

Special Education Overview

Laws Governing the Provision of Special Education Services

The Individuals with Disabilities Education Act (IDEA)

IDEA is the primary federal law entitling children with disabilities to appropriate educational services. Part B of IDEA requires that states provide children between the ages of 3 and 21, who have disabilities that affect their educational performance, with a free appropriate public education (FAPE) in the least restrictive environment (LRE). Children with disabilities who have been suspended or expelled are also entitled to FAPE. Current Minnesota state special education regulations require that children with disabilities from birth to age 21 receive FAPE.

The Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability by any program that receives federal funding, including public school programs. Children are protected under Section 504 if:

- They have a physical or mental impairment which substantially limits one or more major life activity;
- They have a record of having such an impairment; or
- They are regarded as having such an impairment.

The Americans with Disabilities Act (ADA)

The ADA prohibits discrimination on the basis of disability by public entities, including public schools. Children are protected by provisions of Title II of the ADA if:

- They have a physical or mental impairment which substantially limits one or more major life activity;
- They have a record of having such an impairment; or
- They are regarded as having such an impairment.

Definition of Common Terms

Child Find

Local school districts are legally mandated to locate, identify, and evaluate children with disabilities who may require special education services and who reside in the school district. This process is called Child Find.

Due Process Hearing

This is a formal administrative proceeding in special education cases in which an Impartial Hearing Officer determines the outcome of a dispute between a parent or a guardian and the local education agency (LEA).

Extended School Year (ESY)

ESY refers to special education and/or related services provided to a child with a disability beyond the normal school year of the LEA, in accordance with the child's IEP and at no cost to the parents of the child.

Functional Behavioral Assessment (FBA)

An FBA refers to an assessment designed to achieve an understanding of the: times and circumstances under which a challenging behavior is likely to occur; function or purpose of the behavior; and environmental or other variables which affect the behavior.

Free Appropriate Public Education (FAPE)

This refers to special education and related services that: are provided at public expense under public supervision and direction without charge to the parents; meet the standards of the state educational agency; and are provided in accordance with an IEP.

Individualized Education Program (IEP)

An IEP is an individualized plan for providing special education and related services to a student with a disability. It is a written statement for a child with a disability that is developed, reviewed, and revised for that particular child at least annually and includes statements of:

- the child's present level of educational performance, including how the child's disability affects his/her participation and progress in the general curriculum;
- measurable annual goals, including benchmarks or short-term objectives for the child relating to:
- meeting needs that result from the child's disability to enable the child to be involved in and to progress in the general curriculum; and
- meeting the child's other educational needs that result from the child's disability;
- the special education, related services, and supplementary aids and services to be provided to the child and a statement of the program modifications and supports for school personnel that will be provided to enable the child to:
 - adequately progress toward achieving annual goals,
 - be involved in and to progress in the general curriculum, and
 - participate in extracurricular and other nonacademic activities;
- the extent, if any, that the child will not participate with non-disabled children in the regular education class and activities, and an explanation of this statement;
- a statement of any modifications needed in the administration of state or district-wide assessment of student achievement needed in order for the child to participate in the assessments, or if the IEP team determines that the child will not participate in a particular assessment, a statement of why the assessment is not appropriate for the child and how the child will be assessed alternatively;
- the projected date for the beginning of the services and modifications and anticipated frequency, location, and duration of services and modifications;
- beginning at age 14 and updated annually thereafter, the child's anticipated curriculum-based transition services needs;
- beginning at age 14, or earlier if needed, the child's needed transition services;
- beginning at least one year before the child reaches the age of 18, a statement that the child has been informed of their rights, if any, that will transfer to the child upon reaching the age of majority; and
- a statement of how the child's progress toward annual goals will be measured and how the child's parents will be regularly informed, at least as often as parents of non-disabled children are informed of: their child's progress toward the annual goals set forth and the extent to which that progress is sufficient to enable the child to achieve the goals by the year's end.

