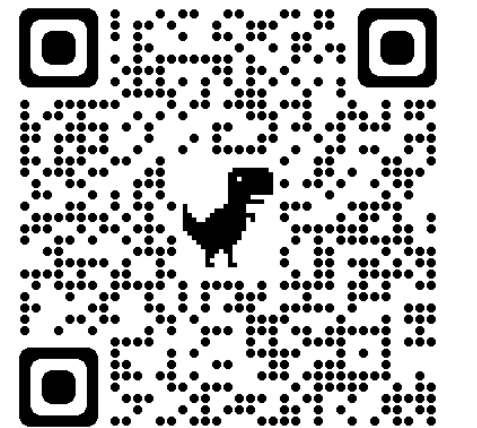




Moving Beyond the Basic Legal Principles to Understanding How the IDEA Serves Students

GJ&A



Individuals with Disabilities Education Act

- **The IDEA is law that ensures students with a disability are provided with Free Appropriate Public Education (FAPE) that is tailored to their individual needs.**
- **In 2022–23, the number of students ages 3–21 who received special education and/or related services under the Individuals with Disabilities Education Act (IDEA) was 7.5 million, or the equivalent of 15 percent of all public school students.**

Individuals with Disabilities Education Act

Between the 2019-20 and 2020-21 school years, the number of students receiving special education services decreased by 1%, from 7.3 million to 7.2 million. This was the first year-over-year drop in special education enrollment since 2011-12.

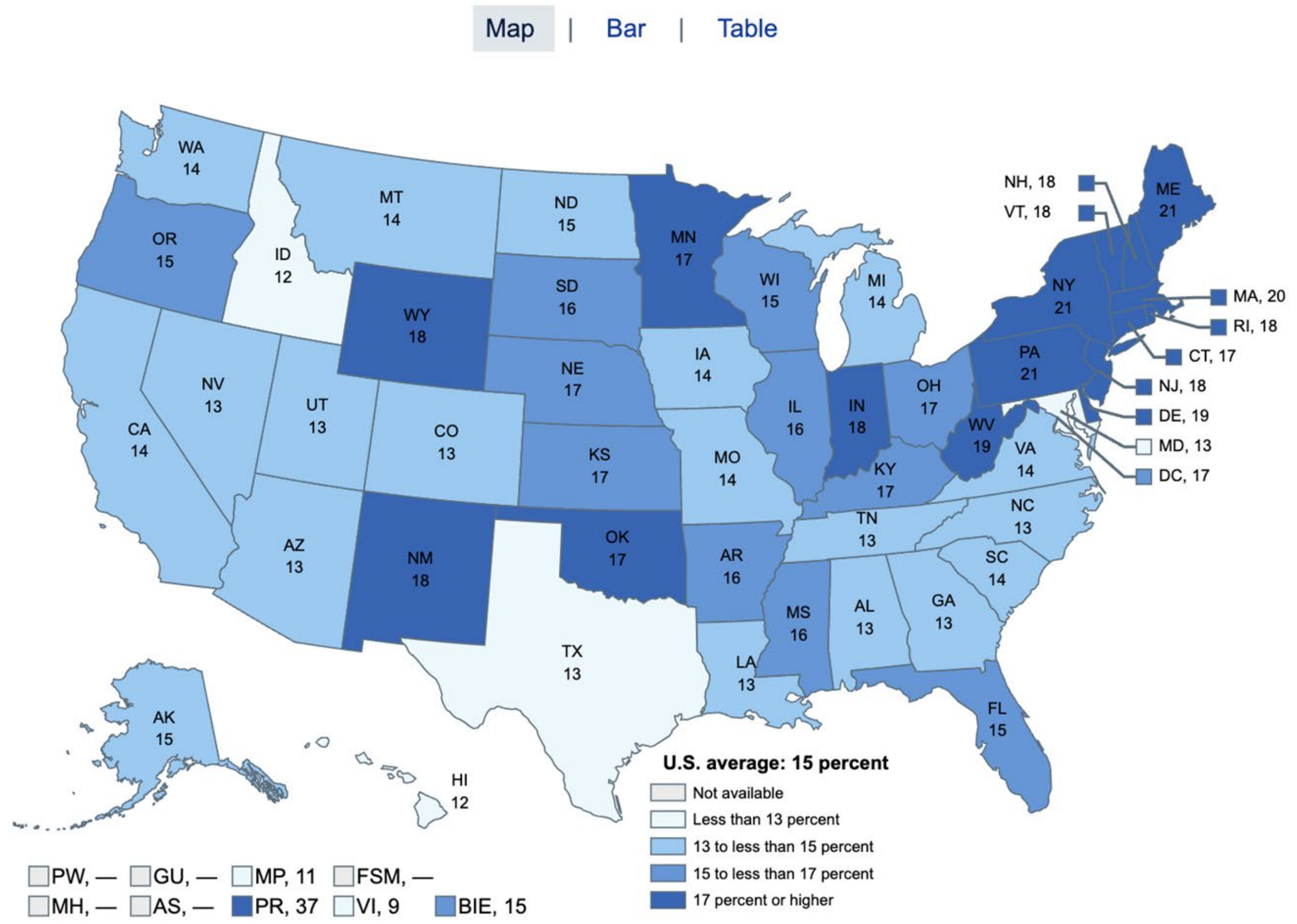
Individuals with Disabilities Education Act

