

SPECIAL EDUCATION SEMINAR

Independence, Ohio
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“IDEA 2004: Where Do We Go From Here?”

Presented by

R. Brent Minney, Esq.

I. A New Era: Revitalizing Special Education for Children and Their Families (President’s Commission on Excellence in Special Education – July 1, 2002)

“We believe and we know we can do better by applying many of the same principles of No Child Left Behind to IDEA: accountability for results; flexibility; local solutions for local challenges; scientifically-based programs and teaching methods; and full information and options for parent.”

A. Findings.

B. Major Recommendations.

1. Focus on results – not on process.
2. Embrace a model of prevention – not a model of failure.
3. Consider children with disabilities as general education children first.

II. Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. §1400, et seq.

A. Effective July 1, 2005, except for highly qualified definition and requirements, which became effective on the date of enactment.

B. Findings – Sec. 601(c).

1. Education of children with disabilities can be made more effective by:

- a. Having high expectations for such children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent appropriate in order to meet developmental goals and, to the maximum extent possible, the challenging expectations that have been established for all children and be prepared to lead productive and independent adult lives;
- b. Strengthening the role and responsibility of parents and ensuring that families have meaningful opportunities to participate in the education of their children;
- c. Coordinating the IDEA with other local, state, and federal school improvement efforts including the NCLB Act;
- d. Supporting high-quality, intensive preservice preparation and professional development for all personnel who work with children with disabilities in order to ensure that such personnel have the skills and knowledge necessary to improve the academic achievement and functional performance of children with disabilities, including the use of scientifically-based instructional practices to maximum extent appropriate;
- e. Providing incentives for whole-school approaches, scientifically-based early reading programs, positive behavior interventions and supports, and early intervening services to reduce the need to label children as disabled in order to address the learning and behavioral needs of such children; and
- f. Supporting the development and use of technology, including assistive technology devices and assistive technology services, to maximize accessibility for children with disabilities.

2. Parents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways.
3. Teachers, schools, local educational agencies, and states should be relieved of irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.

C. Purposes – Sec. 601(d).

1. To ensure 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 further education, employment, and independent living.
2. To assist states in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families.
3. To ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting system improvement activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services.
4. To assess and ensure the effectiveness of efforts to educate children with disabilities.

D. Definitions -- Sec. 602.

1. “Assistive Technology Device” does not include a medical device that is surgically implanted or the replacement of such device.
2. “Core Academic Subjects” has the same meaning given the term in Section 9101 of the NCLB Act.
3. “Elementary School” includes a public elementary charter school.
4. “Highly Qualified” for any special education teacher has the meaning given the term in Section 9101 of the NCLB Act.
 - a. The teacher has obtained full state certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the state special

education teacher licensing examination and holds a license to teach in the state as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the state's public charter school law.

- b. The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis.
- c. The teacher holds at least a bachelors degree.
- d. For special education teachers who teach core academic subjects exclusively to children who are assessed against alternate achievement standards, highly qualified means the teacher, whether new or not new to the profession, either:
 - (1) Meets the applicable requirements of Section 9101 of the NCLB Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
 - (2) Meets the requirements of subparagraph (B) or (C) of Section 9101(23) of the NCLB Act as applied to an elementary school teacher, or in the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the state, needed to effectively teach to those standards.
- e. Special education teachers who teach two or more core academic subjects exclusively to children with disabilities, in order to be highly qualified may either:
 - (1) Meet the applicable requirements of Section 9101 of the NCLB Act for an elementary, middle, or secondary school teacher who is new or not new to the profession;
 - (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under Section 9101(23)(C)(ii) of the NCLB Act, which may include a

single, high objective uniform state standard of evaluation covering multiple subjects; or

- (3) In the case of a new special education teacher who teaches multiple subjects and who is highly-qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under Section 9101(23)(C)(ii) of the NCLB Act, which may include a single, high objective uniform state standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

- f. Nothing in this section shall be construed to create a right of action on behalf of an individual student or class of students for failure of a particular state educational agency or local educational agency employee to be highly qualified.
- g. A teacher who is highly qualified under the IDEA shall also be considered highly qualified for purposes of the NCLB Act.

See, Special Education Intervention Specialists: Meeting Highly Qualified Requirements and Principal Reporting Materials for Highly Qualified Teachers published by the Ohio Department of Education.

