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## The Individuals with Disabilities Education Act

### Facts at a GLANCE

- The Individuals with Disabilities Education Act (IDEA) is organized in a logical structure—Parts A–D—that has remained basically the same since its original enactment in 1975.
- Part A is titled General Provisions.
- Part B is titled Assistance for Education of All Children with Disabilities.
- Part C is titled Infants and Toddlers with Disabilities.
- Part D is titled National Activities to Improve Education of Children with Disabilities.
- The IDEA defines *special education* as “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability” (Pub. Law No. 94-142, § 602(25)).
- Six elements of the IDEA constitute the law’s essential support structure: the individualized education program (IEP), the guarantee of a free appropriate public education (FAPE), the requirement of education in the least restrictive environment (LRE), appropriate evaluation, active parent and student participation in the educational mission, and procedural safeguards for all participants.
- The confidentiality regulations of the IDEA have their foundation in comprehensive legislation enacted by the Congress in 1974 (the year before enactment of Public Law No. 94-142) titled the Family Educational Rights and Privacy Act (FERPA).
- As both a professional and a legal responsibility, special and general educators are expected to be conversant with what can be called the behavioral sequence: (1) determination that a behavioral intervention plan or BIP (positive behavioral intervention strategies and supports) is needed; (2) development of the BIP, following a functional behavioral assessment (FBA); and (3) implementation of the BIP, with periodic review and modification, as needed.

More than thirty years after the 1975 passage of Public Law No. 94-142, now commonly known as the Individuals with Disabilities Education Act (IDEA), the objectives outlined in the law's preamble remain essentially the same:

It is the purpose of this Act to assure that all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure the rights of handicapped children and their parents or guardians are protected, to assist states and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children. (Pub. L. No. 94-142, § 601)

Other than the term *handicapped children*—now superseded by *children with disabilities*—this declaration of purposes is still a valid and cogent statement of intent nearly a decade into the twenty-first century. This chapter will summarize the major elements of the IDEA.

## STRUCTURE OF THE IDEA

The IDEA is organized in a logical structure—Parts A–D—that has remained basically the same since its original enactment in 1975. Let's take a look at that structure.

### PART A, GENERAL PROVISIONS

This part includes

- findings and purposes;
- definitions of terms used throughout, such as *special education*, *native language*, *child with a disability*, and *free appropriate public education*;
- requirements for employment of individuals with disabilities; and
- requirements for individualized family service plans (IFSPs) and procedural safeguard mechanisms.

### PART B, ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

This portion of the law contains the largest number of program requirements and represents the very core of the IDEA, including

- matters related to fiscal policy and money management among federal, state, and local jurisdictions, including federal funding arrangements;

- responsibilities at the state level, usually directed to the state education agency;
- responsibilities of local education agencies, commonly meaning local school districts, but also directed to other organizational units such as a collaboration of school districts for special education purposes;
- rights, protections, and responsibilities in the educational process, including evaluations, eligibility determinations, individualized education programs, and educational placements;
- procedural safeguards, also known as the due process provisions;
- federal administration and ongoing national data-gathering responsibilities of the states and local school districts; and
- preschool grants, directed to children three through five years of age.

## PART C, INFANTS AND TODDLERS WITH DISABILITIES

This is a national program that provides early intervention services to children from birth to age three who manifest or are at risk of developmental delay. This part includes

- a definition of the eligible population,
- a listing of authorized services,
- requirements for a statewide system in each state, and
- requirements for an individualized family service plan (IFSP) and procedural safeguard mechanisms.

## PART D, NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN WITH DISABILITIES

This part, now including the Education Sciences Reform Act, Part E, comprises two major clusters of generally highly valued support programs—two of which (research and training of professionals) were created in the 1950s. These programs are administered at the national level, where awards are made to a wide array of eligible recipients in the form of grants, contracts, and cooperative agreements. The major components are

- coordinated research and innovation;
- professional preparation;
- studies, evaluations, and an ongoing national assessment of the IDEA's effectiveness;
- parent training and information centers, including community parent resource centers;

- coordinated technical assistance and knowledge/information dissemination through regional resource centers, including institutes, and clearing-houses; and
- technology development and utilization and educational media services.

