, and business leaders. It provides students with both academic and industry workplace skills, which are recognized and portable.

### **Special Education Services**

Special Education services are provided for juveniles with disabilities in accordance with the Individuals with Disabilities Education Act (IDEA). All juveniles with disabilities have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their individual needs and to prepare them for further education, employment, and independent living. Juveniles may also receive services and accommodations through an ADA/504 plan.

*Other educational/work programs offered by the agency's school district are:*

**School-to-Work** -- A challenging academic and CATE curricula; career exploration and counseling initiatives; teachers trained to link classroom learning to the world of work, apprenticeships, and mentorships.

**Youth Industries Program** -- A cooperative effort between business and government. In February 1998, DJJ was registered with the United States Department of Labor as an Apprenticeship Program site. This program allows juveniles committed to DJJ to learn a trade. Participating juveniles also earn wages to make victim restitution payments, child support payments, and to put aside money for reentry into their communities.

**Facility Work Program** -- This program provides an opportunity for juveniles to help facilitate their transitions from incarceration to their communities. Each long-term facility at DJJ provides the opportunity for a meaningful work experience for all juveniles in an organized, supervised work program that affords juveniles opportunities for at least two hours participation per day in constructive and physical work activity.

For more information on the SC Department of Juvenile Justice visit:

<http://www.state.sc.us/djj/index.php>

# People with Intellectual Disability in the Criminal Justice System: Victims & Suspects

By Leigh Ann Davis, M.S.S.W., M.P.A.

*How do people with intellectual disability get involved in the criminal justice system?*

People with intellectual, cognitive or developmental disabilities get involved as both victims and suspects/offenders more often than individuals without disabilities. Although there is no way to know *exactly* how many people with intellectual disability are victimized in the U.S. each year since they are not included in federally mandated surveys, researchers have found that they have a 4 to 10 times higher risk of becoming victims of crime when compared to those without disabilities (Sobsey, 1994). Children with any type of disability are 3.4 times more likely to be abused compared to children without disabilities (Sullivan & Knutson, 2000).

Individuals with this disability also constitute a small, but nonetheless growing percentage of suspects/offenders within the criminal justice system. While those with intellectual disability comprise 2% to 3% of the general population, they represent 4% to 10% of the prison population, with an even greater number of those in juvenile facilities and in jails (Petersilia, 2000). One study that looked at the number of people with disabilities in state and federal prisons found that fewer than 1% of inmates had physical disabilities while 4.2% had mental retardation (referred to in this fact sheet as intellectual disability) (Veneziano & Veneziano, 1996).

*How do people with intellectual disability become victims of crime?*

Factors such as impaired cognitive abilities and judgment, physical disabilities, insufficient adaptive behaviors, constant interactions with "protectors" who exploit them, lack of knowledge on how to protect themselves and living and working in high-risk environments increase the vulnerability to victimization (Luckasson, 1992).

Crimes committed against people with intellectual disability are often labeled as abuse and neglect (rather than assault, rape or murder), which understates the criminal victimization problem. Many victims with intellectual disability may not report crimes because of their dependence on the abuser for basic survival needs. When victims do report crimes, police and court officials may not take the person's allegations seriously or be reluctant to get involved. Additionally, people with intellectual disability often don't have access to the types of support and resources they need to prosecute.

*What types of crime do people with intellectual disability commit?*

Some people with intellectual disability commit crimes, not because they have below-average intelligence, but because of their unique personal experiences, environmental influences and individual differences. During the early 1900s, some professionals believed that individuals with intellectual disability were predisposed to becoming criminals due to their disability. This view lost support during the 1930s when its leaders rescinded their original beliefs and the focus on causes of crime shifted from biological reasons to psychological and sociological ones. Research from the mid-80s to the 1990s found that the types of crime committed range from property crimes, like theft or robbery, to physical and sexual assault. Some have been accused of murder as well. One researcher found that many

who committed sexual offenses were victimized sexually, and that their experience as a victim was linked to their later experience as the offender (Firth, 2001).

*What disadvantages do people with intellectual disability face in the criminal justice system?*

Almost all people with intellectual disability now live in the community and are susceptible to becoming involved in the criminal justice system as suspects and/or victims. As suspects, individuals with this disability are frequently used by other criminals to assist in law-breaking activities without understanding their involvement in a crime or the consequences of their involvement. They may also have a strong need to be accepted and may agree to help with criminal activities in order to gain friendship. Many individuals unintentionally give misunderstood responses to officers, which increase their vulnerability to arrest, incarceration and possibly execution, even if they committed no crime (Perske, 2003).

Considering such extreme disadvantages, it is not surprising that people with intellectual disability are more likely to be arrested, convicted, sentenced to prison and victimized in prison. Once in the criminal justice system, these individuals are less likely to receive probation or parole and tend to serve longer sentences due to an inability to understand or adapt to prison rules. Some common responses from those with intellectual disability that may affect their ability to protect their rights include the following:

**As suspects, individuals may:**

- not want their disability to be recognized (and try to cover it up)
- not understand their rights but pretend to understand
- not understand commands, instructions, etc.
- be overwhelmed by police presence
- act upset at being detained and/or try to run away
- say what they think officers want to hear
- have difficulty describing facts or details of offense
- be the first to leave the scene of the crime, and the first to get caught
- be confused about who is responsible for the crime and "confess" even though innocent

**As victims, individuals may:**

- be easily victimized and targeted for victimization
- be less likely or able to report victimization
- be easily influenced by and eager to please others
- think that how they have been treated is normal and not realize the victimization is a crime
- think the perpetrator is a "friend"
- be unaware of how serious or dangerous the situation is
- not be considered as credible witnesses, even in situations where such concern is unwarranted
- have very few ways to get help, get to a safe place or obtain victim services or counseling



## What Parents Need to Know When Their Child with Disabilities is Incarcerated

This fact sheet contains a brief summary of useful information for parents of incarcerated youth with disabilities. It includes information about how parents can be involved in ensuring that incarcerated youth receive the special education and related services to which they are entitled.

The information in this fact sheet is not intended as legal advice. It is always best to consult with correctional teachers and administrators about your child's needs for special education while he or she is incarcerated. You may also want to consult an attorney about your incarcerated child's legal rights to special education.

What should parents know about school policies on discipline and violent behavior?

- Both you and your child should obtain a copy of your school's discipline policy. Read it over very carefully, and if you don't understand something, ask a teacher or school counselor to explain it.
- If you believe your child needs assistance to meet the school's behavioral expectations, discuss with a teacher or school counselor how the school can help to meet these needs.
- Find out what your school identifies as a weapon and a threatening statement. Be aware and discuss with you- child what types of behaviors can result in school suspension or expulsion.

What should parents tell their child with a disability if he or she is arrested?

- If you are worried the police may stop your child, develop a "game plan" and act it out with him or her before that happens. Repeat the game plan from time to time.
- Explain to your child that if the police stop him or her, they should tell the police their name, address, and phone number. *They* should ask the police to call you, and a lawyer.
- Tell them to always be polite and cooperative with a police officer if they are stopped.
- Anything your child tells the police may be used against them later on in court.
- The best advice is to tell you- child not to respond to specific questions about the alleged offense until you are there to help them.

What can parents do if their child is arrested?

- Go to the police station as soon as you find out your child is being questioned or detained.
- Get as much information as you can about the charges, as soon as possible.
- Find out if there were any witnesses.
- Provide information about your child's disability to the police, to your child's attorney and to the court as soon as possible. Explain how your child's disability affects his or her behaviors, their understanding of the alleged offense, and their ability to answer questions.

Should a parent share information about their child's disability with Justice system officials?

- It is essential that information about your child's disability be given to court

- professionals, especially his or her lawyer, probation officer and judge.
- Ask the court to address the contribution of the disability to the youth's behavior and alleged offense.
- If your child is placed under the supervision of the court or is incarcerated, you want to be certain that he or she receives the mental health services and the special education services to which they are entitled.
- When possible, ask people who know and like your child to write a letter to the court or to come to court to speak on his or her behalf.

What accommodations may be needed by youth with disabilities in court?

- Repetition and explanation of questions.
- Additional time to think about the questions and their responses.
- Questions presented in different formats (e.g., video, writing, sign language).

What special education services are youth entitled to in the delinquency system?

- Children with disabilities who are eligible for services under the Individuals with Disabilities Education Act. (IDEA) have the right to a free, appropriate public education (FAPE) including special education and related services, wherever they live or attend school. This includes juvenile correctional placements and with certain exceptions, adult correctional facilities.
- The involvement of parents in special education decision-making is a fundamental principle of the IDEA, and this does not change when a child is incarcerated. Parents/guardians of incarcerated youth should be involved in the development of their child's Individualized Education Program (IEP).
- If the parents/guardians are not able to attend IEP meetings in a correctional facility, they can participate through telephone conferencing. If parents/guardians are not available to participate in the IEP process, surrogate parents can be appointed by the agency funding the youth's education.
- Children with disabilities may also be entitled to services under the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act. of 1973.
- If your child has never been identified as having a disability, but you have reason to believe he or she may be disabled and in need of special education, you can ask in writing for an evaluation. The correctional facility is obligated to consider your request and to determine if your child has special needs.
- Services can be provided through an IEP if your child receives special education services under the IDEA, or a "504 plan" if your child receives special help under Section 504, even if that plan has expired.
- When a child is transferred to a correctional facility, an IEP or 504 Plan must be developed that specifies the services your child needs in the correctional facility.
- Licensed personnel including special education teachers, psychologists, social workers or mental health professionals, should provide special education services.
- Whenever possible, it is advisable that the IEP meeting include representation from your child's IEP team in your home school district. If a representative of the home school cannot come to the IEP meeting, they can provide input by phone, mail, fax.
- If the home school district has not sent your child's educational records including the IEP or 504 plans to the correctional facility, you may obtain a copy and send it to the facility. These records are very important.
- If you feel your child in a correctional facility is not receiving appropriate special

education and related services, you have the same rights under the IDEA to mediation and due process that are afforded to parents whose children attend school in the community.