- **The decline in students receiving special education services was part of a 3% decline in the overall number of students enrolled in public schools between 2019-20 and 2020-21.**
- **While special education enrollment bounced back to pre-pandemic levels in the 2021-22 school year, overall public school enrollment remained flat.**

Individuals with Disabilities Education Act

- **The most common type of disability for students in prekindergarten through 12th grade involves “specific learning disabilities,” such as dyslexia. In 2021-22, about a third of students (32%) receiving services under IDEA had a specific learning disability.**
- **Some 19% had a speech or language impairment**
- **Over 15% qualified as Other Health Impairment.**
- **Autism at 12.2 percent with all other eligibilities under 10% respectively.**

Figure 1. Students ages 3–21 served under the Individuals with Disabilities Education Act (IDEA), as a percentage of public school enrollment, by state and jurisdiction: School year 2022–23



Individuals with Disabilities Education Act

- A goal of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.
- The focus is to provide children with disabilities the same opportunity for education as those students who do not have a disability.

What is FAPE ?

Andrew F. v. Douglas County Sch. Dist.
RE-1, 69 IDELR 174 (2017).

Rawley Standard

Board of Educ. v. Rowley :: 458 U.S. 176
(1982)

Special Education Defined by Law

"Special education" means specially designed instruction, provided at no cost to the parents, that is intended to meet the unique needs of a child with a disability, including: 1) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and 2) instruction in physical education. 34 CFR 300.39(a)(1).

The term includes: 1) speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under state standards; 2) travel training; and 3) vocational education. 34 CFR 300.39(a)(2).

Specially Designed Instruction

(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. *34 CFR 300.39(b)(3)*.

Specially Designed Instruction

The unique needs of a student with a disability encompass more than a mastery of academic subjects. Unique needs are broadly construed to include academic, social, health, emotional, physical, and vocational needs, all as relating to the provision of preschool, elementary, and secondary education services.

***County of San Diego v. California
Special Educ. Hearing Office,
24 IDELR 756 (9th Cir. 1996).***

Specially Designed Instruction



is NOT just



ACCOMMODATIONS

Specialty Designed Instruction

Accommodations

- **Providing a study guide.**
- **Oral administration of tests.**
- **Video of class instruction.**
- **Providing sensory fidget.**
- **Visual aides**
 - Braille
 - Math equations
 - Calendar/schedule

Specialty Designed Instruction

- **Student taught with repetition how to use a calendar for organization.**
- **Using a different curriculum such a reading program for students with dyslexia.**
- **Teaching a child to recognize emotions and regulate responses.**
- **Pre-teaching curriculum.**
- **Teaching sensory regulation techniques.**

Special Education Evaluations

DEFINITION AND PURPOSE OF EVALUATIONS

- The IDEA defines "evaluation" to mean the procedures used to determine whether a child has a disability and the nature and extent of the child's need for special education and related services. Those procedures must comport with the requirements set forth at *34 CFR 300.304 through 34 CFR 300.311. 34 CFR 300.15.*
- An evaluation under the IDEA serves two purposes: identifying students who need specialized instruction and related services because of an IDEA-eligible disability; and helping IEP teams identify the special education and related services the student requires. 71 Fed. Reg. 46,548 (2006).