As part of the 2004 amendments, Congress transferred the research functions from the Office of Special Education Programs (OSEP) to the Institute of Educational Sciences. The National Center for Educational Research, one of four centers under the institute's umbrella, directly administers the IDEA's research efforts.

## EVOLUTION OF THE LAW

A review of the evolution of the IDEA requires attention to the programs authorized *before* Public Law No. 94-142, as well as the numerous amendments to the IDEA that occurred *after* its enactment in 1975—although Public Law No. 94-142 established the basic framework of rights and responsibilities that remains in place to this day. Pre-Public Law No. 94-142 legislation helped develop an infrastructure of effective early intervention and special education practice while inaugurating a very modest, but useful direct program managed at the state level. Post-Public Law No. 94-142 legislation attended to further refinements of the IDEA.

A bit of historical trivia aids in reducing the confusion commonly surrounding the titles used for the law. From 1970 to 1990, the law was known as the Education of the Handicapped Act (EHA). In fact, Public Law No. 94-142 was actually a massive amendment, amounting to a “top to bottom” rewrite of the earlier core segments of the EHA. In the 1990 reauthorization to the EHA, Congress changed the title from the EHA to the IDEA. For the reader's peace of mind, simply remember that the EHA became the IDEA and this text will consistently lead with “the IDEA.”

What is a reauthorization? Put simply, the Congress traditionally affixes an end date to a great many pieces of legislation; this action is popularly known as “sunsetting” the legislation. This means that the Congress must revisit and “reauthorize” (or not “reauthorize,” depending on the circumstances) such legislation. Because policy makers agreed that Public Law No. 94-142 constituted a bill of rights for children with disabilities and their families, Part B of the IDEA was and remains permanently authorized. (Consult Structure of the IDEA, above, in this chapter.) However, Parts, A, C, and D (definitions, early intervention, and the national support programs administered at the federal level) require periodic reauthorization. Can Part B still be amended at the periodic reauthorization of the other parts? Yes, but to make the point that Part B constituted permanent civil

rights legislation, the policy makers left Part B unaltered for an unprecedented 20 years, except for minor refinements.

What follows is a brief history of the IDEA. The reader is advised that this segment represents nothing more than the evolution of the IDEA and does not address the universe of other national legislation—such as the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA)—affecting the education of special-needs children. The Rehabilitation Act and the ADA are addressed later in this text.

## **BEFORE PUBLIC LAW NO. 94-142**

### **Cooperative Research Act of 1954, Public Law No. 83-531**

Was the first federal research program in special education.

### **Training of Professional Personnel Act of 1959, Public Law No. 86-158**

Was the initial federal program focusing on professional preparation for educating children with mental retardation.

### **Teachers of the Deaf Act of 1961, Public Law No. 87-276**

Trained educational personnel for hard of hearing and deaf children.

### **Mental Retardation Facilities and Community Health Centers Construction Act of 1963, Public Law No. 88-164**

Expanded support for professional preparation to teach a wider population beyond mental retardation and further expanded the research program.

### **Federal Assistance to State Operated and Supported Schools for the Handicapped, Public Law No. 89-313**

Was passed in 1965 as an amendment to Title I of the Elementary and Secondary Education Act (ESEA); was the first major direct program supporting the education of children and youth with disabilities; stood as the largest fiscal program for instruction until Public Law 92-142, with the assistance primarily directed toward state-run institutions and schools.

### **Elementary and Secondary Education Act Amendments of 1966, Public Law No. 89-750**

Created the Bureau of Education for the Handicapped (BEH), which later became the administering agency for the EHA and the IDEA. The agency was later titled the Office of Special Education Programs (OSEP), which still exists today.

**Elementary and Secondary Education Act Amendments of 1967, Public Law No. 90-247**

Was the first national commitment to technical assistance and dissemination, with the creation of centers for deaf-blind children in response to the rubella epidemics of 1964; also created regional resource centers (RRCs) for special education.

**Handicapped Children's Early Education Assistance Act of 1968, Public Law No. 90-538**

Authorized the first early childhood model programs, focusing on children ages three through nine, but emphasizing the preschool years for children ages three through five.