- Each state has regulations that pertain to transfer of rights for youth over the age of 18 in the IEP process. If your child cannot advocate for his or her rights because of a disability, he or she can transfer the authority to you or to a surrogate parent to act as an advocate in the IEP process.
- If your child uses any psychotropic medication ask your physician or the physician in the correctional facility, to provide a list of the medications, the dosage, the time the medication should be given and any possible side effects, to the education program.

What transition services should be provided for youth in the delinquency system?

- If your child is over age 13 (in South Carolina) and eligible for special education services, a Transition Plan must be included as part of their IEP. Transition plans include the skills and service your child will need once they leave public school. Transition services can include instruction in life skills, social skills, assistance in returning to high school, job seeking skills, pre-vocational and vocational training, and supports in the community from the educational agency or from adult service agencies.
- When your child leaves a correctional facility, he or she will need an aftercare plan. Ideally, planning for release back into the community should begin when a child enters the facility.
- An aftercare plan includes what your child must do to stay out of trouble, including academic goals and school attendance, ongoing mental health services, substance abuse classes, and meetings with a probation officer. The aftercare plan should be similar to and may be coordinated with the Transition Plan.

What should parents do if their child with a disability is sent to an adult correctional setting?

- Understand your child's disability needs and their rights to education and special education in adult correctional facilities.
- Remain involved and persistent as advocates for your child.
- Contact the staff in the correctional facility to let them know that you are willing to cooperate and work with them, and that your child is entitled to special education and related services.
- Tell the correctional staff what has worked and not worked for your child in the past.
- Do not be intimidated by the corrections setting.
- Most youth with disabilities under the age of 22 and incarcerated in adult correctional facilities are entitled to special services under the IDEA if they were identified as eligible and were receiving special education services through an IEP *prior to* their incarceration
- Collect information about your child's education including transcripts, IEP, 504 plan and medical needs and provide copies for the correctional education staff.
- Youth with disabilities in adult correctional facilities may also be entitled to services under the ADA or Section 504 of the Rehabilitation Act of 1973.

*Lili Garfinkel, EDJJ Associate Director EDJJ:  
The National Center on Education, Disability and Juvenile Justice*



## Section 5

### ADDITIONAL INFORMATION

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## South Carolina State Resources

### Government

#### **Senator Lindsey Graham (R)**

290 Russell Senate Office Building

Washington, DC 29510

Phone: (202) 224-5972

Lowcountry Regional Office:

530 Johnnie Dodds Boulevard, Suite 202

Mt. Pleasant, SC 29464

Phone: (843) 849-3887

<http://www.lgraham.senate.gov/public/>

#### **Senator Tim Scott (R)**

717 Hart Senate Office Building

Washington, DC 20510

<http://www.scott.senate.gov/>

Phone: (202) 224 – 6121; Toll Free: (855) 425-6324; Fax: (855) 802 – 0366

Lowcountry Regional Office:

2500 City Hall Lane, 3<sup>rd</sup> Floor Suite

North Charleston, SC 29406

Phone: (843) 727-4525

#### **Congressman Mark Sanford (R); 1<sup>st</sup> District**

322 Cannon House Office Building

Washington, DC 20515- 4001

Phone: (202) 225-3176

<http://sanford.house.gov/>

Lowcountry Regional Office:

530 Johnnie Dodds Boulevard, Suite 201

Mt. Pleasant, SC 29464

Phone: (843) 352-7572; Fax: (843) 352-7620

#### **Congressman James Clyburn (D); 6<sup>th</sup> District**

242 Cannon House Office Building

Washington, DC 20515

Phone: (202) 225-3315; Fax: (202) 225-2313

<http://clyburn.house.gov/>

Columbia Office

1225 Lady Street, Suite 200

Columbia, SC 29201

Phone: (803)799-1100; Fax: (803)799-9060

**Governor Henry McMaster (R)**  
State House – 1100 Gervais Street  
P. O. Box 12267  
Columbia, SC 29211  
Phone: (803) 734 – 2100  
<http://www.governor.sc.gov>  
E-Mail: [governor@govoepp.state.sc.us](mailto:governor@govoepp.state.sc.us)

## **State Agencies**

**SC Department of Education**  
<http://ed.sc.gov/>

**Molly Spearman, State Superintendent of Education**  
1429 Senate Street  
Columbia, SC 29201  
Phone: (803) 734 - 8500  
E-mail: [SCSuptED@sc.gov](mailto:SCSuptED@sc.gov)

**Office of Special Education Services**  
John Payne, Director  
Director, Office of Special Education Services  
1919 Blanding Street  
Room B133  
Columbia, SC 29201  
Phone: (803) 734-2738; Fax: (803) 734-5021  
E-mail: [JRPayne@ed.sc.gov](mailto:JRPayne@ed.sc.gov)

**Ombudsman, Office of Special Education Services,**  
1429 Senate Street, Suite 808-B  
Columbia, SC 29201  
Phone: (803) 734-2833; Toll Free: (866) 628-0910  
E-mail: [specialedservicesoa@ed.sc.gov](mailto:specialedservicesoa@ed.sc.gov)

**Office of General Counsel**  
Barbara Drayton  
Rutledge Building Room 1015-C  
1429 Senate Street  
Columbia, SC 29201  
Phone: (803) 734-3393  
E-mail: [bdrayton@sde.state.sc.us](mailto:bdrayton@sde.state.sc.us)

**Programs and Initiatives (Including Pre-school)**  
Tresa Diggs  
1919 Blanding Street  
Room: B128  
Columbia, SC 29201  
Phone: (803) 734-5454  
Email: [tdiggs@ed.sc.gov](mailto:tdiggs@ed.sc.gov)



**Programs for Infants and Toddlers with Disabilities: Ages Birth through 2**  
**SC BabyNet**

Dept. of Health & Environmental Control/Baby Net  
P. O. Box 8206  
Columbia, SC 29202-8206  
Phone: (888) 971-1637  
Email: [info@scdhhs.gov](mailto:info@scdhhs.gov)  
<https://msp.scdhhs.gov/babynet/>

*Charleston Office serves Berkeley, Dorchester & Charleston Counties*

**BabyNet**

6296 Rivers Avenue, Suite 309  
North Charleston, SC 29406  
Phone: (843) 740-3193; Fax: (843) 740-3198  
Email: [Lauren.Robbins@scdhhs.gov](mailto:Lauren.Robbins@scdhhs.gov)

**SC School for the Deaf and the Blind**

Page McCraw, President  
355 Cedar Springs Road  
Spartanburg, SC 29302-4699  
Phone: (864) 585-7711  
<https://www.scsdb.org>  
E-mail: [sbreitweiser@scsdb.k12.sc.us](mailto:sbreitweiser@scsdb.k12.sc.us)

**SC Department of Vocational Rehabilitation**

1410 Boston Ave  
West Columbia, SC 29171  
<https://scvrd.net/>

Berkeley-Dorchester Counties:

2954 S. Live Oak Drive  
Moncks Corner, SC 29461  
Phone: (843) 761-6036 (Office/TDD); Toll Free: (866) 297-6808  
E-mail link: <https://scvrd.net/berkeley-dorchester>

Charleston County:

4360 Dorchester Road  
North Charleston, SC 29405  
Phone: (843)-740-1600 (Office/TDD)  
E-mail link: <https://scvrd.net/charleston>

**State Mental Health Agency**

Department of Mental Health  
John H. Magill, Director  
2414 Bull Street  
Columbia, South Carolina 29202  
Phone: (803) 898 – 8581; TTY: (864) 297-5130  
<http://www.state.sc.us/dmh/>

**South Carolina Continuum of Care**

1205 Pendleton Street, Suite 372  
Columbia, South Carolina 29201  
Phone: (803) 734.4500; Fax: (803) 734.4538  
<http://coc.sc.gov/>

**Lowcountry Office:**

7410 Northside Drive, Suite 201  
North Charleston, South Carolina 29420  
Phone: (843) 569.3079; Fax: (843) 569.2403

**Programs for Children with Special Health Care Needs**

Department of Health and Environmental Control (DHEC)  
2600 Bull Street  
Columbia, SC 29201  
Phone: (803) 898-3432  
<http://www.scdhec.gov/Health/ChildTeenHealth/ServicesforChildrenwithSpecialHealthCareNeeds/>

**Lowcountry Office:**

Charleston County Health Department  
3 Charleston Center Drive  
Charleston, SC 29403  
Phone: (843) 579-4640

**State Disabilities and Special Needs**

Department of Disabilities and Special Needs (DDSN)  
Beverly A.H. Buscemi, Director  
3440 Harden Street Extension  
P.O. Box 4706  
Columbia, SC 29240  
(803) 898-9769  
[www.ddsn.sc.gov](http://www.ddsn.sc.gov)

**State Children's Health Insurance Plane (CHIP)**

(Health care for low-income uninsured children)  
SC Health Care Voices - South Carolina Appleseed  
P.O. Box 7187  
Columbia, SC 29202  
Phone: (803) 779-1113; Fax: 803-779-5951  
[www.schealthcarevoicess.org/resources/chip](http://www.schealthcarevoicess.org/resources/chip)  
E-mail: [info@scjustice.org](mailto:info@scjustice.org)

**Children's Rehabilitative Services**

Charleston County Health Department  
3 Charleston Center Drive  
Charleston SC 29403  
Phone: (843) 579-4640; Toll Free: (888) 808-4244  
<http://www.scdhec.gov/Health/ChildTeenHealth/ServicesforChildrenwithSpecialHealthCareNeeds/ChildrensRehabilitativeServices/>

**South Carolina Commission for the Blind**

1430 Confederate Avenue

P.O.Box 2467

Columbia, SC 29202

Phone: (888) 335-5951

<http://www.sccb.state.sc.us>

E-mail: [publicinfo@sccb.sc.gov](mailto:publicinfo@sccb.sc.gov)

Charleston District Office

Fairfield Office Park

1064 Gardner Road, Suite 109

Charleston, SC 29407

Phone: (843) 852.4225

**Center for Disabilities Resources**

University of South Carolina School of Medicine

Department of Pediatrics

Columbia, SC 29208

Phone: 803-935-5231; Fax: 803-935-5059

<http://uscm.med.sc.edu/cdrhome/index.asp>

E-mail: [David.Rotholz@uscmed.sc.edu](mailto:David.Rotholz@uscmed.sc.edu)