Least Restrictive Environment (LRE)

LRE means that, to the maximum extent appropriate:

- children with disabilities, including children in public or private institutions or other facilities, are educated with children who are not disabled; and
- that special classes, separate schooling, or other removal of children with disabilities from the regular education 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 satisfactorily achieved.

Local Education Agency (LEA)

An LEA is a local school division or, more formally, a local education agency.

Manifestation Determination

The purpose of the meeting is to determine whether the child's conduct is a manifestation of (related to) the child's disability.

Re-evaluation

Sometimes called a "three year re-evaluation," the term re-evaluation refers to an evaluation conducted by the LEA at least once every three years to determine if a child receiving special education and related services remains eligible for those services.

State Education Agency (SEA)

The SEA is the state education agency which monitors and regulates the provision of educational services. In Minnesota, the SEA is the Minnesota Department of Education, which is governed by the State Board of Education.

Identification and Referral

Child Find

Under IDEA and state regulation, LEAs are required to conduct on-going Child Find activities to locate, identify, and evaluate students with disabilities who may require special education services. Child Find applies to students enrolled in public and private schools, including parochial schools. Children can also be referred to LEAs for evaluation by parents, physicians, or other individuals.

Eligibility for Special Education Services

In order to be determined eligible for services under IDEA, a child must be between the ages birth through 21 (inclusive) and:

- have a disability and
- require special education and related services.

Referral for Evaluation

A referral for an evaluation can be made by a parent, state or local professional, school principal or teacher, doctor, social worker, or other community worker.

Initial Evaluation

When a child is referred, the LEA must conduct an initial evaluation to decide if the child needs special education and related services. Consent by the child's parent or guardian is required before the LEA can conduct this evaluation.

After obtaining parental consent:

- the LEA must notify the parents, in writing, that the evaluation will take place, describe the proposed evaluation process, and offer parents the opportunity to have input into the evaluation process;
- the LEA must use a variety of assessment tools to gather information to assist the Eligibility Committee, a team of qualified professionals and the child's parents, in determining:
 - whether the child has a disability,
 - the child's present level of performance and educational needs, and
 - whether the child needs special education and related services;
- the tests used by the LEA must be technically sound, validated for the specific purpose for which they are used, administered by trained and knowledgeable personnel, and administered in the child's native language or favored mode of communication, to the maximum extent possible;

When the tests are completed, an eligibility determination is made by the Eligibility Committee. If the parents obtained independent evaluations of their child, the results of these evaluations must be considered in eligibility and programming decisions. The LEA must also consider all other relevant information;

- the LEA must provide the parents with a copy of the LEA's evaluation report(s) and the eligibility determination; and
- an eligibility determination must be made within 30 school days of the receipt of parental consent for the evaluation.

Limited English Speaking Children

In making a determination of eligibility, a child cannot be determined to be a child with a disability if the principal factor for such a determination is a lack of instruction in reading or math or limited English proficiency. The child may, however, qualify for other special programs that can assist him/her to improve skills. Each LEA can advise parents of available programs.

Reevaluation

The LEA must conduct a reevaluation of a child's eligibility for special education services at least every three years or earlier if needed. A review of existing information may be sufficient to determine that the child is still eligible for special education services. The IEP Team decides what evaluations, if any, should be conducted, but is not required to do an additional evaluation. A teacher or the parent can request a new evaluation at any time.

IEP Development, Implementation, and Review

The IEP Team

The IEP is developed by an IEP team. This team is composed of:

- the parent(s) of the child with the disability;
- at least one regular education teacher of the child if the child is, or may be, participating in the regular education environment;
- at least one special education teacher;
- an administrative representative of the LEA;
- an individual who can interpret evaluation results;
- other individuals who have knowledge or special expertise concerning the child, at the discretion of the parent or the LEA; and
- the child with a disability, when appropriate.