**Extension of Programs of Assistance for Elementary and Secondary Education Act Amendments of 1970, Public Law No. 91-230**

Decoupled special education programs from the ESEA and consolidated them in a separate and independent EHA.

**Education Amendments of 1974, Public Law No. 93-380**

Is considered the "early warning" legislation for Public Law No. 94-142; required full-service goals and timetables, as well as assurances that such elements as due process and least restrictive placements were in development; set no dates for actual implementation, however.

**PUBLIC LAW 94-142****Education for All Handicapped Children Act, Public Law No. 94-142**

Is the landmark legislation requiring a free appropriate public education for all children with disabilities—the heart of which is contained in Parts A and B of the IDEA.

**AFTER PUBLIC LAW NO. 94-142****Education of the Handicapped Amendments of 1977, Public Law No. 95-49**

Extended authority for the discretionary programs and eliminated the National Advisory Committee on the Handicapped.

**Education of the Handicapped Act Amendments of 1983, Public Law No. 98-199**

Strengthened the support programs under Part D (grants and contracts managed and awarded at the national level) to promote integration of children with severe disabilities, including creation of severely handicapped

institutes; also promoted transitions from school to adult living and a change in statewide service systems; required least restrictive environment as well.

**Handicapped Children's Protection Act of 1986, Public Law No. 99-372**

Reversed a U.S. Supreme Court decision requiring exhaustion of IDEA due process procedures before filing a civil action under any other statute, such as Section 504 also authorized the awarding of attorney fees to the prevailing party in administrative due process if approved by a court.

**Education of the Handicapped Act Amendments of 1986, Public Law No. 99-457**

Completed the age mandate of Public Law No. 94-142 by establishing a phase-in of FAPE for preschool children from three through five years of age under Part B; created an early intervention program for infants and toddlers from birth to three years of age, now Part C; also authorized a state-of-the-art program for technology and for educational media and materials.

**Education of the Handicapped Act Amendments of 1990, Public Law No. 101-476**

Added transition services to the required content of the individualized education program (IEP), which was viewed only as a statutory clarification of an existing requirement; added traumatic brain injury and autism to the disability categories; changed the name of the EHA to the Individuals with Disabilities Education Act (IDEA); and established the parent training and information center (PTIC) system on a nationwide basis.

**Individuals with Disabilities Education Act Amendments of 1997, Public Law No. 105-17**

Opened Part B to needed adjustments more than 20 years after the enactment of Public Law No. 94-142; included major refinements that strengthened the relationship to the general curriculum, overhauled the evaluation and reevaluation provisions, added new stipulations in the IEP regarding state- and districtwide tests, and designed controversial procedures related to behavior and discipline.

**Individuals with Disabilities Education Act Amendments of 2004, Public Law No. 108-446**

Coordinated the policy and procedures of the IDEA with those of the No Child Left Behind Act (NCLB); further amended eligibility procedures, IEP requirements, and procedural safeguards; streamlined discipline procedures; and consolidated special education research with other federal research in the Institute for Education Sciences.

## SPECIAL EDUCATION

In the definitions of diagnostic categories given in the IDEA regulations, the reader should note the use of the phrase “that adversely affects a child’s educational performance.” Further, the statutory definition of a *child with a disability* reads: “. . . and who, by reason thereof, needs special education and related services.” These two clauses are critical for determining (1) precisely which children will be served under the IDEA and (2) precisely what makes this educational program partially different from the general education program.

The IDEA defines *special education* as “specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability” (Pub. L. No. 94-142, § 602(25)). The IDEA regulations, published in the Code of Federal Regulations, or C.F.R., further define *specially designed instruction* to mean “adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child’s disability” (34 C.F.R. § 300.39(b)(3)).

The policy makers—in both Congress and the administering federal agency—have not further defined *special education* in the IDEA. They continue, wisely, to respect the fact that the parameters of special education are a professional matter that continually evolves through professional research, training, and advances in practice. What they do say through the IDEA, however, is that special education *must be provided* to a defined group of America’s children.