**South Carolina Assistive Technology Program (SCATP)**

Midlands Center

8301 Farrow Road

Columbia SC 29203

Phone: (803) 935-5263; Toll Free: (800) 915-4522; Fax: (803) 935 5342 fax

<http://scatp.med.sc.edu/>

E-mail: [Carol.Page@uscmed.sc.edu](mailto:Carol.Page@uscmed.sc.edu)

**South Carolina Developmental Disabilities Council**

Valarie Bishop, Executive Director

1205 Pendleton Street, Suite 461

Columbia, SC 29201

Phone: (803) 734-0465; TTY: 803.734.1147 (TTY)

[www.sccddc.state.sc.us](http://www.sccddc.state.sc.us)

E-mail: [valarie.bishop@admin.sc.gov](mailto:valarie.bishop@admin.sc.gov)

**Protection and Advocacy for People with Disabilities**

Gloria M. Prevost, Executive Director

3710 Landmark Drive, Suite 208

Columbia, SC 29204

(803) 782-0639; (866) 275-7273 (In SC)

[www.protectionandadvocacy-sc.org](http://www.protectionandadvocacy-sc.org)

E-mail: [prevost@pandasc.org](mailto:prevost@pandasc.org)

## **Organizations for Parents and Self-Advocates**

### **State Parent Training and Information Center (PTI)**

Family Connections of South Carolina

Amy Holbert, Director

2712 Middleburg Drive, Suite 103- B

Columbia, SC 29204

Phone: (803) 252-0914; Toll Free: (800) 578-8750 Web:

[www.info@familyconnectionssc.org](http://www.info@familyconnectionssc.org)

### **Community Parent Resource Center (CPRC)**

*(Serving Charleston, Berkeley and Dorchester counties)*

### **Parent Training Resource Center (PTRC)**

Family Resource Center for Disabilities & Special Needs (FRC)

Beverly McCarty, Director

1575 Savannah Highway – Suite 6

Charleston, South Carolina, 29407

Phone: (843) 266-1318; Fax: (843) 266-1941

[www.frcdsn.org](http://www.frcdsn.org)

E-mail: [bevmccarty@frcdsn.org](mailto:bevmccarty@frcdsn.org)

### **SC Parent Teacher Association (PTA)**

1826 Henderson Street

Columbia, SC 29201-2619

Phone: (800) 743-3782

[www.scpta.org](http://www.scpta.org)

E-mail: [office@scpta.org](mailto:office@scpta.org)

### **AccessAbility**

*Independent Living Center serving Berkeley, Dorchester, & Charleston Counties*

7944 Dorchester Road, Suite 5

North Charleston, SC 29418

Phone: 843.225.5080

<http://www.abilitysc.org/>

E-mail: [info@abilitysc.org](mailto:info@abilitysc.org)

### **Abel SC – SC Independent Living Center**

720 Gracern Rd – Ste 106

Columbia, SC 29210

Phone: (803) 779-5121; Toll Free: 800-681-6805; TTY: (803) 779-0949

<http://www.able-sc.org/>

### **South Carolina Autism Society**

806 12th Str.

W Columbia, SC 29169

Phone: (803) 750-6988; (800) 438-4790

[www.scautism.org](http://www.scautism.org)

E-mail: [scas@scautism.org](mailto:scas@scautism.org)

**Lowcountry Autism Foundation (LAF)**

MUSC, MSC 567, Developmental Behavioral Pediatrics  
135 Rutledge Avenue  
Charleston, South Carolina 29425  
Phone: (843) 876-0415; Fax: (843) 876-1518  
[www.lafinc.org/](http://www.lafinc.org/)  
E-mail: [callahsu@musc.edu](mailto:callahsu@musc.edu)

**Down Syndrome Association of the Lowcountry**

PO Box 2275  
Mt Pleasant, SC 29465  
Phone: (843) 654-1552  
E-mail: [DSALowcountry@gmail.com](mailto:DSALowcountry@gmail.com)

**Easter Seals South Carolina**

PO Box 5715  
Columbia, SC 29250  
Phone: (803) 256-0735; (800) 951-4090  
[www.sc.easter-seals.org](http://www.sc.easter-seals.org)  
E-mail: [dlewis@easterseals.org](mailto:dlewis@easterseals.org)

**Federation of Families of South Carolina**

810 Dutch Square Blvd. - Suite 205  
Columbia, SC 29210  
Phone: (803) 772-5210  
[www.fedfamsc.org](http://www.fedfamsc.org)

**National Alliance for Mental Illness (NAMI) of South Carolina**

1735 St Julian Pl - Ste. 300  
Columbia, SC 29204  
Phone: (803) 733-9591; Toll Free: (800) 950-6264  
[www.namisc.org](http://www.namisc.org)  
E-mail: [bill.lindsey@namisc.org](mailto:bill.lindsey@namisc.org)

**South Carolina Hearing Association**

Mollie Miller, Director  
Post Office Box 1782  
Columbia, SC 29202  
Phone: (803) 764-5041  
<http://www.scscha.net/>  
E-mail: [mmiller@mpastrategies.com](mailto:mmiller@mpastrategies.com)

**The Brain Injury Association of South Carolina**

121 Executive Center Dr #135  
Columbia, SC 29210  
Phone: (803) 731-9823; Toll Free: (877) 824-3228; Fax: (803) 731-4804  
<http://www.biausa.org/sc/>  
E-mail: [jdavis.biasc@gmail.com](mailto:jdavis.biasc@gmail.com)

**Telecommunications Relay Services for Individuals who are Deaf, Hard of Hearing, or with Speech Impairments**

TTY: 1-800-735-8583

Voice: 1-800-735-2905

ASCII: 1-800-735-7293

Customer Service: 1-800-676-3777

**Some Telephone Numbers of Interest to Tri-County Residents**

<b>Family Resource Center For Disabilities &amp; Special Needs &amp; Parent Training &amp; Resource Center</b>		<b>843-266-1318</b>
ABLE SC Independent Living Center, Columbia		803-217-6244
AccessAbility SC Independent Living Center (Lowcountry)		843-225-5080
Aging & Disability Resource Center		877-846-8148
Association for the Blind & Visually Impaired		843-723-6915
Autism Division (Coastal) – SCDDSN		843-832-5561
BabyNet		843-740-3194
Berkeley Citizens (DSN)		843-761-0300
Big Brothers/Big Sisters		843-266-5230
Carolina Children's Charity		843-769-0300
Carolina Youth Development Center		843-266-5200
Charles Webb Center		843-852-5545
Charleston/Dorchester Mental Health Center		843-852-4100
Charleston Mayor's Office for Children, Youth & Families		843-965-4190
Charleston Speech & Hearing		843-552-1212
	Toll Free	888-460-9544
Child Care Resources & Referral Network	Toll Free	888-335-1002
Children's Rehabilitative Services (CRS) & Children & Youth with Special Health Care Needs	Toll Free	843-579-4640 888-808-4244
Coastal Center Residential Facility (DDSN)		843-873-5750
Continuum of Care/Emotionally Disturbed Children		843-554-6884
Darkness to Light		843-965-5444
Dee Norton Child Advocacy Center		843-723-3600
DHEC (Dept. of Health & Environmental Control)		843-953-0150
Disabilities Board Of Charleston County		843-805-5800
Dorchester County Disabilities Board		843-871-1285
Down Syndrome Association Of The Lowcountry		843-654-1552

Easter Seals		803-466-4089
Epilepsy Services for the Lowcountry		843-991-7144
Family Connections of South Carolina & SC Parent Training & Information Center (PTI)	Toll Free	800-578-8750
Family Corps (formerly Parents Anonymous of SC)		843-747-0480
Family Court – Charleston County		843-958-4400
Family Services, Inc.		843-735-7802
Federation of Families of SC		866-779-0402
First Call for Help – TriCounty Information Services		211
First Steps SC		
Charleston		843-745-0237
Dorchester		843-873-3507
Berkeley		843-863-3030
Goodwill Industries		800-466-3945
Guardian Ad Litem		
Charleston		843-577-6975
Dorchester		843-552-8278
Berkeley		843-719-4950
Head Start Child Development		843-332-1135 843-332-3923
Hearing Loss Resources		800-327-9355
Joint Base Charleston, School Liaison Officer		843-963-4410
March of Dimes		843-571-1776
MUSC – Developmental Pediatrics		843-876-0444
Muscular Dystrophy Association		843-556-3654
National Alliance for the Mentally Ill (NAMI)		800-788-5131
Navy Fleet & Family Support Center		843-764-7294
One 80 Place (Homeless Shelter)		843-723-9477
Orton Dyslexia Society		800-646-9788
Parent & Guardian Assoc. of the Coastal Center		843-821-5809
Parents for Public Schools (National Organization)		800-880-1222
Protection & Advocacy for People with Disabilities	Toll Free	866-275-7273 866-232-4525 TTY
School District Numbers		
Berkeley County – District Office		843-899-8600
<a href="https://www.bcsdschools.net/Domain/4">https://www.bcsdschools.net/Domain/4</a>		
Berkeley County – Superintendent		843-899-8601
Berkeley County – Special Education Dept.		843-899-8890

