

Changes in the Individuals with Disabilities Education Act (IDEA) - Effective Now.

What Parents Need to Know about the “Improved” IDEA 2004.

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Parents of students with disabilities need to know how the “improved” Individuals with Disabilities Education Act of 2004 (IDEA 2004) changed the legal obligations for both the school system and themselves starting this school year. Congress reauthorized the IDEA and made significant revisions to procedural safeguards, teacher qualifications, IEPs, discipline, and transition services. This article assumes some familiarity with the existing special education law as detailed in the *Parent’s Rights Handbook* routinely distributed by school systems and papering most of your walls. As such, this article will focus on changes to the IDEA which you should be aware of as either a parent or practitioner in special education.

All special needs students are still entitled to a free and appropriate public education (FAPE). Children with brain injury, minimal brain dysfunction, and traumatic brain injury still qualify as a child with a disability, if by reason of their disability, they need special education and related services. Few students with a brain injury or a traumatic brain injury would fail to qualify for special education. However, it has been my experience that many school psychologists overlook student histories which suggest brain injury because of oxygen deprivation at birth, accidents, or physical abuse. Students with brain injuries may be diagnosed as “slow learners” or behavioral problems even though there is an organic basis for the behavior and/or academic delays. Parents or psychologists can ask for a neuropsychological evaluation to determine whether a brain injury is indicated as the reason for the student’s academic problems.

Free Appropriate Public Education Means Equality of Opportunities

IDEA 2004 defines FAPE somewhat differently than its predecessor. FAPE is defined as “equality of opportunities, full partnership, independent living, and economic self-sufficiency for individuals with disabilities.” The goal of special education under IDEA 2004 is to prepare disabled students “to lead productive and independent adult lives to the maximum extent possible.” Manna for parents of brain injured students who wonder what the future holds in adulthood.

Transitional services are now stated in the child’s IEP after his/her 16th birthday rather than the 14th. These transition goals must include: 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 course of study) needed to assist the child in teaching these goals.” This implies proactive assistance from schools which transitions rather than passive reliance in vocational rehabilitation. North Carolina schools have historically been ineffective with transitional services, so IDEA 2004 gives parents more ammunition to press for appropriate transitional services.

IEPs, Evaluations, IEP Meetings

IDEA 2004 made changes to IEPs, evaluations requirements and attendance at IEP meetings. Initial evaluations must be conducted within 60 days of a parent or school referral. The NC special education statute currently allows 90 days from referral to the development of an IEP, but federal law of 60 days would prevail with respect to evaluations. As before, a student must be assessed in all areas of suspected disability. Reevaluations are still not more than once every three years unless the parent or school system requests a more frequent reevaluation. Students with brain injuries would probably need more frequent reevaluations.

IDEA 2004 has moved away from the discrepancy model for identify children with learning disabilities. In the past, a 15 point discrepancy between IQ and achievement was required to be identified as learning disabled. Many brain injured students have processing deficits which historically have not met the discrepancy model but have allowed identification under the alternative discrepancy model. Now the alternative discrepancy model is the norm rather than the exception.

For traditionally reading disable students, the discrepancy model has been useful in identifying them as reading disabled, but no more. A child is not eligible under IDEA 2004 as reading disabled if the child's reading problem was caused by a "lack of appropriate instruction in reading, including in the essential components of reading instruction." To determine whether a child has a specific learning disability under IDEA 2004, the school must use interventions to determine if the child's responds to scientifically research based intervention as part of the evaluation process. This seems to contradict the classification of dyslexia as a reading disability because all dyslexia students respond to a multi-sensory phonetically based instruction. How this will be implemented and explained in the regulations has yet to be determined.

IEPs will continue to have present levels of performance, however, the present level of performance will have to state the child's academic achievement and functional performance rather than just the child's present level of educational performance. Present levels of academic achievement and functional performance must be derived from objective data gleaned from assessments rather than subjective observations or grades. Annual goals are still required, but IDEA 2004 eliminated the requirement of benchmarks and short terms objectives in IEPs except for children who take alternative assessments. IDEA 2004 requires that IEPs indicate "a standard of measurable annual goals, including academic and functional goals." Moreover, IDEA 2004 requires a statement of special education and related services and supplementary services based on peer-reviewed research to be part of the child's IEP.