Special Education Evaluations

DISTRICT RESPONSIBILITY FOR EVALUATION

- Each district "must conduct a full and individual initial evaluation" before providing special education and related services to a child with a disability. *34 CFR 300.301 (a)*. See, e.g., *Wentzville R-IV Sch. Dist.*, 61 IDELR 116 (SEA MO 2013).
- A district may fulfill this requirement by having its own personnel evaluate the student, or by arranging a third-party evaluation at no cost to the parents. However, the district cannot require the parents to obtain their own evaluation. See, e.g., *N.B. and C.B. v. Hellgate Elem. Sch. Dist.*, 50 IDELR 241 (9th Cir. 2008).

Special Education Evaluations

PARENTAL CONSENT

- A district cannot conduct an initial evaluation of a child suspected of having a disability without first obtaining informed parental consent. *34 CFR 300.300 (a)(1)(i)*.
- If the parent does not consent or fails to respond to a request for consent, the district may (but is not required to) use the IDEA's mediation or due process procedures to demonstrate the need for an evaluation (unless such conduct is prohibited under state law). *34 CFR 300.300 (a)(3)(i)*.

Special Education Evaluations

PROCEDURAL REQUIREMENTS

- Evaluations must conform to the procedural requirements set out in IDEA regulations at 34 CFR 300.304 through 34 CFR 300.311.
- The Part B regulations contain provisions governing the following areas:
 1. Initial evaluations. 34 CFR 300.301.
 2. Evaluation procedures. 34 CFR 300.304.
 3. Determination of needed evaluation data. 34 CFR 300.305.
 4. Determination of eligibility. 34 CFR 300.306 (a) through 34 CFR 300.306 (b).
 5. Procedures for determining eligibility and placement. 34 CFR 300.306 (c).
 6. Reevaluations. 34 CFR 300.303.

Student Must Require Special Education and Related Services

- In order to qualify as a "student with a disability" under the IDEA, the student must:
 - Meet the definition of one or more of the categories of disabilities, AND
 - Need special education and related services as a result of his disability or disabilities.

Special Education Eligibility Categories

1. Autism
2. Deaf-blindness
3. Deafness
4. Emotional disturbance
5. Hearing impaired
6. Intellectual disability
7. Multiple disabilities
8. Orthopedic impairment
9. Other health impairment
10. Specific learning disability
11. Speech or language impairment
12. Traumatic brain injury
13. Visual impairment including blindness
14. (Developmental Delay)

34 C.F.R. § 300.8

Diagnosis vs. Eligibility

Medical Diagnosis

- Medical Diagnosis are made by a medical professional.
- In making a medical diagnosis medical professional may used:
 - diagnostic criteria
 - Diagnostic and Statistical Manual of Mental Disorders (DSM)
 - clinical case definitions

The medical provider is NOT considering IDEA eligibility in making a diagnosis.

Diagnosis vs. Eligibility

The IDEA's child find provision does not require a district to develop an IEP for every student diagnosed with a disability. So long as the district can show it conducted an appropriate evaluation and considered the student's need for special education services, it should be able to overcome a child find claim.

***Miller v. Charlotte-Mecklenburg
Schools Board of Education,
123 LRP 12111 (4th Cir. 04/06/23)***

Determination of Eligibility

Upon completion of the administration of assessments and other evaluation measures:

1.A group of qualified professionals and the parent of the child determine whether the child is a child with a disability, as defined in 34 CFR 300.8, in accordance with 34 CFR 300.306(b) and the educational needs of the child; and

1.The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. 34 CFR 300.306 (a).

Determination of Eligibility

A child must not be determined to be a child with a disability:

1.If the determinant factor for that determination is:

2.Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in Section 1208(3) of the Elementary and Secondary Education Act);

3.Lack of appropriate instruction in math; or

4.Limited English proficiency; and

• If the child does not otherwise meet the eligibility criteria under 34 CFR 300.8 (a). And 34 CFR 300.306 (b).