Berkeley County – Transportation		843-899-8609
Charleston County – District Office		843-937-6300
<b><a href="http://www.ccsdschools.com/#3">http://www.ccsdschools.com/#3</a></b>		
Charleston County – Superintendent		843-937-6571
Charleston County – Special Education Dept.		843-937-6500
Charleston County – Transportation		843-556-8142
Dorchester County District 2 – District Office		843-873-2901
<b><a href="http://www.edlinesites.net/pages/Dorchester_County_SD">http://www.edlinesites.net/pages/Dorchester_County_SD</a></b>		
Dorchester County District 2 – Superintendent		843-873-2901
Dorchester County District 2 – Special Education Dept.		843-875-4161
Dorchester County District 2 – Transportation		843-873-6196
Dorchester County District 4 – District Office		843-563-4535
<b>Insert website</b>		
Dorchester County District 4 – Superintendent		843-563-5910
Dorchester County District 4 – Special Education Dept.		843-462-7629
Dorchester County District 4 – Transportation		843-563-5921
Sojourner Center for Women		843-763-7333
Social Security Administration	Toll Free	866-495-0111
SC Association of the Deaf		803-403-9255 TTY
	Voice	803-794-3175
South Carolina Autism Society		800-438-4790
SC Commission for the Blind		843-852-4225
SC Department of Disabilities & Special Needs (DDSN)	Toll Free	888-376-4636
		803-898-9600 TTY
SC Special Olympics		803-772-1555
SC Youth Advocate Program (YAP)		800-882-5513
Spina Bifida Association (National)		800-621-3141
TEL-A-RIDE (Transit system for people with disabilities)		843-724-7420
Tourette Association of SC	Toll Free	888-486-8738
Trident Head Injury Support Group		843-881-1214
Trident United Way		843-740-9000
Vocational Rehabilitation (Local Office)		843-740-1600
Women, Infants, & Children (WIC)		800-922-4406

### Extremely Informative Websites

**Center for Parent Information and Resources:** A repository of resources on a vast array of topics, including resources formerly housed at NICHCY: **[www.parentcenterhub.org/](http://www.parentcenterhub.org/)**

**Wrights law:** Accurate, reliable information about special education law, education law, and advocacy for children with disabilities: **<http://www.wrightslaw.com/>**



## Useful & Informative Websites

### Education & Others

Individuals with Disabilities Education Act – Federal Website: <https://sites.ed.gov/idea/>

IDEA Full Text: <http://www.parentcenterhub.org/repository/idea/#exact>

Topic Index of OSEP (Office of Special Education Programs, US Department of Education) Policy Documents Regarding the Education of Infants, Toddlers, Children and Youth with Disabilities: <http://www2.ed.gov/policy/speced/guid/idea/letters/revpolicy/index.html>

Special Education Process Guide for South Carolina:

<http://ed.sc.gov/scdoe/assets/File/districts-schools/special-ed-services/Special%20Ed%20Process%20Guide%20SEPG-2013.pdf>

South Carolina Standards for Evaluation and Eligibility Determination (SEED)

[http://ed.sc.gov/scdoe/assets/file/programs-services/173/documents/SEED\\_Final.pdf](http://ed.sc.gov/scdoe/assets/file/programs-services/173/documents/SEED_Final.pdf)

English/Spanish Glossary of terms:

<http://www.neparentcenters.org/glossary/glossary.html>

South Carolina Code of Regulations Chapter 43 – State Board of Education

<http://law.justia.com/codes/south-carolina/2005/43/43.html>

South Carolina Code of Laws Title 59 – Education:

<http://www.scstatehouse.gov/code/title59.php>

South Carolina Public Education Regulations: This site provides a table of contents & links to regulations currently in place:

<https://ed.sc.gov/state-board/state-board-of-education/additional-resources/regulations-table-of-contents/>

Americans with Disabilities Act (ADA): [www.ada.gov](http://www.ada.gov)

U.S Department of Education: [www.ed.gov/about/offices/list/oia/ire.htm](http://www.ed.gov/about/offices/list/oia/ire.htm)

National Collaborative on Workforce and Disability/Youth: [www.ncwd-youth.info](http://www.ncwd-youth.info)

National Council on Independent Living: [www.ncil.org](http://www.ncil.org)

U.S. Equal Employment Opportunity Commission: [www.eeoc.gov](http://www.eeoc.gov)

Early Childhood and Parenting Collaborative: <http://ecap.crc.uiuc.edu>

National Rehabilitation Information Center: [www.naric.com](http://www.naric.com)

### Some of OSEP's Federally Funded National Technical Assistance and Dissemination Centers

National Center on Accessible Educational Materials (AEM): [www.aem.cast.org/](http://www.aem.cast.org/)

The AEM Center provides technical assistance to State education agencies, local education agencies, and other stakeholders to: (1) improve the implementation of National Instructional Materials Accessibility Standard (NIMAS) and (2) to develop and implement

unified distribution systems in SEAs that will improve the timely delivery of high-quality AEM to all children with disabilities who need instructional materials in accessible formats.

**Center on Positive Behavioral Interventions and Supports (PBIS): [www.pbis.org](http://www.pbis.org)**

The technical assistance Center on Positive Behavioral Interventions and Supports was established by the Office of Special Education Programs, U.S. Department of Education to give schools capacity-building information and technical assistance for identifying, adapting, and sustaining effective school-wide behavior practices.

**National Center on Deaf-Blindness (NCDB): [www.nationaldb.org](http://www.nationaldb.org)**

The National Center on Deaf-Blindness (NCDB) works to positively impact the lives of children and students who are deaf-blind, their families, and those that serve them, through a work scope designed to address needs of individuals, organizations, and agencies serving children who are deaf-blind. The project creates visibility and direction for identified priorities and develops and delivers evidence-based services, supports, tools, and products through a range of technical assistance activities. NCDB endeavors to capitalize on current and future opportunities to improve the national network of OSEP-funded technical assistance (TA) projects for children who are deaf-blind. A conceptual framework that reflects emerging implementation science knowledge and principles of quality community engagement guides the development and implementation of all activities.

**CADRE (National Center for Appropriate Dispute Resolution in Special Education): [www.directionservice.org/cadre](http://www.directionservice.org/cadre)**

The National Center for Appropriate Dispute Resolution in Special Education (CADRE), a national technical assistance and dissemination project, works toward elevating the capacity of educators, family members, service providers, and other stakeholders to engage in collaborative problem-solving and other positive, non-adversarial processes. Ultimately, this approach results in better educational programs and outcomes for students with disabilities. CADRE delivers high quality technical assistance and informational support to State education agencies (Part B), early intervention lead agencies (Part C), parent centers, local education agencies, local early intervention providers, and dispute resolution practitioners.

**Early Childhood Technical Assistance Center (ECTA): [www.ectacenter.org](http://www.ectacenter.org)**

The ECTA Center builds upon the foundation of several recent OSEP-funded TA centers to improve service systems and assist States in scaling up and sustaining effective services and research-based interventions for infants, toddlers, and preschoolers with disabilities and their families.

**Equity Assistance Centers (2016-2021)/ South Central Collaborative for Equity: [http://www.idra.org/equity\\_assistance\\_center\\_categor/about-the-south-central-collaborative-for-equity/](http://www.idra.org/equity_assistance_center_categor/about-the-south-central-collaborative-for-equity/)**

The 4 Equity Assistance Centers are funded by the U.S. Department of Education under Title IV of the 1964 Civil Rights Act. They provide assistance in the areas of race, gender, national origin, and religion to public school districts to promote equal educational opportunities. Region 2 serves Alabama, Arkansas, District of Columbia, Florida, Georgia, Louisiana, Mississippi, North Carolina, **South Carolina**, Tennessee, Texas, Virginia.

**The Schoolwide Integrated Framework for Transformation (SWIFT) Center: [www.swiftschools.org](http://www.swiftschools.org)**

The SWIFT Center offers school, States, and districts the ability to build capacity to scale up and sustain new practices for schoolwide inclusive reform in urban, rural, and high-need schools in grades K-8 for students with disabilities. The SWIFT Center focuses on improving the knowledge and skills of classroom educators to implement inclusive schoolwide reform; increasing the capacity of schools to implement fully inclusive reform in academic, extracurricular, and school-based settings; and increasing family and community engagement in schoolwide reform.

**Center on Innovations in Learning (CIL): [www.centeril.org](http://www.centeril.org)**

The Center on Innovations in Learning (CIL) focuses on the culture of innovation and personalized learning. Within the topic of culture of innovation, CIL examines change leadership and change processes (improvement, innovation, and transformation). CIL addresses several components of personalized learning, especially (a) learning technologies, (b) competency-based education, and (c) personal competencies.

**National Center on Educational Outcomes (NCEO): [www.nceo.info](http://www.nceo.info)**

The National Center on Educational Outcomes provides technical assistance on improving results for students with disabilities by increasing their participation rates in high quality assessment and accountability systems, improving the quality of assessments in which they participate, improving the capacity of States to meet data collection requirements, and strengthening accountability for results.

**The IRIS Center: [www.iriscenter.com](http://www.iriscenter.com)**

The IRIS (IDEA '04 and Research for Inclusive Settings) Center creates free training enhancement resources for college faculty who are preparing the next generation of school personnel and for professional development providers who are training current school professionals. IRIS training enhancements are designed to equip school personnel with the knowledge and skills necessary to effectively teach students with disabilities in general education classrooms. The IRIS array of materials includes online interactive modules, case studies, information briefs, activities, a searchable directory of disability-related Web sites, and an online dictionary of disability-related terms.

**Collaboration for Effective Educator Development, Accountability, and Reform (CEEDAR): [www.ceedar.org](http://www.ceedar.org)**

The CEEDAR Center is a national technical assistance center dedicated to supporting States in their efforts to develop teachers and leaders who can successfully prepare students with disabilities to achieve college and career ready standards.

**Center for Parent Information and Resources: [www.parentcenterhub.org/](http://www.parentcenterhub.org/)**

The Center for Parent Information and Resources (CPIR) serves as a central resource of information and products to the community of Parent Training Information (PTI) Centers and the Community Parent Resource Centers (CPRCs), so that they can focus their efforts on serving families of children with disabilities. To find the PTI or CPRC organizations providing training, information and support for families and youth in your state go to: [www.parentcenterhub.org/find-your-center](http://www.parentcenterhub.org/find-your-center)

**Native American PTAC – EPICS: [www.parentcenterhub.org/nativeamerican](http://www.parentcenterhub.org/nativeamerican)**

The Native American Parent Technical Assistance Center is a project within EPICS to provide training and technical assistance to Parent Training and Information Centers (PTIs) and Community Parent Resource Centers (CPRCs) nationwide on providing effective,

culturally responsive services to Native American families of children with disabilities, as well as youth with disabilities.