## THE SIX PILLARS OF THE IDEA

In essence, six elements of the IDEA constitute the law’s essential support structure—with no single element complete without the presence of the other five. These six elements are the individualized education program (IEP), the guarantee of a free appropriate public education (FAPE), the requirement of education in the least restrictive educational environment (LRE), appropriate evaluation, active participation of parent and student in the educational mission, and procedural safeguards for all participants.

## INDIVIDUALIZED EDUCATION PROGRAM

The cornerstone of educational planning and implementation under the IDEA is undoubtedly the requirement of individualized programming for each student. In fact, the action of placing such a requirement in law in 1975 may be viewed as nothing less than one of the most far-reaching actions undertaken in federal education policy. The mechanism for delivering this requirement is known as the *individualized education program*, or IEP. Either an IEP or its early childhood equivalent, the

*individualized family service plan* (IFSP), must be in place and operating for every child designated as eligible for services under the IDEA. The IEP has been, and will continue to be, both the cornerstone of the IDEA and the heart of American special education.

The statute says simply, but with powerful implications, that “[t]he 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” (Pub. L. No. 94-142, § 614(d)(1)(A)). The law then specifies (1) the required content of each child’s IEP; (2) how parents will receive progress reports; (3) who must, and who may, be included in the IEP team; (4) considerations in the development of the IEP, including certain special factors; (5) the role of the regular education teacher; and (6) the requirements for review and revision of the IEP. The regulations repeat the law, while expanding and clarifying where necessary. Chapter 10 of this text is devoted to a comprehensive discussion of the IEP with practical implications and recommendations.

## FREE AND APPROPRIATE PUBLIC EDUCATION

A fundamental, nondebatable presumption embodied in the IDEA is that no child can be denied a public education. This is popularly known as the principle of zero reject. Regardless of the severity of disability, each and every child has the right to a public education. In fact, the groundswell of citizen advocacy in the late 1960s and the early 1970s that led to the zero reject principle was known as the “right to education” movement. Further, the IDEA states that the educational program for eligible children cannot be just any program of public education. Instead, the statute says that the program must be special education appropriate for the individual child.

The law’s definition of *free appropriate public education*, or FAPE, is lean in terms of words, but robust in terms of implications:

The term “free appropriate public education” means special education and related services that (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program under section 614(d). (Pub. L. No. 94-142, § 602(9))

The statute guarantees a FAPE and the corresponding actual availability of a FAPE to an eligible child for as long as necessary from the child’s third birthday through his or her twenty-first year—with certain qualifications such as matriculation with a regular high school diploma. Chapter 7 explores all facets of FAPE.

## LEAST RESTRICTIVE ENVIRONMENT

Another nondebatable presumption at the core of the IDEA is *least restrictive environment*, or LRE. Put simply, LRE requires that children with disabilities be educated in the same place as all other children. Though various terms have enjoyed currency since the enactment of Public Law No. 94-142 in 1975—including *integration*, *mainstreaming*, *inclusion*, *full inclusion*, and *least restrictive environment*—none has precisely the same meaning. Regardless, each of the terms embodies the bedrock belief enshrined in the U.S. Supreme Court’s ruling in *Brown v. Board of Education* (1954): namely, that *separate is unequal*, as well as the converse, that *together is inherently better*. Parenthetically, the term *least restrictive environment* has appeared in the regulations since they were first promulgated in 1977 and thus has the effect of law.

Although the IDEA states that children with disabilities must be educated with children who are nondisabled, it also includes a critical qualifier: “to the maximum extent appropriate.” What does that mean? The law offers a specific answer: “That separate 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” (Pub. L. No. 94-142, § 612(a)(5)). One can describe this qualifier as a necessary—though often frustrating—tension between two desirable objectives for children with disabilities. On the one hand, maximum inclusion of the child is mandated; on the other hand, an educational program that meets the child’s needs may require some degree of separation from the educational environment shared by all students.

So how is this tension resolved? The law leaves the resolution to the IEP team, which includes the parents. Once an agreement is reached, the placement for the child becomes, by definition, the least restrictive educational environment for that child. Therefore, pull-out periods in a resource room coupled with regular classroom placement may be the LRE for a particular child, while instruction in a separate class may be the LRE for another child.