Determination of Eligibility

In interpreting evaluation data for the purpose of determining if a child is a child with a disability under 34 CFR 300.8, and the educational needs of the child, each public agency must:

- i) draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
- ii) ensure that information obtained from all of these sources is documented and carefully considered.

Determination of Eligibility

The failure of an IEP team to consider relevant information about the student in making an eligibility determination may result in a denial of FAPE.

*Lauren G. v. West Chester
Area Sch. Dist.,*
60 IDELR 4 (E.D. Pa. 2012)

Individualized Education Plans

- **The IDEA requires that each public agency must ensure that –**
 - **A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and**
 - **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.**

34 CFR 300.323 (c)

Individualized Education Plans

- **The IEP describes the child's individual needs and proscribes the proper placement and services designed to meet those unique needs.**
- **At the beginning of each school year, each public agency must have an IEP in effect for each child with a disability within its jurisdiction. 34 CFR 300.323 (a).**
- **The IDEA requires that an IEP team develop a student's IEP. The IDEA specifies both the mandatory and permitted members of a student's IEP team. 34 CFR 300.321.**

Mandatory Team Members

1. The parents of the child;
1. Not less than one general education teacher of the child (if the child is or may be participating in the general education setting);
1. Not less than one special education teacher of the child, or, where appropriate, not less than one special education provider of the child;
1. A district representative who: i) is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities; ii) is knowledgeable about the general education curriculum; and iii) is knowledgeable about the availability of district resources.
1. An individual who can interpret the instructional implications of evaluation results;
1. Other individuals who have knowledge or special expertise about the child, including related services personnel as appropriate; and
1. Whenever appropriate, the child with the disability.

Mandatory Under Certain Circumstances

- Students: Students must be invited to participate in an IEP meeting if one of the purposes is to discuss postsecondary transition goals and services. 34 CFR 300.321 (b)(1).
- Representatives of postsecondary transition agencies: To the extent appropriate, these individuals must be invited, if the agency is likely to be responsible for providing or paying for transition services. 34 CFR 300.321 (b)(3).
- Part C system representatives: If a child with a disability previously received services under Part C of the IDEA, the district must, at the request of the parent, invite the Part C services coordinator or another representative of the Part C system to assist with the smooth transition of services. 34 CFR 300.321 (f).

Discretionary Team Members

- **Under the IDEA, both the parent and the district have discretion to invite "other individuals" with knowledge or special expertise about the child to the IEP meeting. 34 CFR 300.321 (a)(6).**
- **The party who invites these individuals to the IEP meeting determines whether they have knowledge or special expertise. 34 CFR 300.321 (c).**

The IEP Meeting

There is no required format for an IEP meeting as a matter of federal law. *See generally* 34 CFR 300.321 (a)(1); and 34 CFR 300.322.

Pursuant to the IDEA, each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including —

1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
1. Scheduling the meeting at a mutually agreed time and place. 34 CFR 300.322 (a).

The IEP Meeting

- **Districts must ensure that the parents of a student with a disability have a meaningful opportunity to participate in each IEP meeting. However, if the student's parents refuse to attend an IEP meeting, the district may hold the meeting without the parent. *A.L. v. Jackson County Sch. Bd.*, 66 IDELR 271 (11th Cir. 2015, unpublished)**
- **The parent and the public agency can agree to use alternative means of meeting participation, such as videoconferences and conference calls. 34 CFR 300.322 (c); 34 CFR 300.328.**

***A.L. v. Jackson County Sch. Bd.,
66 IDELR 271 (11th Cir.
2015, unpublished)***

The IEP Meeting – Predetermination

- A district engages in predetermination in violation of the IDEA when it excludes a parent from the process of determining the student's special education services. See, e.g., *Boone v. Rankin Pub. Sch. Dist.*, 123 LRP 18965 (S.D. Miss. 05/18/23)
- "If a public agency develops a draft IEP prior to the IEP Team meetings, the agency should make it clear to the parents at the outset of the meeting that the services proposed by the agency are preliminary recommendations for review and discussion with the parents." 71 Fed. Reg. 46,678 (2006).