**Partnerships for Action, Voices for Empowerment (PAVE): [www.wapave.org](http://www.wapave.org)**

PAVE is a parent directed organization that works with families, individuals with disabilities, professionals and community members in all walks of life and with all types of disabilities. Since 1979, PAVE has provided information, training and support for over 1,000,000 individuals with disabilities, parents and professionals. PAVE is the grantee for

**The Branch: The Military Parent Technical Assistance Center: <https://branchta.org/>**

The Branch (MPTAC) builds the capacity of parent centers to provide effective services to military parents of children with disabilities and youth with disabilities in military families.

**National Postsecondary Education Programs Network (pn2): [www.pepnet.org](http://www.pepnet.org)**

Pepnet 2 (pn2)'s mission is to improve postsecondary outcomes for individuals who are deaf or hard of hearing, including those with co-occurring disabilities. Pepnet 2 provides resources to individuals who are deaf or hard-of-hearing (D/HH), and the educators, schools, agencies and professionals who work with them. Pepnet 2's goal, and the focus of our resources, is to increase the educational, career, and lifetime choices available to individuals who are D/HH.

**National Technical Assistance Center on Transition (NTACT): [www.transitionta.org](http://www.transitionta.org)**

The National Technical Assistance Center on Transition (NTACT) assists State educational agencies (SEAs), local educational agencies (LEAs), State vocational rehabilitation (VR) agencies, and VR service providers to implement evidence-based and promising practices ensuring students with disabilities, including those with significant disabilities, graduate prepared for success in postsecondary education and employment.

**Center on Technology and Disability: [www.ctdinstitute.org](http://www.ctdinstitute.org)**

CTD provides current, accurate, and relevant information resources on assistive and instructional technologies. It conducts outreach to a national infrastructure of organizations that work directly with families and children, strengthening their ability to provide technology-related support. The project also provides online forums, annual technology institutes, and in-depth monthly newsletters to educators, disability professionals, technical assistance and dissemination project personnel, and families.

**For a full list of the OSEP TA&D Centers visit:**

**<https://www.osepideasthatwork.org/find-center-or-grant/find-a-center>**

**Disability & Special Health Care Needs Websites**

The American Academy of Child & Adolescent Psychiatry provides an extensive “Facts for Families” collection of one-pagers that includes information sheets on over 100 topics that range from specific emotional, behavioral or mental health conditions, medications, developmental or stage-of-life issues or bullying:

**[http://www.aacap.org/AACAP/Families\\_and\\_Youth/Facts\\_for\\_Families/FFF-Guide/FFF-Guide-View-by-Topic.aspx](http://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/FFF-Guide-View-by-Topic.aspx)**

Autism National Committee: **[www.autcom.org](http://www.autcom.org)**

Autism Society of America: **[www.autism-society.org](http://www.autism-society.org)**

South Carolina Autism Society: **[www.scautism.org](http://www.scautism.org)**

Autism Speaks: [www.autismspeaks.org](http://www.autismspeaks.org)

American Association on Intellectual and Developmental Disabilities: [www.aamr.org](http://www.aamr.org)

International Rett Syndrome Association: [www.rettsyndrome.org](http://www.rettsyndrome.org)

National Down Syndrome Congress: [www.ndsccenter.org](http://www.ndsccenter.org)

National Down Syndrome Society: [www.ndss.org](http://www.ndss.org)

Downs Syndrome Association of the Lowcountry: [www.dsal.org](http://www.dsal.org)

National Fragile X Foundation: [www.fragilex.org](http://www.fragilex.org)

National Organization on Fetal Alcohol Syndrome (NOFAS): [www.nofas.org](http://www.nofas.org)

Williams Syndrome Association: [www.-williams-syndrome.org](http://www.-williams-syndrome.org)

American Council of the Blind: [www.acb.org](http://www.acb.org)

National Federation of the Blind: [www.nfb.org](http://www.nfb.org)

American Association of the Deaf Blind: [www.aadb.org](http://www.aadb.org)

For Parents of Children Who are Deaf and Hard of Hearing: [www.ncbegin.org](http://www.ncbegin.org)

Alexander Graham Bell Association for the Deaf and Hard of Hearing: [www.agbell.org](http://www.agbell.org)

Cochlear Implant Awareness Foundation: [www.ciafonline.org](http://www.ciafonline.org)

Federation of Families for Children's Mental Health: [www.ffcmh.org](http://www.ffcmh.org)

National Alliance for the Mental: [www.nami.org](http://www.nami.org)

March of Dimes Birth Defects Foundation: [www.modimes.org](http://www.modimes.org)

National Center on Birth Defects and Developmental Disabilities: [www.cdc.gov/ncbddd/](http://www.cdc.gov/ncbddd/)

Easter Seals: [www.easterseals.com](http://www.easterseals.com)

Allergy and Asthma Network Mothers of Asthmatics: [www.aanma.org](http://www.aanma.org)

American Diabetes Association: [www.diabetes.org](http://www.diabetes.org)

Cystic Fibrosis Foundation: [www.cff.org](http://www.cff.org)

FACES the National Craniofacial Association: [www.faces-cranio.org](http://www.faces-cranio.org)

Immune Deficiency Foundation: [www.primaryimmune.org](http://www.primaryimmune.org)

National Center for Education in Maternal Child Health: [www.ncemch.org](http://www.ncemch.org)

National Hemophilia Foundation: [www.hemophilia.org](http://www.hemophilia.org)

National MPS Society Inc: [www.mpsociety.org](http://www.mpsociety.org)

Parents of Kids with Infections Diseases: [www.pkids.org](http://www.pkids.org)

Prader-Willi Syndrome Association: [www.pwsausa.org](http://www.pwsausa.org)

Sickle Cell Disease Association of America: [www.sicklecelldisease.org](http://www.sicklecelldisease.org)

United Mitochondrial Disease Foundation: [www.umdff.org](http://www.umdff.org)  
International Dyslexia Association: <https://dyslexiaida.org/>  
LD Online: <http://www.idonline.org/>  
Learning Disabilities Association of America: <http://idaamerica.org/>  
National Center for Learning Disabilities: [www.ncld.org](http://www.ncld.org)  
National Coalition on Auditory Processing Disorders: <http://www.ncapd.org/>  
Epilepsy Foundation: <http://www.epilepsy.com/>  
Hydrocephalus Foundation: <http://www.hydroassoc.org/>  
Tourette Association of America: <https://www.tourette.org/>  
Tuberous Sclerosis Alliance: <http://www.tsalliance.org/>  
Children's Hemiplegia and Stroke Association: [www.chasa.org](http://www.chasa.org)  
Muscular Dystrophy Association: [www.mda.org](http://www.mda.org)  
National Multiple Sclerosis Society: [www.nationalmssociety.org](http://www.nationalmssociety.org)  
United Spinal Association: [www.spinalcord.org](http://www.spinalcord.org)  
United Cerebral Palsy: [www.ucp.org](http://www.ucp.org)  
American Speech-Language-Hearing Association: [www.asha.org/default.htm](http://www.asha.org/default.htm)  
National Aphasia Association: [www.aphasia.org](http://www.aphasia.org)  
National Stuttering Association: [www.nsastutter.org](http://www.nsastutter.org)  
Brain Injury Association of America: [www.biausa.org](http://www.biausa.org)  
Brain Injury Resource Center: [www.headinjury.com](http://www.headinjury.com)

### **Other Pertinent Resources**

Pacer Center (Champions for Children with Disabilities): [www.pacer.org](http://www.pacer.org)  
Family Voices: [www.familyvoices.org](http://www.familyvoices.org)  
Prevent Child Abuse America: [www.preventchildabuse.org](http://www.preventchildabuse.org)  
National Children's Center: [www.nccinc.org](http://www.nccinc.org)  
Best Buddies: [www.bestbuddies.org](http://www.bestbuddies.org)  
Federal Student Aid: <http://studentaid.ed.gov>  
The Schwab Foundation for Learning: <http://www.schwablearning.org/>  
National Council on Alcoholism and Drug Dependence: [www.ncadd.org](http://www.ncadd.org)  
Compassionate Friends (supporting family after a child dies):  
[www.compassionatefriends.org](http://www.compassionatefriends.org)

## Some Relevant Dear Colleague Letters

Dear Colleague Letters (DCL) are issued from the US Department of Education and the Office of Civil Rights regarding a specific topic. They convey general information, policy updates, or a request for information or action.

**Restraint-Seclusion:** This letter is written to clarify policy concerning the use of restraint and seclusion:

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>

**English Language Learners (ELL):** This letter addresses policies to ensure that ELL students can participate meaningfully and equally in educational programs and services.

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>

**ADHD:** This letter is written to clarify and provide guidance for student with Attention Deficit Hyperactivity Disorder. <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201607-504-adhd.pdf>

**Racial Discrimination:** This letter was written to addressing the prevention of racial discrimination in Special Education.

<https://www2.ed.gov/about/.../letters/colleague-201612-racedisc-special-education.pdf>

**Discipline:** This letter addresses issues of short-term disciplinary removal from school due to behavior concerns and FAPE.

<https://www2.ed.gov/policy/gen/guid/...discipline/.../dcl-on-pbis-in-ieps--08-01-2016.pdf>

**Virtual Schools:** This letters provides guidance and information on virtual schools.

<https://www2.ed.gov/policy/speced/guid/idea/.../dcl--virtual-schools--08-05-2016.pdf>

**Behavioral Interventions:** This letter addresses issues concerning positive behavioral interventions for special education student struggling with behavior concerns.

<https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps--08-01-2016.pdf>

**Limited English Proficiency:** This letter provides information for Limited English Proficient parents and guardians and for school districts that communicate with them.

<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf>

**Bullying:** This letter addresses issues of bullying and special education students.

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf>

**Title IX and Transgender Issues:** This letter addresses discrimination based on sex.

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201702-title-ix.docx>

**Progress Reports:** This letter provides guidance regarding the content of the progress reports for transition-aged students.

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep-letter-to-pugh-1-18-17.pdf>

**Parentally placed students in private school:** These letters provide clarification regarding the obligation of local educational agencies (LEAs) and other factors related to private school placements.