5. “Homeless Children” has the meaning given the term homeless children and youths in Section 725 of the McKinney-Vento Homeless Assistance Act.
6. “Limited English Proficient” has the meaning given the term in Section 9101 of the NCLB Act.
7. “Parent” means:
- a. A natural, adoptive or foster parent of a child (unless a foster parent is prohibited by state law from serving as a parent);
- b. A guardian (but not the state if the child is a ward of the state);

- c. An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
 - d. An individual assigned to be a surrogate parent.
- 8. "Related Services" includes interpreting services and school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the IEP, but does not include a medical device that is surgically implanted or the replacement of such device.
- 9. "Secondary School" includes a public secondary charter school.
- 10. "Transition Services" means a coordinated set of activities for a child with a disability that:
 - a. 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 post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - b. Is based on the individual child's needs taking into account the child's strengths, 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.
- 11. "Universal Design" has the meaning given the term in Section 3 of the Assistive Technology Act of 1998.
- 12. "Ward of the State" means a child who, as determined by the state where the child resides, is a foster child, is a ward of the state, or is in the custody of a public child welfare agency; however, the term does not include a foster child who has a foster parent who meets the definition of a parent.

E. Office of Special Education Programs (OSEP) Policy Letters and Statements – Sec. 607.

1. The U.S. Secretary of Education is prohibited from implementing or publishing in final form any regulation that violates or contradicts any provision of the IDEA.
2. The Secretary may not issue policy letters or other statements (including letters or statements regarding issues of national significance) that violate or contradict any provision of the IDEA or establish a rule that is required for compliance with, and eligibility under, the IDEA without following the applicable statutory or regulatory requirements set forth in the United States Code.
3. Any written response by the Secretary regarding a policy, question, or interpretation shall include an explanation in the written response that a response is provided as informal guidance and is not legally binding; when required, the response is issued in compliance with the regulatory requirements of the United States Code; and the response represents the interpretation of the Department of Education of the applicable statutory or regulatory requirements in the context of the specific facts presented.

F. State Administration – Sec. 608.

1. Each state that receives funds under the IDEA is required to:
 - a. Ensure that any rules, regulations and policies conform to the purposes of the IDEA.
 - b. Identify in writing to local educational agencies and the Secretary any rule, regulation, or policy as a state-imposed requirement that is not required by the IDEA and its regulations.
 - c. Minimize the number of rules, regulations and policies to which the local educational agencies and schools located in the state are subject.
2. State rules, regulations, and policies must support and facilitate local educational agency and school-level system improvement designed to enable children with disabilities to meet the challenging state student academic achievement standards.

G. Paperwork Reduction – Sec. 609.

1. Establishes a pilot program to provide an opportunity for states to identify ways to reduce paperwork burdens and other administrative duties that are directly associated with the requirements of the IDEA in order to increase the time and resources available for instruction and other activities aimed at improving educational and functional results for children with disabilities.
2. The U.S. Secretary of Education is authorized to grant waivers of statutory or regulatory requirements for a period of up to 4 years with respect to not more than 15 states based on proposals submitted by states to reduce excessive paperwork and noninstructional time burdens that do not assist in improving educational and functional results for children with disabilities.
3. However, the Secretary may not waive any statutory or regulatory requirements relating to applicable civil rights requirements.
4. Any state desiring to participate in the program must submit a proposal to the Secretary which includes a list of any statutory or regulatory requirements that the state desires the Secretary to waive, in whole or in part; and a list of any state requirements that the state proposes to waive or change, in whole or in part, in order to carry out a waiver granted by the Secretary.
5. The Secretary must terminate the waiver if the state needs assistance in meeting its obligations under the IDEA and the waiver contributed to or caused the need for assistance; the state needs intervention; or the state failed to appropriately administer the waiver.

H. Child Find – Sec. 612(a)(3).

A state's child find efforts must include children with disabilities who are homeless children or are wards of the state.

I. Children in Private Schools – Sec. 612(a)(10).

1. To the extent consistent with the number and location of children with disabilities in the state who are enrolled by their parents in private elementary and secondary schools in the school district served by a local educational agency, provision must be made for the participation of those

children in the program assisted or carried out under the IDEA by providing for such children special education and related services.