Goals, Services, and Placement

Based on evaluations and other information, the IEP team decides what special education and related services the child needs in order to achieve FAPE and where the child will receive those services. The IEP team also decides what modifications or adaptations are needed in order for the child to achieve established goals, progress in the general curriculum, and interact to the maximum extent possible with non-disabled peers in academic, non-academic, and extracurricular activities. The IEP team must also consider whether the child needs Extended School Year (ESY) services in order to achieve FAPE.

IEP Implementation

The LEA is required to have an IEP in effect for each eligible child at the beginning of each school year. Special education and related services should begin as soon as possible after IEP development. If eligibility for special education is determined before an extended break, such as summer vacation, the IEP team makes the decision as to whether services should begin during the break or at the beginning of the next school year. This decision must be individualized and ensure the child receives FAPE.

IEP Review

The IEP team must review the child's IEP periodically, but not less than once a year. The team determines whether that annual goals for the child are being met and revises the IEP to address:

- any lack of progress toward annual goals or in the general curriculum;
- the results of any reevaluation;

- any additional information provided by the parents, LEA staff, or other experts/consultants; and
- the child's anticipated educational needs.

The parents or the LEA can request, at any time, that changes to the IEP be considered. Parents can make a request for an IEP meeting, preferably in writing, to the child's teacher, the school principal, or the special education administrator. If the parent disagrees with the content of the IEP or any proposed changes to the IEP, the parent can invoke the procedural safeguards available to them.

Discipline Issues

Behavioral Intervention Plans

When a child's behavior adversely affects his/her learning or that of other students, the IEP team shall:

- include appropriate IEP goals and objectives for addressing the behavior;
- consider positive behavioral interventions and supports to address the behavior. Examples of positive behavioral interventions may include, but are not limited to implementing:
 - a graduated response system to inappropriate behaviors starting with the least intrusive intervention (i.e., time to settle down, warning, time-out, or out of the classroom);
 - an ongoing meaningful reward system designed to reinforce appropriate behavior; or
 - interventions designed to help the student feel safe and secure, such as a "safe room" or interaction with a trusted teacher during behavioral episodes.

Change in Placement for Up to 45 Days

Drugs and Weapons: An LEA can order a change in placement to an alternative educational setting for the same amount of time a child without a disability would be subject to discipline, but for not more than 45 days, if the child:

- knowingly possesses a weapon at school or at a school function; or
- knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance.

Hearing Officer Ruling: A Hearing Officer may order a change in placement to an alternative educational setting for not more than 45 days if the Hearing Officer:

- determines that the LEA has demonstrated by substantial evidence that maintaining the child's current placement would likely result in injury to the child or others;
- considers the appropriateness of the current placement;
- considers whether the LEA has made reasonable efforts to minimize the risk of harm in the child's current placement;
- determines that the alternative educational setting will enable the child to meet his/her IEP goals; and that the
- IEP includes services designed to address the behavior so that it does not reoccur.

Procedural Safeguards

IDEA provides that the parents of a child with a disability may:

- Examine all records relating to their child;
- Participate in meetings concerning the identification, evaluation, and educational placement of the child, and to the provision of FAPE; and
- Obtain an independent educational evaluation of the child, which under certain circumstances, is at public expense.

Additionally, parents are entitled to:

- receive prior written notice whenever the LEA proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child;
- receive all notices written in an easily understandable manner and in the native language of the parents, unless this is clearly not feasible;

- present complaints concerning the identification, evaluation, or educational placement of their child, or the provision of FAPE to the child; and
- be offered by the LEA the opportunity to request an impartial mediation process to resolve disputes whenever a Due Process Hearing is requested either by the parents or the LEA.

The LEA must, at a minimum, provide a copy of the Procedural Safeguards to parents upon initial referral for evaluation, at each IEP meeting notification, at each reevaluation of the child, and upon the filing of a complaint by the parent.