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/letter-to-chambers-12-27-2016.pdf>

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/osep-letter-to-goodman-private-school-children8-23-16.pdf>

<https://www2.ed.gov/policy/speced/guid/idea/letters/2007-1/warne032307childfind1q2007.pdf>

**IEP Team Members:** Provides guidance regarding the IDEA requirements related to members of the IEP Team with special regard to attorneys.

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/15-017791-il-andel-iepteam-acc.pdf>

**LRE & Preschool:** Provides updated guidance on preschool least restrictive environments (LRE) and addresses key statutory and regulatory requirements, preschool placement options, reporting educational environments data for preschool children with disabilities, and the use of *IDEA* Part B funds for preschool children with disabilities.

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/preschool-lre-dcl-1-10-17.pdf>

**Charter Schools:** These letters address various issues regarding children with disabilities in public charter schools.

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-charter-school.pdf>

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/faq-idea-charter-school.pdf>

**IEP Translation:** Communication from OSEP regarding the Government's Statement of Interest in *R. v. The School District Philadelphia* addressing the translation of Individualized Education Program (IEP)s pursuant to Title VI of the *Civil Rights Act* of 1964 (Title VI) and the *Equal Educational Opportunities Act* of 1974. This addresses the translation of documents into a parent's native language:

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/iep-translation-06-14-2016.pdf>

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/attachment-to-06-14-2016-email.pdf>

**Retaliation:** The purpose of this letter from the Department of Education, Office of Civil Rights (OCR) is to remind school districts, postsecondary institutions, and other recipients that retaliation is also a violation of Federal law. This letter seeks to clarify the basic principles of retaliation law and to describe OCR's methods of enforcement:

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html>

Additional Dear Colleague Letters, as well as a wealth of important information, can be found on the **US Department of Education (USED)** website: <https://www.ed.gov/>

Regarding all matters related to special education and rehabilitative services please visit the USED website for the **Office of Special Education & Rehabilitative Services (OSERS)** and the **Office of Special Education Programs (OSEP)**:

<https://www2.ed.gov/about/offices/list/osers/osep/index.html>



## **Assistive Technology as a Tool**

Tools -or assistive technology- are devices and equipment designed to make your life easier or to help you perform a specific task. Everyone uses tools. A dictionary is used to spell a word. Color high lighters are used to help people pick out important words in a book.

If you are one of more than 49 million Americans with disabilities, matching the right tools with your disability can give more options for greater freedom in your life. These assistive devices help you become more involved at work, at school, or in everyday living.

Tools are for people of all ages and with all disabilities, illnesses or impairments. Tools can be as simple as those mentioned above or as complex as a customized talking computer.

Whatever your needs, you can take the following steps:

- Find out what tools are available through information and referral services.
- Discover possible resources to help pay for devices.
- Learn how to get, use, and take care of assistive technology at resource centers in your state.
- Make changes in public agencies that pay for tools and services.

An assistive technology device is.... Any item, piece of equipment, or product that is used to increase, maintain, or improve the abilities of people with disabilities.

An assistive technology service is....Any service that directly assists a person with a disability in selecting, obtaining, or using an assistive technology device. Assistive technology is a growing and complex field. New developments occur daily. Assistive technology provides the tools that can enable many people with learning difficulties:

- To have more effective control over all aspects of their own lives: living, learning, working, and playing;
- To become more involved in and have greater access to the daily activities within their community (e.g., reading a neighborhood newspaper, finding a phone number, deciphering a map, or taking notes at a city council meeting); and,
- To have the same choices that are readily available to people without disabilities.

A growing number of technology-related options are now available. Unfortunately, ongoing myths about AT services and devices cause technology solutions to be overlooked or avoided in meeting the needs of people with disabilities.

### **Assistive Technology Is... A Tool for Living**

Assistive technology provides tools that help people of all ages with learning disabilities to be included in the community and its activities. For example:

- A check-writing template and a signature stamp make paying bills easier.
- Computer software and hand-held devices help plot and find destinations.
- Telephone speed dialing, caller ID, free 411 directory assistance, and hand-held voice organizers assist access by telephone.
- Digital watches, talking clocks, and digital timers help tell time and stay on task.
- Talk radio shows, computer on-line news services, and pagers with news headlines can keep individuals up-to-date on current events.
- Electronic calendars and computer organizers help manage schedules and other personal information.

## **Assistive Technology Is... A Tool for Learning**

Assistive technology helps people of all ages and disabilities learn, practice, and use the skills necessary to be independent and successful. For example:

- Color-coding on files, drawers, and clothing help a person with a learning disability remember something important.
- Books on tape make textbooks and popular works accessible to people with reading difficulties.
- Tape recorders help students review class materials.
- Changing a computer monitor's background colors assists reading.

## **Assistive Technology Is... A Tool for Working**

Assistive technology may give people with learning disabilities tools to help them obtain and keep a job. It may help people become taxpaying citizens. For example:

- Computers that talk help people with reading and writing difficulties.
- Talking calculators assist those with math or perceptual disabilities.
- An optical character recognition system lets the worker enter text or printed material into a computer by use of a scanner.
- Speech recognition systems enable the user to dictate to the computer, converting oral language to written text.
- Workers with learning disabilities can make their work more efficient by altering colors, font, or print size on a computer screen.
- Software programs can ease concerns about grammar, spelling, and vocabulary.

## **Basic Principles of Assistive Technology**

- A team approach is best when deciding upon the most appropriate technology.
- User and family are the most important team members.
- The user should seek a professional evaluation of needs and written recommendations.
- The search for assistive technology should focus on function and options.
- The user should request a trial period of use.

## **Benefits of Assistive Technology: An Overview**

What can assistive technology do for you?

- Assistive technology tools can help you or someone you know be more functional and independent.
- "Tools" mean more choices and greater freedom in your daily life.
- Assistive technology provides tools to enable a person to experience success at home, work, or school, perhaps for the first time.
- Assistive technology helps people of all ages and disabilities.
- Assistive technology can make the difference between dependence and independence for people with disabilities and their families.

## Assistive Technology Definitions: Glossary of Terms

**Aids for Activities for Daily Living (ADL):** Self-help aids for use in activities such as eating, bathing, shopping, home maintenance, specially designed toilet seats, etc.

**Assessment Recommendation:** A professional opinion with regard to the types of aids, equipment, or other services within the field of assistive technology that might improve an individual's level of functioning.

**Assistive Listening:** Hearing aids, amplifiers, captions on TV, and typing telephones that help a person who is either deaf or hearing impaired.

**Assistive Technology Device (as defined by ATP):** Devices that help individuals with disabilities to function more independently (devices may include: wheelchairs, communication devices, environmental controls, etc.)

**Assistive Technology Device (as related to Special Education):** Any item, piece of equipment, or product system whether purchased off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

**Assistive Technology Services:** Services include selecting, getting, or using assistive technology devices. This may include evaluation, customization, repair, maintenance, and training on how to use the device.

**Augmentative Communication:** Electronic and non-electronic devices (picture boards, battery operated communication devices/software, computers, etc) that can be used to assist people with speech or writing difficulties to communicate and access their environment more effectively.

**Auxiliary Aids and Services:** The means for achieving effective communication. This term includes sign language interpreters; written materials; assistive listening devices; telecommunication devices for the deaf and speech-impaired (TDDs); tapes, braille, or large print materials; readers; and other communication tools.

**Computer-Based Instruction:** Software to address learning challenges in reading, writing, math, and/or other academic areas.

**Durable Medical Equipment:** Equipment which is most often used to serve a medical purpose, withstands repeated use, and is something that can be used in the consumer's home.

**Environmental Controls:** Aids or devices (such as electronic equipment, switches, keyboards, and remote controls, etc) used within an individual's surroundings in order to assist in independent living activities.

**Environmental Adaptations:** Changes or modifications (such as ramps, door widening, tub seats, etc) to an individual's environment in order to assist in independent living activities.

**Equipment Fabrication:** The design and construction of a device or piece of equipment that improves an individual's functioning level.

**Equipment Fitting:** The process of installing, adjusting, and testing a device, or other adaptation as it applies to benefiting an individual in some way.

**Equipment Modification:** To change or alter the design and construction of an existing device or piece of equipment that improves an individual's functioning level.

**Evaluation/Technical Assessment:** A hands-on, in-person evaluation whereby a disabled individual is tested, measured, observed, and questioned for the purpose of determining the most appropriate and beneficial technology for his/her individual situation.

**Home/Worksite/Modifications:** Structural adaptations and/or fabrications in the home, worksite, or other areas that remove or reduce physical barriers for an individual with a disability such as ramps, lifts, widened doorways, lowered desk, or counter tops.

**Instructional Equipment:** Equipment, supplies, and publications necessary to aid the consumer in reaching the goals and objectives of the Individual Education Program (IEP).

**Major life Activity:** The basic activities that the average person in the general population can perform, with little or no difficulty. Examples include: caring for oneself, manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working, etc.

**Medically Necessary:** Items that are needed by the consumer for medical reasons. These items must be ordered by a doctor or other medical professionals.

**Mobility:** Wheelchairs, walkers, adapted bicycles, any other device that enables a person with a physical or visual disability to move safely through the community.

**Personal Assistance Services:** A range of services provided by one or more people. These services are designed to assist an individual with a disability to perform activities of daily living on or off the job that the individual would typically do if s/he did not have a disability.

**Positioning:** Adjustable chairs, tables, standers, wedges, and/or straps, etc used to assist a person with a physical disability to achieve and maintain a good position for learning without becoming overly fatigued.

**Rehabilitation Engineering:** A service that uses technology to assist persons who have difficulty completing tasks independently. Rehabilitation engineers work as team members and may make custom-made devices, adapt existing devices, or make changes in work site, homes or other environments to increase access and independence for people with disabilities.

**Rehabilitation Technology:** The use of technologies, engineering methods, or scientific principles by individuals with disabilities. The term includes rehabilitation engineering, assistive technology devices, and/or services.

**Visual Aids:** Large print books, books on tape, magnifiers, talking computer software, Brailers, tablets, etc for individuals with limited vision or blindness to access printed information.