- a. Proportionate amount of federal funding made available under IDEA must be expended for the provision of services to parentally placed private school children.
 - b. In calculating the proportionate amount of federal funding, the school district, after timely and meaningful consultation with representatives of private schools, 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 school district.
 - c. Services to parentally placed private school children may be provided on the premises of the private (including religious) school to the extent consistent with law.
2. The requirements relating to child find shall apply with respect to children with disabilities in the state who are enrolled in private (including religious) elementary and secondary schools.
 3. The child find process must be designed to ensure the equitable participation of parentally placed private school children with disabilities and an accurate count of such children.
 4. In carrying out this requirement, the local educational agency must undertake activities similar to those activities undertaken for the agency's public school children.
 5. The local educational agency may not consider the cost in carrying out this requirement in determining whether it has met its obligations.
 6. The child find process must be completed in a time period comparable to that for other students attending public schools in the local educational agency.
 7. To ensure timely and meaningful consultation, a local educational agency is required to consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during design and development of special education and related services for the children, including:

- a. 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;
 - b. The determination of the proportionate amount of federal funds available to serve parentally placed private school children with disabilities and how the amount was calculated;
 - c. The consultation process among the local educational agency, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how such 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;
 - d. How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and
 - e. How, if the local educational agency 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 local educational agency shall provide to the private school officials a written explanation of the reasons why the local educational agency chose not to provide services directly or through a contract.
8. When timely and meaningful consultation has occurred, the local educational agency is required to obtain a written affirmation signed by the representatives of participating private schools, and if such representatives do not provide an affirmation within a reasonable period of time, the local educational agency must forward the documentation of the consultation process to the state educational agency.
 9. A private school official has the right to submit a complaint to the state educational agency that the local educational agency did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

10. If the private school official is dissatisfied with the decision of the state educational agency, the official may submit a complaint to the U.S. Secretary of Education by providing the basis of the noncompliance and the state educational agency shall forward the appropriate documentation to the Secretary.
11. The provision of services to students parentally placed in private schools 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, and such services must be secular, neutral, and non-ideological.

J. Reimbursement for Private School Placement – Sec. 612(a)(10)(C).

Modifies the notice requirements to provide that the cost of reimbursement shall not be reduced or denied for failure of the parents to provide the required notice if compliance would likely result in physical harm to the child; or if a court or hearing officer, in its discretion, determines that the failure to provide the notice was due to the parent being illiterate or unable to write in English, or compliance would likely result in serious emotional harm to the child.

K. Personnel Qualifications – Sec. 612(a)(14).

1. The state educational agency must establish and maintain qualifications to ensure that personnel necessary to carry out the IDEA are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.
2. The required qualifications must include qualifications for related services personnel and paraprofessionals that are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements and ensure that related services personnel who deliver services in their discipline or profession meet the necessary requirements and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.
3. The qualifications must also ensure that each person employed as a special education teacher in the state who teaches elementary, middle, or secondary school is highly qualified by the deadline established by the NCLB Act.

4. The state is also required to adopt a policy that includes a requirement that local educational agencies in the state take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities.
5. Nothing in these requirements shall be construed to create a right of action on behalf of an individual student for the failure of a particular state educational agency or local educational agency staff person to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the state educational agency.

L. Performance Goals and Indicators – Sec. 612(a)(15).

The state must establish goals for the performance of children with disabilities that are the same as the state’s definition of adequate yearly progress, including the state’s objectives for progress by children with disabilities, under the NCLB Act, and address graduation rates and drop-out rates, as well as such other factors as the state may determine.

M. Participation in Assessments – Sec. 612(a)(16).

1. All children with disabilities must be included in all general state and district-wide assessment programs, including assessments required by the NCLB Act, with appropriate accommodations and alternate assessments where necessary as indicated in their respective IEPs.
2. The state (or the district in the case of a districtwide assessment), must develop guidelines for the provision of appropriate accommodations.
3. The state (or the district in the case of a districtwide assessment), must develop and implement guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments with accommodations as indicated in their respective IEPs.
4. The guidelines must provide for alternate assessments that are aligned with the state’s challenging academic content standards and challenging student academic achievement standards and if the state has adopted alternate academic achievement standards permitted by the NCLB Act, measure the achievement of children with disabilities against those standards.

5. The state educational agency (or the district in the case of a districtwide assessment), must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the number of children with disabilities participating in regular assessments; the number of those children who were provided accommodations in order to participate in the assessments; the number of children participating in alternate assessments; and the performance of children with disabilities on regular assessments and on alternate assessments.