Professionals must bear in mind that when the IEP is being developed, the presumed placement must be the regular classroom with full inclusion in all other school activities. To the extent that this is not what is agreed on in the final IEP, that document must include an explanation of what options were considered and why something less than full-time inclusion in the regular setting was chosen. A comprehensive treatment of LRE, including the continuum of placement options, is available in Chapter 8.

## APPROPRIATE EVALUATION

The evaluation is the process through which a child is determined to have a disability requiring the support of special education and related services. The evaluation process also should help identify the child’s actual special education and

related service needs, though the evaluation precedes the development of the IEP. A team of qualified professionals and the child's parent(s) must make the final eligibility determination.

The IDEA sets out many critical requirements for conducting an evaluation. These requirements, designed to protect against misidentification, include the use of a variety of assessment tools and strategies, a prohibition against the use of any single procedure as a sole criterion, assessment of the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors, and protections against evaluation instruments that may be racially or culturally discriminatory.

The issue of nondiscriminatory testing and evaluation was the central concern in the original evaluation component of Public Law No. 94-142, and given the ever-increasing number of immigrants to the United States from non-English-speaking countries since the law's original enactment, the concerns surrounding this issue have grown. Once again, the rule that is fundamental throughout the IDEA applies in evaluation: namely, evaluation must be appropriate for determining the needs and strengths of each child on an individual basis. A full discussion of evaluation and reevaluation is offered in Chapter 9.

## PARENT AND TEACHER PARTICIPATION

Central to the design and functioning of the IDEA—indeed, central to the success of special education throughout its history—is the family–professional partnership. *Family*, of course, means the child and the child's parents, and *professional* means the teachers and other individuals who apply their expertise to the child's education. The activities that occur daily in schools when parents and professionals partner in the learning enterprise for individual children are reflected at a distance in national politics. Parents were indispensable in obtaining passage of Public Law No. 94-142, and they remain vigilant guardians of both the content and the implementation of the IDEA to this day.

The section of the law addressing procedural safeguards focuses primarily on protecting the educational rights of children and their parents. If the law seems to some critics too heavily weighted toward parents, supporters argue that the single family unit would be at a distinct disadvantage in relation to public authorities and public school systems without such a deliberate tilting of the scales. Beyond procedural safeguards, the law guarantees the right of consent to and participation in every aspect of the educational process, including evaluation and reevaluation, placement, the IEP, and the uses of public and private insurance. The same aspects of guaranteed participation apply—where deemed appropriate—to the student, with involvement in the development of the IEP being a prime example. As a matter of law, the schoolhouse door is open wide to parent involvement. The importance of parent involvement is addressed throughout this text.

## PROCEDURAL SAFEGUARDS

The *right to procedural safeguards*, also known as the right to redress of grievance and the right to due process of law, has a very long history; it dates back to early medieval English common law and was eventually carried forward into the U.S. Constitution's Bill of Rights. The guarantee of procedural safeguards appeared early in the development of the nation's special education law because such guarantees were required first by the courts in two historic 1972 "right to an education" decrees. The pair of rulings—*Pennsylvania Association for Retarded Citizens v. Pennsylvania* (1972) and *Mills v. Board of Education of the District of Columbia* (1972)—greatly influenced both the creation and the content of the procedural safeguards section of Public Law No. 94-142.

The opening lines of the IDEA's procedural safeguards section make a frank statement of purpose: "to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education" (Pub. L. No. 94-142, § 615). The law lists a number of essential guarantees, including the right to examine all educational records, the right to have an impartial hearing and an impartial hearing officer, the right to receive certain prior notices, the right to be afforded mediation, the right to be accompanied by an attorney, and the right to have a state-level appeal if a hearing has been conducted by a local education agency. Relating to the highly charged issue of discipline infractions, this section of the IDEA also contains protections for all parties—parents, students with and without disabilities, and school personnel—in an effort to balance the critical need for school safety with the right of a particular child with a disability to a continuing educational program.

Although the IDEA's procedural safeguards are focused primarily on providing protections to children and their parents, the reader should understand that these safeguards also benefit school systems, teachers, and other school personnel because the essence of due process is the right of *all parties* to make their case in an impartial setting. An examination of the concepts and dimensions of procedural safeguards is found in Chapter 11.