\* Terms, definitions and/or statements were excerpted from multiple sources as well as Patti Slobogin.

# How Assistive Technology Can Help Your Child Be More Active

By Patti Slobogin, Ph.D.

*Director, Lower Hudson Valley Regional Technology Center Westchester Institute for Human Development*

The federal government recognized the importance of assistive technology for students when it revised the Individuals with Disabilities Education Act (IDEA) in 1997. Since that time, federal law has said that school districts must consider assistive technology for any child in special education. That means that the educational team at your school must ask if there is a device that might help your child become more actively involved in a classroom activity. If the answer is yes, the school district must provide certain services:

- a qualified evaluator must complete an assistive technology evaluation;
- if the evaluator recommends a device, it must be acquired; and
- if you, your child or the staff in your child's school need training to use the device, that training must be provided.

## Augmentative & Alternative Communication Devices

Augmentative and alternative communication (AAC) devices are typically used by people who do not speak, are difficult to understand, or have language retrieval issues. AAC devices are used by people of all ages with a variety of disabilities. A person can send a message through printed words, speech or voice output, pictures, or any combination of these. Devices range from having basic components and performing fundamental language functions to having the ability to perform computer-like functions and control household appliances. AAC devices are designed to be used as supplementary modes of communication for existing communication strategies and can be configured or customized to address most communication needs. Many augmented communicators use a combination of electronic and non-electronic AAC systems. Non-electronic AAC systems can include alphabet boards, picture books, facial expressions, gestures, sign language, and residual speech.

## FREQUENTLY ASKED QUESTIONS

**Under what circumstances is a school district required to permit a student with a disability to use a school-purchased assistive technology device - including augmentative communication devices - in the student's home or in another setting?**

A school district must permit a student with a disability to use school-purchased assistive technology devices at home or in other settings, if the IEP team determines that the student needs access to those devices in non-school settings in order to receive a Free and Appropriate Public Education (FAPE). For example, to complete homework, access the Internet, etc.

**Who would use an augmentative communication device?** Some individuals are not able to meet their communication needs without adaptive assistance, even though they may be able to produce a limited amount of speech.

**Does a device replace my child's speech?** It is important to understand that using an augmentative communication device should be multimodal in nature. That means that the individual's full communication capabilities should be utilized. This would include using any residual speech or vocalizations, gestures, facial expression, eye gaze, signs and communication aid.

**Will the use of a device interfere with a child's vocal development?** Children will use the quickest, most efficient/effective, and most accessible means to communicate. Speech will be the way a child communicates if it is available to him. Research indicates that alternative/augmentative communication facilitates spoken language by increasing interactions, improving language skills, and providing a voice output model for speech.

**What types of communication devices are available?** There are a variety of communication devices available. Devices can have a single message or multiple messages. Medicare categorizes devices based on the following features.

1. **Speech Output-** Digitized (recorded human speech) or synthesized (electronic conversion of text into speech).
2. **Message Type-** Prerecorded (messages that are stored) or Message Formulation {can spontaneously create novel messages}.
3. **Recording Time-** less than or equal to 8 minutes, greater than 8 minutes, or based on the memory size of the device in general (e.g., 16 MB).
4. **Access Method-** Direct Physical Contact with Device or Multiple Access Methods {e.g., switch, mouse, joystick, etc.}.
5. **Message Formulation Technique-** Spelling only or Spelling and other methods

Additionally, devices have different display types (dynamic, static or both). Dynamic displays are similar to a computer monitor. The selection set or level changes automatically on a dynamic display screen as the user makes choices. Some dynamic displays can be activated by touch or through a pointing tool (e.g., stylus). Dynamic displays can be color or black and white. Typically, the information on these screens is difficult to see in places with bright lighting. These screens can also be damaged by misuse or accidental impact.

Static displays have fixed selection sets or levels that can be manually changed. Static displays are easier to see in lighted situations depending on the quality of the information (photographs). Dynamic Displays contain selection sets or symbols to represent language. Selection sets can be any combination of photographs, line drawings, text, objects (on some static display devices), or other graphic symbols. Symbols can vary in size and may be in color or black and white depending on the device. Symbols can represent entire messages (e.g., a picture of a toilet to represent "I have to use the bathroom."), single words or letters. Some symbols must be combined with others symbols to create words, sentences, or complete messages.

**Does a person have to use his or her hands to operate a communication device?** No. Although some devices can only be accessed by directly pressing or touching, most communication devices will accept alternative input. The way in which a person physically selects the messages is called the Access Method. If a person is unable to directly select the message through pointing with a finger, headpointer, mouthstick or other tool, he or she will need to use an alternative input device. Alternative input devices include mouse emulators and specialized switches. A mouse emulator is a device that simulates mouse movements with the assistance of a driver or other software (joysticks, trackballs, infrared pointers, etc).

Specialized switches are used with the scanning feature on some devices. Specialized switches can be activated by almost any body part or body action. Some examples of specialized switches include sip and puff, myoelectric, mercury, eye blink, and vibration.

Scanning is a selection method that presents choices or messages in a sequence. To make a selection, an individual activates a switch when the choice or message is presented to make a

selection. Scanning presentation can be through visual patterns, auditory cues, or a combination of both. Scanning patterns can vary depending on the skills of the individual. Typical patterns include: linear (choices or messages are automatically presented individually), row-column (rows are automatically presented, then each choice or message in that row is presented), and step (the individual uses his or her switch to step or scan through the choices or messages and then makes a selection with the switch). Scanning rate (how fast the items are scanned) and timing (the amount of time that the switch needs to be activated to make a selection) can also be adjusted according to the individual

**Does a person need to be able to read to use a communication device?** No. Some devices require keyboarding or spelling skills, but most devices can include pictures in the display. Additionally, voice output allows the user to hear the message and correct it if it wasn't what they intended.

**Will using a communication device stop someone from trying to talk?** Not likely. There is research that supports the idea that using a communication device does not hinder the development or return of natural speech. In fact, most people using a device find it faster to use natural speech if they can be understood by others.

**Is training required to use a communication device?** Most of the time, some form of training will be required before operating a communication device. Minimal training (e.g., how to turn it on, how to recharge it, etc.) will be necessary with most devices; however, some devices require more extensive training. The manufacturer or distributor of the device typically offers training. Local agencies, professionals, or experienced users familiar with AAC may also be able to provide training.

**Are there ways to help pay for a communication device?** Yes, there are some funding options for communication devices. A formal AAC assessment performed by a Speech-language Pathologist is usually required prior to seeking funding. A physician's prescription may also be required by some funding sources. Refer to the specific funding source for details. Some of these options can be combined.

Private Insurance: Some private insurance companies will fund AAC equipment. Prior authorization is usually required and coverage depends on the policy. The insurance company may need an explanation of what the AAC device does. The insurance company may also need to be convinced of the medical necessity of the device.

Schools: Schools are legally required to provide appropriate assistive technology services for students. The Individuals with Disabilities Education Act (IDEA, P.L. 101-476) and the 1997 amendment specifically address the inclusion of assistive technology in the Individualized Education Plan (IEP). Services must be provided at no cost to the parents if the IEP team determines that a student requires this type of assistive technology in order to receive a free and appropriate public education (FAPE) and designates assistive technology as either part of special education or a related service.

Medicaid: The purchase of AAC equipment is typically covered for individuals up to age 21 in most states. Many states cover the purchase of equipment for individuals of all ages. However, each state varies as to their submission and coverage guidelines. Equipment manufacturers should be familiar with specific state funding practices and documentation necessary.

Division of Vocational Rehabilitation: The Individualized Plan for Employment (IPE) or comparable plan of action outlines the services provided through VR for the purpose of

seeking employment. If AAC is required to meet established goals, funding may be available.

**Medicare:** Medicare is now funding assistive technology devices for Medicare Part B enrollees who live in their own home or in an assisted living facility. Medicare requires that a Speech-language Pathologist perform an evaluation that meets the guidelines according to the Regional Medical Review Policies (this information is available from the AAC-RERC).

**Tricare:** Tricare, formerly CHAMPUS, the health benefits program for dependents of active duty military service members and military retirees, now covers AAC devices for all program enrollees who require them. Congress explicitly directed the expansion of Tricare AAC device coverage in the FY 2002 military reauthorization bill, signed by the President on December 28, 2001.

**How much do communication devices cost?** Devices range in price from basic, single message units to devices with more messages and/or options. Medicare has set cost guidelines for predefined device categories.

**Are there ways to try out communication devices?** The selection of a communication device can be a very difficult decision. It is always helpful to seek the assistance of an experienced Speech-Language Pathologist and/or Assistive Technology Practitioner for a complete and thorough evaluation. Be sure to investigate the features, support, and warranty of several devices before purchasing one. Additionally, research the funding options in your area and if possible, arrange to borrow the particular device for an extended period of time (typical loan or rental periods range from 2 weeks to 3 months).

## **6 Tips for Choosing Augmentative Communication Devices**

What should speech therapists, parents, and users consider when choosing augmentative communication equipment? The following tips are general guidelines to help individuals evaluate communication devices. While every person is different, these tips will apply to almost all users of communication aids.

1. Look for solutions that are easy to use. Computerized dynamic display screens allow individuals to compose messages using familiar methods which eliminates memorization of complicated codes and increases speed.
2. Choose portable devices. Portability allows non-speaking individuals to take their "voices" anywhere.
3. Consider flexible devices. Look for devices that offer a variety of access options.
4. Require excellent voice quality. Sound projection and quality are obviously important. See if the voice output can be personalized.
5. Look for a device that "grows" with the user. Think about an individual's needs a few years down the road. Can vocabulary be added and used quickly? Can the person use vocabulary independently?
6. Choose durable, reliable devices. Can the device withstand the stress of daily usage? Look for reliability. Make sure the battery life lasts long enough to meet a user's needs.



## The South Carolina Assistive Technology Project

<http://scatp.med.sc.edu/>

The South Carolina Assistive Technology Program (SCATP) is a federally funded program concerned with getting technology into the hands of people with disabilities so that they might live, work, learn and be a more independent part of the community. As part of a national network of technology-related assistance programs, our goal is to enhance independence, productivity and quality of life for all South Carolinians through access to assistive technology devices and services. We provide a device loan and demonstration program, an on-line equipment exchange program, training, technical assistance, publications, an information listserv and work with various state committees that affect AT acquisition and IT accessibility. We link people with technology and work with consumers, service providers, state agencies and policy makers.