Boone v. Rankin Pub. Sch. Dist.,
123 LRP 18965 (S.D. Miss.
05/18/23)

The IEP Document

The IDEA does not require that an IEP document conform to any specific length or format as long as the IEP meets the content requirements of 34 CFR 300.320.

See, e.g., District of Columbia Pub. Schs., 120 LRP 22532 (SEA DC 06/21/20)

The IEP Document Must Include

STATEMENT OF PRESENT LEVELS OF EDUCATIONAL PERFORMANCE

The IDEA requires that each IEP include a statement of the child's present levels of academic achievement and functional performance, including:

1. How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
1. For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. 34 CFR 300.320 (a)(1).

The IEP Document Must Include

STATEMENT OF GOALS AND OBJECTIVES

An IEP must include a statement of measurable annual goals, including academic and functional goals designed to:

- 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
- Meet each of the child's other educational needs that result from the child's disability. 34 CFR 300.320 (a)(2)(i).

The IEP Document Must Include

METHOD OF MEASURING PROGRESS

An IEP must include a description of:

1. How the child's progress toward meeting the annual goals described in 34 CFR 300.320 (a)(2) will be measured; and
1. When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. 34 CFR 300.320 (a)(3)

The IEP Document Must Include

SPECIAL EDUCATION, RELATED SERVICES, AND SUPPLEMENTARY AIDS AND SERVICES

The IDEA requires each IEP to include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child or on behalf of the child and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

The IEP Document Must Include

1. To advance appropriately toward attaining the annual goals;
1. To be involved in and make progress in the general education curriculum in accordance with this section and to participate in extracurricular and other nonacademic activities; and
1. To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section. 34 CFR 300.320 (a)(4)

The IEP Document Must Include

PARTICIPATION IN GENERAL EDUCATION CLASS AND ACTIVITIES

An IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described at 34 CFR 300.320 (a)(4). 34 CFR 300.320 (a)(5).

The IEP Document Must Include

ACCOMMODATIONS FOR ASSESSMENTS

- Each IEP must contain a statement of any individual appropriate accommodations that are necessary to measure the child's academic achievement and functional performance on statewide and districtwide assessments consistent with 20 USC 1412 (a)(16). 34 CFR 300.320 (a)(6)(i).
- If the IEP team determines that the child must take an alternate assessment instead of a particular regular statewide or districtwide assessment of student achievement, the IEP must include a statement of why:
 - The child cannot participate in the regular assessment; and
 - The particular alternate assessment selected is appropriate for the child. 34 CFR 300.320 (a)(6)(ii).

The IEP Document Must Include

TIME, PLACE, AND DURATION OF SERVICES

- The IEP must state the projected date for the beginning of the services and modifications described in 34 CFR 300.320 (a)(4), as well as the anticipated frequency, location, and duration of those services and modifications. 34 CFR 300.320 (a)(7).
- An IEP must include sufficient information about the amount of services that will be provided so that the agency's level of commitment to the student will be clear. 71 Fed. Reg. 46,667 (2006).

The IEP Document Must Include

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
1. The transition services (including courses of study) needed to assist the child in reaching those goals. 34 CFR 300.320 (b)(1). See also 71 Fed. Reg. 46,668 (2006).

The IEP Document Must Include

TRANSFER OF RIGHTS AT AGE OF MAJORITY

Beginning not 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 the IDEA, if any, that will transfer to the child on reaching the age of majority. 34 CFR 300.320 (c).

The IEP Generally

The Supreme Court's decision in *Andrew F. v. Douglas County School District RE-1*, 69 IDELR 174 (2017), established the standard that IEPs should meet:

“...a district must offer an IEP that is reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.”

The IEP Generally

Districts should generally refrain from providing a student with disability services that are not explicitly required by his IEP.

If a district consistently provides a student a higher level of support than what is determined necessary by the IEP team, the parent may subsequently argue that the IEP document is deficient because it failed to include services necessary for FAPE.

Adams 12 Five Star Schs.,
75 IDELR 86 (SEA CO 2019)

Least Restrictive Environment

1. 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
1. 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. 34 CFR 300.114 (a). See also 34 CFR 104.34 (a).

The "regular educational environment" encompasses regular classrooms and other settings in schools, such as lunchrooms and playgrounds, in which children without disabilities participate. 34 CFR 300.117.