## CONFIDENTIALITY OF INFORMATION

Along with the six pillars of the IDEA, other issues merit attention, including the matter of strict confidentiality of personally identifiable information. In keeping with Sections 612(a)(8) and 617(c) of the IDEA, the implementing regulations make it clear that "[t]he State must have policies and procedures in effect to ensure that public agencies in the State comply with §§ 300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information, collected, used, or maintained under Part B of the Act" (34 C.F.R. § 300.123).

The foundation of the confidentiality regulations of the IDEA is the Family Educational Rights and Privacy Act (FERPA). Enacted by Congress in 1974

(the year before enactment of Public Law No. 94-142) under the sponsorship of then U.S. Senator James Buckley, FERPA effectively mandates privacy protections for all of America's schoolchildren and their families. And like the IDEA, FERPA's basics remain the law to this day. Given the frequently sensitive and far-reaching information gathered about them, no group of children and their families is more in need of a strict code of privacy than students who are receiving or are being considered for eligibility to receive special education services and their parents. Upon close scrutiny, the confidentiality provisions are actually a delicate balance of two necessary protections—*access* and *confidentiality*.

Let's first turn to the issue of *right of access*. The regulations state:

Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 [overall due process] or §§ 300.530 through 300.532 [discipline procedures], or resolution session pursuant to § 300.510, and in no case more than 45 days after the request has been made. (34 C.F.R. § 300.613)

In support of parents' right to inspection and review, the agency must respond to reasonable parental requests for explanations and interpretations; provide copies of the records if failure to do so would, in effect, deny the right to inspect; and allow the parents or their representative to inspect and review the records.

What about the information itself? Every state education agency must have available to the public its policy regarding information gathered about students. This policy should include a description of the children on whom personally identifiable data are maintained; the types of information sought; the methods the state intends to use in gathering information, including the sources from whom information is gathered; and the uses to be made of the information. All of the local education agencies (school districts) in the state must adhere to this state policy. (See 34 C.F.R. § 300.612.) When considering personal information gathered for special education purposes, a good rule of thumb is this: *The only information gathered should be information needed to provide appropriate special education and related services to the child.*

Now we proceed to the matter of *confidentiality*. While parents and authorized personnel from the school district generally have access to student information, for all other persons and parties access is greatly restricted. As a general rule, *parental consent* must be obtained before personally identifiable information is shared with anyone other than authorized personnel and, importantly, before the information is used for any purpose other than those specified under the IDEA. Further, each agency must keep a careful record of any other party who is given access, including the individual's name, the date when access was authorized, and the purpose for which access was authorized.

An important, but too often overlooked, stipulation in the federal IDEA regulations addresses the destruction of information. Because of the critically precise wording, the regulation is quoted:

**Destruction of information**

- (a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part *is no longer needed to provide educational services to the child.*
- (b) The information *must be destroyed at the request of the parents.* However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. (emphasis added)  
(34 C.F.R. § 300.624)

Importantly, the confidentiality regulations include their own due process procedures. Here is the trigger: "A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information." The agency may then agree to amend the information or refuse to do so. If the agency refuses, it must inform the parents and provide the opportunity for a hearing. If, after a hearing, the agency still refuses to amend the information, it must allow the parents to place in the child's records a "statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency." This parental statement must be maintained in the child's records and be made available if the record or the contested section is disclosed to any party (34 C.F.R. §§ 300.618–300.621). Ideally, full-blown due process concerning educational records should rarely be required because parents and schools can amicably amend the records. Nonetheless, the heightened attention to discipline infractions over the past 20 years suggests attention by all parties to protections and procedural safeguards for matters involving personally identifiable data.

When evaluating access to and privacy of information in a particular case or locale, the reader is cautioned to investigate the precise policy and practice of the specific state or school district due to the possibility of loopholes and insufficient monitoring. The complete provisions on confidentiality may be found in the IDEA regulations at 34 C.F.R. §§ 300.610–300.627.