See, *Ohio State-Wide Testing Program Rules Book* published by the Ohio Department of Education.

N. Overidentification and Disproportionality – Sec. 612(a)(24).

The state must have in effect policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

O. Prohibition on Mandatory Medication – Sec. 612(a)(25).

1. The state educational agency must prohibit state and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation, or receiving services.
2. However, this prohibition shall not be construed to preclude teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance or behavior in the classroom or school, or regarding the need for evaluation for special education or related services.

P. Evaluations – Sec. 614(a)(1).

1. Either a parent of a child, a state educational agency, other state agency, or local educational agency, may initiate a request for initial evaluation to determine if the child is a child with a disability.
2. The initial evaluation shall consist of procedures to determine whether a child is a child with a disability within 60 days of receiving parental consent for the evaluation, or if the state establishes a timeframe within which the evaluation must be conducted within that timeframe.

3. The relevant timeframe shall not apply to a local educational agency if a child enrolls in a school after the timeframe has begun and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability, but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation and the parent and subsequent local educational agency agree to a specific timeframe when the evaluation will be completed, or the parent of a child repeatedly fails or refuses to produce the child for evaluation.

Q. Parental Consent -- Sec. 614(a)(1)(D)

1. The agency proposing to conduct an initial evaluation must obtain informed consent from the parent before conducting the evaluation.
2. An agency responsible for making a free appropriate public education available to a child with a disability shall seek to obtain informed consent from the parent before providing special education and related services to the child.
3. If the parent of a child does not provide consent for an initial evaluation, or the parent fails to respond to a request to provide the consent, the local educational agency may pursue the initial evaluation by utilizing the dispute resolution procedures.
4. If the parent of a child refuses to consent to services, the local educational agency shall not provide special education and related services to the child by utilizing the dispute resolution procedures.
5. If the parent of a child refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide such consent, the local educational agency shall not be considered to be in violation of the requirement to make a free appropriate public education available to the child or for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and a local educational agency is not required to convene an IEP meeting or develop an IEP for the child.
6. If a child is a ward of the state and not residing with his/her parent, the agency must make a reasonable effort to obtain the informed consent from the parent of the child (as defined in Section 602) for an initial evaluation.

7. However, the agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation if:
 - a. Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent;
 - b. The rights of the parents of a child have been terminated in accordance with state law; or
 - c. The rights of a parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
8. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services.

R. Reevaluations – Sec. 614(a)(2).

1. A local educational agency must ensure that a reevaluation of each child with a disability is conducted.
 - a. If the local educational agency determines that the educational or related services needs, including improved academic achievement and functional performance of the child warrants a reevaluation; or
 - b. If the child’s parents or teacher requests a reevaluation.
2. A reevaluation shall occur not more frequently than once a year, unless the parent and the local educational agency agree otherwise and at least once every 3 years, unless the parent and the local educational agency agree that a reevaluation is unnecessary.

S. Evaluation Procedures – Sec. 614(b)(3).

1. Each local educational agency must ensure that assessments and other evaluation materials are provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to do so, and are used for the purposes for which the assessments or measures are valid and reliable.

2. Assessments of children with disabilities who transfer from one school district to another school district in the same academic year are coordinated with the child's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.
- T. Determination of Eligibility and Educational Need – Sec. 614(b)(4).
1. The determination of whether the child is a child with a disability and the educational needs of the child must be made by a team of qualified professionals and the parent of the child.
 2. A copy of the evaluation report and documentation of eligibility must be given to the parent.
 3. In making an eligibility determination, a child should not be determined to be a child with a disability if the determinative factor is lack of appropriate instruction in reading, including in the essential components of reading instruction, lack of instruction in math, or limited English proficiency.
 4. When determining whether a child has a specific learning disability, a local educational agency is not required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability in oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematical comprehension, or mathematical reasoning.
 5. Instead, the local educational agency may use a process that determines if the child responds to scientific, research-based intervention as part of the evaluation procedures.
- U. Additional Requirements for Evaluation and Reevaluations – Sec. 614(c).
1. As part of an initial evaluation and as part of any reevaluation, the IEP team and other qualified professionals shall:
 - a. Review existing evaluation data on the child including evaluations and information provided by the parents, current classroom-based, local, or state assessments, classroom-based observations, and observations by teachers and related service providers.