Least Restrictive Environment

CONTINUUM OF ALTERNATIVE PLACEMENTS

- The continuum of alternative placements is the range of potential placements in which a district can implement a student's IEP. The continuum begins with the regular classroom and proceeds to progressively more restrictive placements. 34 CFR 300.115 (a).

Least Restrictive Environment

9TH CIRCUIT'S LRE TEST - RACHEL H. FACTORS

In determining whether a placement is a child's LRE, courts in the 9th U.S. Circuit Court of Appeals apply a test adopted by *Sacramento City Unified Sch. Dist., Bd. of Educ. v. Rachel H.*, 20 IDELR 812 (9th Cir. 1994), cert. denied, 109 LRP 34833 , 512 U.S. 1207 (1994).

Under that test, courts consider four factors:

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

Least Restrictive Environment

In assessing academic benefit for a student whose disabilities prevent him from achieving at the same academic level as his non-disabled peers, the district shouldn't focus on whether the student achieves at grade level. Instead, it should consider the student's progress toward his academic goals.

***D.R. v. Redondo Beach
Unified Sch. Dist.,
82 IDELR 77 (9th Cir.
2022)***

Prior Written Notice

Prior written notice must be sent at "a reasonable time" before a school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a student or the provision of FAPE. 34 CFR 300.503 (a).

- Reasonable is not immediately, but should not be delayed

PRIOR WRITTEN NOTICE

Must include:

1. A description of the action proposed or refused by the district.
2. An explanation of why the district proposes or refuses to take the action.
3. A description of each evaluation procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
4. A statement that the parents have protection under Part B's procedural safeguards and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
5. Sources for parents to contact to obtain assistance in understanding the provisions of Part B.
6. A description of other options that the IEP team considered and the reasons why those options were rejected.
7. A description of other factors relevant to the district's proposal or refusal.

34 CFR 300.503(b)

Implementation

IN GENERAL

- A district must implement a student's IEP with all required components. 34 CFR 300.323 (c).
- The IDEA's implementation mandate does not mean that, to provide FAPE, a district must perfectly implement a student's IEP. According to most courts, a minor discrepancy between the services provided and the services required under the IEP is not enough to amount to a denial of FAPE.

Implementation

'MATERIAL' IMPLEMENTATION FAILURES -- IN GENERAL

- The 3d, 4th, 5th, 8th, 9th, and 11th U.S. Circuit Courts of Appeal have held that only a material implementation failure will qualify as a denial of FAPE.
- *Abigail P. v. Old Forge Sch. Dist.*, 124 LRP 21769 (3d Cir. 06/26/24);
- *Sumter County Sch. Dist. 17 v. Heffernan*, 56 IDELR 186 (4th Cir. 2011);
- *Houston Indep. Sch. Dist. v. Bobby R.*, 31 IDELR 185 (5th Cir. 2000), cert. denied, 111 LRP 30885, 531 U.S. 817 (2000);
- *Neosho R-V Sch. Dist. v. Clark*, 38 IDELR 61 (8th Cir. 2003);
- *Van Duyn v. Baker Sch. Dist.* 5J, 47 IDELR 182 (9th Cir. 2007), reprinted as amended, 107 LRP 51958, 502 F.3d 811 (9th Cir. 2007); and
- *L.J. v. School Bd. of Broward County, Fla.*, 74 IDELR 185 (11th Cir. 2019).

Implementation

'MATERIAL' IMPLEMENTATION FAILURES -- DURATION OF FAILURE AS A FACTOR

In determining whether an implementation failure was material, courts may consider the duration of the failure. See *Turner v. District of Columbia*, 61 IDELR 126 (D.D.C. 2013)

Implementation

'MATERIAL' IMPLEMENTATION FAILURES -- EVIDENCE OF PROGRESS AS A FACTOR

- Where a district substantially implements a student's IEP, its failure to comply with a single component of the IEP will not deny the student FAPE.
- A district can establish substantial compliance by showing that the student:
 - made progress toward achieving his goals
 - improving his grades, and
 - receiving passing scores on state assessments.

See, e.g., A.P. v. Woodstock Bd. of Educ., 55 IDELR 61 (2d Cir. 2010, unpublished)

Question & Answer



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