IEP meeting attendance changed under IDEA 2004 too. A member of the IEP team may be excused from attendance from the IEP meeting if that member's area of curriculum or services will not be discussed or modified and both parent and school agree to their exclusion. A parent can also give written consent for exclusion of an IEP Team member whose curriculum or related service will be discussed or modified if that team member provides the IEP team and parent a written report in advance of the IEP meeting.

IEPs must still reviewed at least annually or more often if necessary. IDEA 2004 does allow amendment or modification of the IEP prior to the annual review if the parent and school official agree in writing to amend the IEP without a formal meeting. The written agreement must describe the changes to the IEP and note that these specific changes were made by agreement without an IEP meeting. This will be helpful for minor revisions or corrections to the IEP, but parents should be careful to limit the changes to only those identified in the written agreement.

Procedural Safeguards

IDEA 2004 made significant changes to the pre-trial procedures and timelines for due process hearings. Many of which are not detailed in the current *Parents Rights Handbook* because the North Carolina Department of Public Instruction (NCDPI) is in the process of revising the *Handbook*. Parents and their attorneys must be cognizant of these changes because they affect the student's rights in litigation.

The statute of limitations for filing a special education case under the IDEA 2004 is 2 years unless the State has its own statute. Currently, the NCDPI contends the North Carolina statute of limitations is still 60 days. Although that is debatable, the courts have not established the 2 year statute as applicable in North Carolina.

It is now mandatory for parents or their advocates to provide the school system with a "Due Process Complaint Notice." The Due Process Complaint Notice must include information about the child, the nature of the problem, facts and proposed resolution. A special education petition form is available at the Office of Administrative Hearings' website at <http://www.oah.state.nc.us/forms.shtml>. Within 10 days, the school system must provide the parents with the Prior Written Notice of their decision if not already provided; and within 15 days, the school system must complain to the Hearing Officer if the Due Process Notice is insufficient. Also within 15 days of receipt of the Due Process Notice, the school district must convene a Resolution Session. The purpose of the Resolution Session is to provide the parties with an opportunity to resolve the complaint before the due process hearing. Parents can recover attorney's fees and costs if they prevail in a due process case, but school districts can also recover its attorney's fees and costs if the parent's case was frivolous, unnecessary, or for improper purpose.

Discipline

School officials can still suspend a disabled child for up to 10 days without a manifestation determination for violations of the code of student conduct even if the behavior was a manifestation of the student's disability. Fortunately IDEA 2004 maintained the requirement of FAPE for disabled students for long-term suspensions and placements in alternative settings. One change, however, allows school systems to place a disabled student in an alternative setting for 45 days if that student causes serious bodily injury to another student. Before a court order was required to place a dangerous disabled student in an alternative setting.

No Child Left Behind, Highly Qualified Teachers, Assessments

IDEA 2004 requires special education teachers by the end of the 2005-06 school year who teach core subjects meet the highly qualified teacher requirements of No Child Left Behind (NCLB). Which means that special education teachers must meet State objective proficiently requirements to teach in the core subject matter. Special education teachers who do not instruct in core subjects do not have to meet highly qualified teacher requirements. NCLB requires that all children including children with disabilities to be proficient in reading, math and science by 2014. Currently reading and math annual proficiency is required for grades 3-8 and annual science assessments are required by 2007.

Private School Disabled Students

Even private school children are entitled to equitable participation in the special education and related services provided to public school children in their local educational agency (LEA). Now, IDEA 2004 requires consultation between public and private schools, including religious schools, about the special education needs of private school students. Private schools can even file complaints against public schools for failing to provide a FAPE.

Conclusion

The impact and effectiveness of IDEA 2004 is unknown. However, parents of brain injured students now have statutory language which requires school districts to focus on postsecondary outcomes and independent living skills. How this will be accomplished is yet to be seen. But knowing your child's rights is the first step towards enforcement.

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