- b. On the basis of this review, and input from the child's parents, the team must identify what additional data, if any, is needed to determine whether the child is a child with a disability and the educational needs of the child or, in the case of a reevaluation, whether the child continues to have a disability and such educational needs, and present levels of academic achievement and related developmental needs of the child.
- c. If the IEP team and other qualified professionals, as appropriate, determine that no additional data is needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the local educational agency shall notify the child's parents of that determination and the reasons for the determination, and the right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.
- d. An evaluation is not required before the termination of a child's eligibility due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility under state law. However, the local educational agency must provide the child with a summary of his/her academic achievement and functional performance, including recommendations on how to assist the child in meeting his/her post-secondary goals.

V. Individualized Education Programs – Sec. 614(d).

- 1. A child's IEP must contain a statement of the child's present levels of academic achievement and functional performance.
- 2. The Act now generally requires only a statement of measurable annual goals, including academic and functional goals. However, for children with disabilities who take alternate assessments aligned to alternate achievement standards, the IEP must contain a description of benchmarks or short-term objectives.
- 3. The IEP must contain a description of how the child's progress toward meeting the annual goals will be measured and 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.

4. Related services and supplementary aids and services identified in the IEP must be based on peer-reviewed research to the extent practicable.
5. The IEP must contain a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments.

If the IEP team determines that the child shall take an alternate assessment on a particular test or districtwide assessment of student achievement, the IEP must contain a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child.

6. Beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter, the IEP must contain appropriate, 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.
7. Nothing in this section shall be construed to require that additional information be included in a child's IEP beyond what is explicitly required, or to require the IEP team to include information under one component of a child's IEP that is already contained under another component of the IEP.
8. A member of the IEP team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member's area of curriculum or related services is not being modified or discussed in the meeting.
9. A member of the IEP team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or a discussion of the member's area of the curriculum or related services if:
 - a. The parent and the local educational agency consent to the excusal; and

- b. The member submits, in writing, to the parent and the IEP team, input into the development of the IEP prior to the meeting.

A parent's agreement and consent must be in writing.

- 10. In the case of a child who was previously served under Part C (infants and toddlers), an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.
- 11. If a child transfers to another school district within the same state within the same academic year, the receiving school district must provide the child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents, until such time as the district adopts the previously held IEP or develops, adopts, and implements a new IEP consistent with state and federal law.

If a child transfers to a school district from another state within the same academic year, the receiving district shall provide the child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the district conducts an evaluation, if determined to be necessary, and develops a new IEP, if appropriate, that is consistent with state and federal law.

To facilitate the transition of the child, the new school district must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and other records relative to the provision of special education and related services to the child, from the previous school in which the child was enrolled, and the previous school in which the child was enrolled is required to take reasonable steps to promptly respond to the request from the new school.

- 12. In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of the child and the local educational agency may agree not to convene an IEP meeting for the purposes of making the changes, but instead develop a written document to amend or modify the child's current IEP. Changes to the IEP may be made either by the entire IEP team or by amending the IEP rather than redrafting the entire document. However, upon request, a parent shall be provided a revised copy of the IEP with the amendments incorporated.

To the extent possible, local educational agencies shall encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

To the extent possible, when conducting IEP team and placement meetings or carrying out administrative matters (such as scheduling, exchange of witness list, and status conferences), the parent and the local educational agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

13. The act establishes a pilot program under which the U.S. Department of Education can permit up to 15 states to use multi-year IEPs not to exceed 3 years.

W. Surrogate Parent – Sec. 615(b).

1. The procedural safeguards of any state educational agency, state agency, or local educational agency must include procedures for the assignment of a surrogate parent.
2. In the case of a child who is a ward of the state, the surrogate parent may be appointed by the judge overseeing the child's care provided that the surrogate meets the necessary requirements.
3. In the case of an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act, the local educational agency shall appoint a surrogate.
4. The state shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after it is determined by the agency that the child is in need of a surrogate parent.

X. Notification Requirements – Sec. 615(c).

The contents of the prior written notice have been modified. Instead of a description of any other options that the agency considered and the reasons why those options were rejected, the notice must include a description of other options considered by the IEP team and the reason why those options were rejected.

Y. Due Process Complaint Notice – Sec. 615(c)(2).

1. A party may not have a due process hearing until the party or his/her attorney files a due process complaint notice meeting the necessary requirements.
2. The due process complaint notice shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party in writing that the receiving party believes the notice has not met the necessary requirements.