## TRANSITION SERVICES

The 1997 amendments to the IDEA added requirements for transitioning disabled students to life after school. Specifically, the IDEA states, as a goal, its intent "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services

designed to meet their unique *needs and prepare them for employment and independent living*” (emphasis added) (Pub. L. No. 105-17, § 601(d)). Although access to education is a means to an end under the law, the supreme goal of the IDEA and special education clearly is preparation for self-fulfillment in the adult years.

Accompanying the IDEA regulations, a Notice of Interpretation includes a statement borrowed from other legislation that is a powerful rendering of the postschool objective for students with disabilities:

Section 701 of the Rehabilitation Act of 1973 describes the philosophy of independent living as including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy, in order to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities, and the integration and full inclusion of individuals with disabilities into the mainstream of American society. (IDEA regulations, Appendix A, IEPS, III)

In requiring that a student’s IEP include a transition component, the IDEA stipulated, until 2004, a two-tiered approach: one commencing when the student turns 14 and the second when the student turns 16. However, the law stated that in both cases the program could begin at a younger age if the IEP team considered it appropriate. The requirement at age 14 emphasized transition services that focused on courses of study, such as participation in advanced-placement courses or a vocational education program. The requirement at age 16 was much more focused on practical outcomes and included the critical requirement that non-education agencies, where appropriate, be involved in the provision of services. State vocational rehabilitation agencies and state employment and training agencies are obvious examples of such agencies.

The movement to mandate full-blown transition services at age 14 acquired special urgency because of the still disturbingly high dropout rate among students receiving special education services. In fact, experts argued that starting transition services for students with disabilities at age 14 (or earlier) constituted sound policy for three pragmatic reasons:

1. “The sooner, the better” makes eminently good sense for all students who have special challenges that may last throughout their lifetime.
2. If these students should still drop out, hopefully they will leave with useful life skills gained at a relatively early time.
3. Because of meaningful, future-oriented transition services, these students are more likely to be motivated to complete their education, obviously a more highly desired outcome than the preceding item.

However, in a move broadly condemned as a giant step backward, the 2004 IDEA amendments moved the age for initiation of transition services to 16. This significant setback occurred during Senate and House negotiations to produce a

final joint bill. Even though the House bill had included services at both 14 and 16 and the Senate bill had required the initiation of all transition services at 14, 14 was stricken and 16 was inserted in the final bill without comment or justification from the conferees.

The student's participation in the IEP meeting is not a parent or professional option when the IEP team is considering transition services. The regulations require that the student be invited, regardless of age. If the student does not attend the IEP meeting, the education agency "must take other steps to ensure that the child's preferences and interests are considered" (34 C.F.R. § 300.321(b)).

Having been developed and refined over two decades, the IDEA's definition of *transition services* offers a reliable and useful summary for the practitioner:

The term "transition services" means a coordinated set of activities for a student with a disability that—(a) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (b) is based upon the individual student's needs, taking into account the student's preferences and interests; and (c) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation. (Pub. L. 105-17, § 602(34))

## DISCIPLINE

Considerations of a student's behavior under the IDEA are most often associated with the controversial discipline procedures added to the due process section of the law in the 1997 reauthorization. Too frequently overlooked, however, is the addition of an important requirement making behavior a consideration in the development of IEPs for all children eligible for special education services. Under the heading of "Consideration of special factors," the law stipulates that the IEP team must, "[i]n the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior" (Pub. L. No. 105-17, § 614(d)(3)(B)). Further, if the IEP team decides that strategies of the nature outlined in the law are necessary, a statement to that effect must be included in the IEP of the child.

Not only is behavioral intervention a crucial component of support for the child, but also it provides a potentially important protection for the other students in an inclusive learning environment. Early behavioral intervention may, in actuality, provide an "ounce of prevention" against future behavior problems. Another important reason for utilizing early behavioral interventions is the possibility that

failing to do so may be a violation of FAPE. Overall, the behavioral intervention requirement is meant to promote the participation of the child in the regular educational environment as opposed to a more restrictive setting. That this stipulation is an important safeguard in the guarantee of LRE for the child is amply reinforced by another statutory mandate that regular education teachers participate in determining appropriate positive behavioral interventions and strategies as members of the IEP team. (Pub. L. No. 105-17, § 614(d)(3)(C)). Finally, including behavioral strategies—again, only if appropriate—may be an important protection for the child if there should be a later discipline infraction, resulting in the need to determine whether the behavior was a manifestation of the child’s disability.