SCATP resources include: SC AT Online Exchange, Resource Center, Device Loans, and AT Training. Visit their website to obtain information on Assistive Technology as it relates to: Adults; Apps; Assessment; Blindness and Low Vision; Children; Communication; Computer Access; Education; Funding; Home Modifications; Independent Living; Infants/Toddlers; Learning Differences; Parents with Disabilities; Ramps; Recreation; South Carolina Department of Education AT Specialists; Seating/Mobility Clinics; Transition; Transportation; and Vehicle Modifications.

### Other Assistive Technology Information Resources:

Augmentative Communication,  
Inc. One Surf Way #2.37  
Monterey, CA 93940  
Phone: 831-649-3050  
<http://www.augcominc.com>

MC Institute  
338 Meadville Street  
Edinboro, PA 16412  
Phone: 814-392-6625  
<http://www.aacinstitute.org>

United States Society for Augmentative and Alternative Communication  
(USSAAC)  
PO Box 21418  
Sarasota, FL 34276  
Phone: 941-312-0992  
<http://www.ussaac.org>

**Tech Connections** (<http://www.techconnections.org>) is a collaborative project of the United Cerebral Palsy Associations, the Center for Assistive Technology and Environmental Access at Georgia Tech, and the Southeast Disability and Business Technical Assistance Center. Funded by a grant from the National Institute on Disability and Rehabilitation Research of the Department of Education. Award #H133A980052.

## Special Needs Transportation

Transportation of special needs students will require much cooperation and communication between the school district's office of transportation and special needs. The Department of Education's County Supervisor of Transportation will also need to be involved with these two offices. Every effort should be made to assign students to class locations that will serve their needs and keep their bus riding time to a minimum.

### *a.) Eligibility (Student Classifications and Individualized Education Programs)*

All special needs students identified in one or more of the following classifications are eligible for transportation on a regular route or special needs bus. Their transportation needs can also be met with a contract between the school district and the Department of Education. A contract can be negotiated when the student cannot be transported efficiently by state-owned buses. Guidelines listed in Regulation 43-80, Z, must be followed for contract transportation.

A special needs student's Individualized Education Program (IEP) is a description, among other things, of the services and programs to be provided to the student during the school year. When required for students with disabilities, transportation should be specified in the student's IEP. The scope of transportation service includes:

- Travel to and from school
- Between schools
- Travel in and around school buildings
- Specialized equipment- such as special or adapted buses, lifts, and ramps required to provide special transportation for a disabled student.

School district transportation officials should attend IEP meetings when transportation information is necessary. Transportation officials are there to inform other members of the abilities and limitations of the transporters, including equipment and personnel, and obtaining information on the student's needs. Transportation arrangements in the IEP cannot be changed without parental participation.

Meetings should be attended by transportation officials:

- If school bus equipment is required to be modified to provide services for the student.
- If the student has severe behavioral problems and transportation will have to implement a behavioral program.
- If the student is medically fragile and requires special handling.
- If the student has an infectious disease.
- If the student has a private duty nurse, provided by a source other than the school district.
- If the route is going to be longer than normal.
- If the student will have a long period of time waiting for the bus at the school in the afternoon. If the student will be unloaded at an unusually early time at the school in the morning.

(Ref. Transporting Students with Disabilities, S. James Rosenfeld, Esq. And Linda F. Bluth, ED.D., pgs. 88,89,94 and 95)

Eligible Classification for Special Needs Students (Reg. 43-80, X.)

- Trainable mentally handicapped (TMH)
- Deaf-blind (DB)
- Hearing handicapped (HH)
- Visually handicapped (VH)
- Emotionally handicapped (EH) (Severely)
- Orthopedically handicapped (OH)
- Educable mentally handicapped (EMH)
- Learning disabled (LD)
- Other health impaired (OHI)
- Pre-school handicapped
- Profoundly mentally handicapped (PMH)
- Traumatic brain injury (TBI)
- Autistic
- Other disabilities identified in Section 504 of the Rehabilitation Act and the Americans With Disabilities Act

Below is a comparison of the definition of disabling condition under the Rehabilitation Act of 1973, more commonly called 504 and the Individuals with Disabilities Education Act (IDEA):

“Handicapped”/504

“Physical or mental impairment” defined as: physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following bodily systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; endocrine mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, specific learning disabilities.

“Handicap” consists of:

- Physical or mental impairment substantially limiting one or more major life activities;
- Record of such an impairment;
- Regarded as having such an impairment

“Disability” / IDEA Children having:

- Mental retardation
- Hearing impairments including deafness
- Speech or language impairments
- Visual impairments including blindness
- Serious emotional disturbance
- Orthopedic impairments
- Autism
- Traumatic brain injury
- Other health impairments
- Specific learning disabilities
- Deaf-blindness
- Multiple disabilities

Courts have recognized some of the following as disabilities which makes them eligible for transportation regardless of the distance of their residence from the school: broken leg; migraine headache; diabetes; AIDS; and asthma. Please note that some disabling conditions can be temporary in nature.

*b.) 1.5 Miles From School, .3 Mile From Route, and .2 Mile Between Stops*

Any student enrolled in an approved special needs program is eligible for transportation on a school bus regardless of the distance of their residence to the school. These students will be loaded and unloaded at their residence and are not subject to the .3 of a mile from the route law and the stops less than .2 of a mile apart regulation. (Law 59-67-520, Reg. 43-80, X.)

*c.) Off Road Loading*

The bus should stop along the road to load these students when it is safe to do so, based on the abilities of the student. The bus should leave the road to load and unload these students when it is deemed that it is unsafe because of the student's mental condition or the student's physical disabilities will require too much time to load while the bus is on the road. There must be a safe and sufficient amount of space for the student to enter and exit the road for the purpose of loading and unloading a student.

*d.) Criteria to Consider When Developing Special Needs Routes*

There are several things to consider when designing special needs routes. The number of schools that a bus has to travel to should be kept at a minimum. Routes in most isolated rural areas will need to transport all of the students from that area regardless of the number of schools. Sometimes you can double route buses in urban areas with a significant number of students going to a few schools when there is approximately 45 minutes or more between the take in and dismissal times for the schools. This keeps the ride time for the student at a minimum. Shuttling is a method of reducing the number of schools that a bus has to go to when some of the rural routes require the bus to go by many schools.

*e.) Student Ride Time*

Student ride time is based on two Federal Statutes, Individuals with Disabilities Education Act (IDEA), originally enacted in 1975 and the Rehabilitation Act of 1973. Neither of these two statutes mentions the length of the school bus ride. There should not be a single policy for all students with disabilities. Questions concerning ride time should be considered on a student by student basis. The basic guideline is that there can be no difference in average travel time simply because of the disability of a student; the school day for disabled students should be the same as that for the nondisabled.

Shorter school days cannot be justified because of a shortage of properly equipped buses or drivers. Mechanical problems with regular equipment cannot justify a shorter school day for disabled students. Problems with transportation scheduling do not justify requiring disabled students to have a shorter school day.

OCR, Office for Civil Rights, has recognized that longer school rides may be required because of a school district's "widespread geography", "multiple logistical requirements", and "a product of careful considerations of options." Among the specific factors mentioned were the student's home

address, shuttle point locations, and the location of special education programs. Alpine (UT) School District (OCR 1991), 17 IDELR 1124.

(Ref. Transporting Students with Disabilities, S. James Rosenfeld, Esq. and Linda F. Bluth, ED. D., pgs, 73, 74, and 75)

*f.) Contract Transportation and Reimbursement for Special Needs Students*

Transportation can be provided by a contract between the school district and the SC Department of Education when it is more economical to the State. It is the responsibility of the school district to establish a contract with the individual or company providing the transportation. A Request for Approval of Contract to Transport Students with Special Needs (R-55) form is used to request approval from the Department of Education. It is submitted by the school district to the Department of Education. It is submitted by the school district to the Department of Education through the County Supervisor of Transportation. A contract will only be reimbursed for a period starting no earlier than ten days before it is received by the County Supervisor. The effective date of this reimbursement policy is October 1, 1996, update changes as of August 1, 2012. Any changes, students transported, miles traveled, days operated, etc., in the contract must be approved by the SC Department of Education before the school district can receive reimbursement for additional costs caused by the changes. Changes must be made on another R-55 form with a copy of the original contract attached. The County Supervisor of Transportation must review and approve each R-55 for accuracy before forwarding it to the Program Manager of District Services in the Office of Transportation. A contract is effective only for the current school year.

The school district submits a Request for Reimbursement of Contract Transportation for Students with Special Needs (First Semester) (R-56) form for reimbursement for all approved contracts (R-55) for special needs students for the first semester of each school year to the Department of Education through the County Supervisor of Transportation. The County Supervisor of Transportation must review and approve each R-56 for accuracy before forwarding it to the Program Manager of District Services in the Office of Transportation.

A Request for Reimbursement of Contract Transportation for Students with Special Needs (Second Semester) (R-56) form must be submitted by the district for reimbursement for all approved contracts (R-55) for special needs students for the second semester of each school year to the SC Department of Education through the County Supervisor of Transportation. This form must be submitted by June 15th. The County Supervisor of Transportation must review and approve each R-56 for accuracy before forwarding it to the Program

**Visit these websites for complete information:**

**Board of Education Regulations for School Transportation:**

<https://ed.sc.gov/scdoe/assets/file/agency/os/Transportation/Safety-Information/documents/regs2002.pdf>

**SC Code of Laws Governing Public School Bus Transportation**

<https://ed.sc.gov/scdoe/assets/file/agency/os/Transportation/Safety-Information/documents/EXISTING LAWS 2005.pdf>

**School District Route and Services Manual Policies and Procedures**

<https://ed.sc.gov/scdoe/assets/File/districts-schools/transportation/regs/SC School Bus Routing Manual.pdf>