The party providing a hearing officer notification that the complaint is insufficient shall provide the notification within 15 days of receiving the complaint.

Within 5 days of receipt of the notification, the hearing officer shall make a determination on the face of the notice of whether the notification meets all necessary requirements and shall immediately notify the parties in writing of such determination.

3. If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, the local educational agency shall, within 10 days of receiving the complaint, send to the parent a response that shall include:
 - a. An explanation of why the agency proposed or refused to take the action raised in the complaint;
 - b. A description of other options that the IEP team considered and the reason why those options were rejected;
 - c. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
 - d. A description of the factors that are relevant to the agency's proposal or refusal.
4. A response filed by a local educational agency shall not be construed to preclude the local educational agency from asserting that the parent's due process complaint notice was insufficient where appropriate.

5. Except as provided above, the non-complaining party shall, within 10 days of receiving the complaint, send to the complainant a response that specifically addresses the issues raised in the complaint.
6. A party may amend its due process complaint notice only if:
 - a. The other party consents in writing to the amendment and is given the opportunity to resolve the complaint through a meeting; or
 - b. The hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than 5 days before a due process hearing occurs.

The applicable timeline for a due process hearing shall commence at the time the party files an amended notice.

Z. Procedural Safeguards Notice – Sec. 615(d).

1. A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only one time a year, except that a copy also shall be given to the parents:
 - a. Upon initial referral or parental request for evaluation;
 - b. Upon the first occurrence of the filing of a complaint; and
 - c. Upon request by a parent.
2. A local educational agency may place a current copy of the procedural safeguards notice on its Internet website.
3. The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so), and written in an easily understandable manner.
4. The procedural safeguards notice shall contain information relating to:
 - a. Independent educational evaluation;
 - b. Prior written notice;
 - c. Parental consent;

- d. Access to educational records;
- e. The opportunity to present and resolve complaints, including the time period in which to make a complaint, the opportunity for the agency to resolve the complaint, and the availability of mediation;
- f. The child's placement during pendency of due process proceedings;
- g. Procedures for students who are subject to placement in an interim alternative educational setting;
- h. Requirements for unilateral placement by parents of children in private schools at public expense;
- i. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- j. State-level appeals (if applicable in that state);
- k. Civil actions, including the time period in which to file such actions; and
- l. Attorney's fees.

AA. Mediation – Sec. 615(e).

- 1. State and local educational agencies must ensure that procedures are established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint, to resolve such disputes through a mediation process.
- 2. A local or state educational agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet with a disinterested party who is under contract with a parent training and information center or community parent resource center in the state or an appropriate alternative dispute resolution entity.
- 3. If a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth the resolution and that:

- a. States that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil procedure;
- b. Is signed by both the parent and a representative of the agency who has the authority to bind the agency; and
- c. Is enforceable in any state court of competent jurisdiction or in a district court of the United States.

BB. Resolution Session – Sec. 615(f)(B)

1. Prior to the opportunity for an impartial due process hearing, the local educational agency is required to convene a meeting with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the complaint within 15 days of receiving notice of the parents' complaint.
2. The meeting must include a representative of the agency who has decision making authority on behalf of the agency.
3. The meeting may not include an attorney of the local educational agency unless the parent is accompanied by an attorney.
4. At the meeting, the parents of the child will discuss their complaint and the facts that form the basis of the complaint, and the local educational agency must be provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive the meeting or agree to use the mediation process.
5. If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing shall commence.
6. If a resolution is reached to resolve the complaint at the meeting, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the agency and is enforceable in any state court of competent jurisdiction or in a district court of the United States.
7. If the parties execute an agreement, a party may void the agreement within 3 business days of the agreement's execution.

CC. Impartial Hearing Officers – Sec. 615(f)(3).

1. A hearing officer conducting a hearing under the IDEA shall, at a minimum:
 - a. Not be an employee of the state or local educational agency involved in the education or care of the child;
 - b. Not be a person having a personal or professional interest that conflicts with the persons' objectivity in the hearing;
 - c. Possess knowledge of, and the ability to understand, the provisions of the IDEA, federal and state regulations, and legal interpretations by federal and state courts; and
 - d. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice, and possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

DD. Impartial Due Process Hearings – Sec. 615(f)(3).