As a result of both growing concerns over school safety and improved research in behavioral interventions for special-needs children, two terms have permanently joined the lexicon of special education: *functional behavioral assessment (FBA)* and *behavioral intervention plan (BIP)*. Deferring to the expertise of the professionals, Congress and the administering agency have not defined these terms. Nonetheless, the law expects the states, as part of their ongoing professional development programs, to “enhance the ability of teachers and others to use strategies, such as behavioral interventions, to address the conduct of children with disabilities that impedes the learning of children with disabilities and others” (34 C.F.R. § 300.382(f)). Thus, as both a professional and a legal responsibility, special and general educators are expected to be conversant with what might be called the behavioral sequence. The behavioral sequence includes

1. determination that a BIP, which includes positive behavioral intervention strategies and supports, is needed;
2. development of the BIP, following an FBA; and
3. implementation of the BIP, with periodic review and modification, as needed.

## ENFORCEMENT

Under the IDEA, the federal government holds each state responsible for full compliance by all parties within its jurisdiction; the law requires that states engage in active monitoring and enforcement in all of their school districts and other participating entities. States are required to keep a written record concerning their policies and procedures related to the IDEA. These policies, which must be available for public review, are most likely to be housed in the special education division of the state education agency. Many of these documents are available on state education agency websites.

Correspondingly, the U.S. Department of Education actively monitors the states for continuing compliance. This monitoring of state IDEA compliance is typically done by the agency’s Office of Special Education Programs (OSEP), which is housed within the larger Office of Special Education and Rehabilitative

Services (OSERS). State monitoring typically occurs on a rotating basis; it involves on-site visits by federal personnel and often includes public hearings, which can be highly valuable in discovering compliance shortcomings. OSEP advises states of any gaps in compliance, and those states that are out of compliance are expected to design a corrective action plan with a timetable for state revisions and modifications. The law requires full transparency to the public in all aspects of this monitoring process, meaning that any document declared “classified” or any denial of access to information should be treated suspiciously.

## SUMMARY

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The IDEA’s essential features have remained remarkably stable and unaltered in the 30 years since the original enactment of Public Law No. 94-142. Structured in four parts (A through D), the law combines a bill of rights for children with disabilities and their families with provisions for federal fiscal support. In addition, the IDEA provides educational and other management directives to all levels of school governance along with ongoing infrastructure support that is administered at the national level. The law delineates the characteristics of the eligible population of children to be served, as well as the nature of the services to be provided.

The law contains six elements that represent the pillars of the IDEA, as well as American special education as a whole. Beyond these six elements, other features such as the confidentiality, transition, and behavioral provisions warrant careful attention and study.

## CRITICAL THINKING QUESTIONS

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1. How does this review of the IDEA compare with your prior perceptions of the IDEA?
2. Does the law strike you as unduly complex and prescriptive? If so, why?
3. In your personal experience, are there requirements in the special education regulations at the state and local levels that are not the result of the IDEA, though you thought they were? What are they?
4. Would you change any of the fundamental features of the IDEA as we advance into the twenty-first century? If so, what would you change and why?
5. Would you change any features of the IDEA regulations that were presented in this chapter? If so, what would you change and why?
6. What do you think would be the effect if the IDEA were totally repealed tomorrow?

7. If you are a teacher or other professional working in public education, which requirements of the IDEA and its accompanying regulations do you find most helpful? Which are least helpful?
8. As a professional, what changes would you recommend in your own working environment to make the IDEA more effective for everyone?

## REFERENCES

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- Brown v. Board of Education*, 347 U.S. 483 (1954).  
Individuals with Disabilities Education Act (Education for All Handicapped Children Act of 1975), Pub. L. No. 94-142, 89 Stat. 773.  
Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No. 105-17, 111 Stat. 37.  
*Mills v. Board of Education of the District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972).  
*Pennsylvania Association for Retarded Citizens v. Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1972), 343 F. Supp. 279 (E.D. Pa. 1972).