1. The party requesting a due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice unless the other party agrees otherwise.
2. A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or if the state has an explicit time limitation for requesting such a hearing, in such time as the state allows. However, this timeline shall not apply to a parent if the parent was prevented from requesting the hearing due to:
 - a. Specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint; or
 - b. The local educational agency's withholding of information from the parent that was required to be provided to the parent.
3. A decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.

4. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies:
 - a. Impeded the child's right to a free appropriate public education;
 - b. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the child; or
 - c. Caused a deprivation of educational benefits.
5. However, the hearing officer is not precluded from ordering a local educational agency to comply with procedural requirements.
6. The right of a parent to file a complaint with the state educational agency is not affected.

EE. Civil Actions – Sec. 615(i).

1. A civil action must be brought within 90 days from the date of the decision of the hearing officer, or if the state has an explicit time limitation for bringing such action, in such time as the state law allows.
2. Attorney fees may be awarded to:
 - a. To a prevailing party who is the parent of a child with a disability;
 - b. To a prevailing party who is a state or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
 - c. To a prevailing state or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

FF. Placement in Alternative Educational Setting – Sec. 615(k)(1).

1. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.
2. School personnel may remove a child with a disability who violates a code of student conduct from his/her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities).
3. If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities (except that services must continue) although they may be provided in an interim alternative educational setting.
4. A child with a disability who is removed from his/her current placement (irrespective of whether the behavior is determined to be a manifestation of the child's disability) shall:
 - a. Continue to receive educational services 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
 - b. Receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violations so that they do not recur.

GG. Manifestation Determination – Sec. 615(k)(1)(E).

1. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP team (as determined by the parent and the local educational agency) shall 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:

- a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
 - b. If the conduct in question was the direct result of the local educational agency's failure to implement the IEP.
2. If the local educational agency, the parent, and relevant members of the IEP team determine that either of the above is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.
 3. If the local educational agency, 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 shall:
 - a. Conduct a functional behavioral assessment, and implement a behavioral intervention plan for the child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change of placement;
 - b. In the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and
 - c. Return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan, or unless change in placement was due to weapons, drugs, or the infliction of serious bodily injury.

HH. Removal Under Special Circumstances – Sec. 615(k)(1)(G).

1. School personnel may remove a child 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, in cases where a child:

- a. Carries or possesses a weapon to or at school, on school premises, to or at a school function under the jurisdiction of a state or local educational agency;
- b. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency; or
- c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency.

II. Parent Appeal – Section 615(k)(3).

1. The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request a hearing.
2. A hearing officer shall hear, and make a determination regarding an appeal.
3. In making the determination, the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may:
 - a. Return a child with a disability to the placement from which the child was removed; or
 - b. Order a change in placement of a 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 such child is substantially likely to result in injury to the child or to others.

JJ. Protections for Children Not Yet Eligible for Special Education and Related Services – Sec. 615(k)(5).

1. A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of student conduct may assert any of the protections provided by the IDEA

if the school district had knowledge that the child was a child with a disability prior to the behavior that precipitated the disciplinary action.

2. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:
 - a. The parent of the child has 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;
 - b. The parent of the child has requested an evaluation of the child; or
 - c. The teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency, or to other supervisory personnel of the agency.
3. The local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation or has refused services or the child has been evaluated and it was determined that the child was not a child with a disability.

KK. Monitoring, Technical Assistance, and Enforcement – Sec. 616

1. The Act establishes 3 monitoring priorities that the U.S. Secretary of Education must use in evaluating school district compliance.
 - a. Provision of a free appropriate public education in the least restrictive environment.
 - b. State exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services.
 - c. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

2. Each state is required to develop not later than 1 year after the date of enactment a performance plan that evaluates the state's efforts to implement the requirements and purposes of the IDEA and describes how the state will improve such implementation.
3. Each state's performance plan, must include measurable and rigorous targets for the monitoring priorities.
4. Each year, the state must publicly report school district progress in meeting the targets established in the state performance plan and must report to the U.S. Secretary of Education the state's performance under its plan.
5. The Secretary will annually review the state's performance report to determine whether the state meets all requirements, or needs assistance, intervention, or substantial intervention in implementing those requirements.
6. The Secretary must provide notice and an opportunity for a hearing with respect to determinations that a state needs intervention or needs substantial intervention.
7. The Act establishes specific enforcement measures that the Secretary will take if a state is repeatedly identified as needing assistance, intervention, or substantial intervention.
8. After 2 consecutive years of a needs assistance determination, the Secretary must take at least one of the following actions:
 - a. Advise the state of available sources of technical assistance;
 - b. Direct the state to use state-level funds in a particular area or areas in which the state needs assistance; or
 - c. Identify the state as a high-risk grantee and impose special conditions on the state's receipt of funds.
9. After 3 consecutive years of a needs intervention determination, the Secretary may take any of the actions identified above and must take one or more of the following actions:

- a. Require the state to prepare a corrective action plan or improvement plan if the Secretary determines that the state should be able to correct the problem within one year;
 - b. Require the state to enter into a compliance agreement if the Secretary has reason to believe that the state cannot correct the problem within one year;
 - c. For each year of the determination, withhold not less than 20% and not more than 50% of the state's funds until the Secretary determines the state has sufficiently addressed the areas in which the state needs intervention;
 - d. Seek to recover funds from the state;
 - e. Withhold, either in whole or in part, any further payments to the state; or
 - f. Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.
10. In addition, at any time that the Secretary determines that a state needs substantial intervention in implementing the requirements of the IDEA or that there is substantial failure to comply with any condition of a state or local educational agency's eligibility, the Secretary shall take one or more of the following actions:
- a. Recover funds from the state;
 - b. Withhold, either in whole or in part, any further payments to the state;
 - c. Refer the case to the Office of the Inspector General at the Department of Education; or
 - d. Refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.
11. Prior to withholding any IDEA-related funds, the Secretary must provide reasonable notice and a hearing to show cause why future payments or authority to obligate funds under the IDEA should not be suspended.

III. Tips for Conducting Successful IEP Meetings

- ✓ Make sure parents receive proper notice of the meeting.
- ✓ Prepare for the meeting by anticipating issues and problems and be proactive with solutions.
- ✓ Make sure that all necessary participants are present.
- ✓ Make sure all relevant data is available for review by the team.
- ✓ Check your ego at the door.
- ✓ Leave the lawyers at home.
- ✓ Start the meeting off as positively as possible and with a clean slate.
- ✓ Stay focused and be prepared to put things in proper perspective for the parents.
- ✓ Work toward a win/win solution.
- ✓ Refrain from reacting to emotional outbursts.
- ✓ Act in a professionally responsible manner.
- ✓ Focus on the needs of the child.
- ✓ Avoid referring to specific methodologies or strategies in the IEP.
- ✓ Remember the IEP isn't written in stone.
- ✓ Develop an IEP that is legally sufficient.

IV. The Seven Deadly Special Education Sins

A. Procedural violations.

1. Provide proper written notice prior to proposing or refusing a change in placement or evaluation or making a substantive change in the IEP. The notice must contain a full explanation of parent's procedural safeguards, explain the actions you are proposing or refusing, describe what other

options were considered, describe each test administered, include any other relevant factors, and be written in the parents' native language.

2. Obtain parents' written consent, but do not withhold services identified on the IEP.
 3. Authorize an independent evaluation at no cost to parents, when appropriate.
 4. Annual goals and objectives must be measurable.
 5. Permit parents to review their child's educational records, including test protocols, if personally identifiable.
- B. Denying services based upon cost.
1. Never tell a parent that a service or instructional method is too expensive.
 2. Investigate alternates in terms of services or providers.
- C. Rigidity.
1. Avoid blanket policies or refusals to consider educational alternatives.
 2. Do not deny evaluations based on past practices/prejudices.
- D. Giving in to the parent's demands (when you know it's not FAPE).
1. The child has a right to a free appropriate public education, not the parent.
 2. A district must be prepared to file due process to meet its obligation to provide FAPE to the student when the parent disagrees.
- E. Acting on the basis of principle vs. reason.
1. The federal law does not make accommodation for a school district's budgetary problems.
 2. Philosophical disagreement with any provision of IDEA does not justify unlawful conduct.

- F. Taking the law into your own hands.
 - 1. Unilateral removal of special education students beyond ten (10) days violates IDEA.
 - 2. Utilize appropriate means to discipline special education students. This will usually include a functional behavioral assessment and a behavioral intervention plan approved by the IEP team.
- G. Procrastinating.
 - 1. In the end, the cost of failing to timely provide special education services can include lawsuits from parents and students, once they reach age 18, and compensatory education.
 - 2. Districts should attempt to provide identified services immediately upon completion of IEP.

V. Conclusion