

Ensure Compliance With the Individuals With Disabilities Education Improvement Act of 2004



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Keywords: IEP process; law; legal; policy

On December 3, 2004, President Bush signed the Individuals with Disabilities Education Improvement Act (IDEIA 2004) into law. This law reauthorized and amended the Individuals with Disabilities Education Act (IDEA). On August 3, 2006, the U.S. Department of Education issued the regulations implementing the IDEIA 2004. The changes in the IDEIA 2004 and the 2006 regulations are both sweeping and important. These changes, added to the mandates of the IDEA, require that special education teachers and administrators know and understand their duties and obligations under the law. Readers are cautioned that the Departments of Education in their respective states will still need to change their regulations to align with the IDEA. It is, therefore, important that they watch events in their own states. In this review, we discuss 20 specific ways that teachers and administrators may ensure compliance with the mandates of the IDEIA 2004.

1 **Meet the procedural requirements of the IDEA.** When Congress enacted the Education for All Handicapped Children Act in 1975 (renamed the Individuals with Disabilities Education Act in 1990; see Yell, 2006), it included an elaborate system of procedural safeguards that were designed to ensure that students in special education are provided with a free appropriate public education (FAPE). The major purpose of the procedural safeguards was to allow parents meaningful involvement in the special education process. These procedural rights are enforceable in court. A very important provision of the IDEIA 2004 requires that “a decision by a hearing officer shall be made on substantive grounds based on a determination of whether a child received a free appropriate public education” [IDEIA 2004, 20 U.S.C. § 1415(f)(3)(E)(I)]. The emphasis on the substantive grounds means that when making rulings in due process hearings, hearing

officers will examine the results of a student's special education program, rather than merely looking at schools' adherence to the procedures of the law. This emphasis on tangible benefits is consistent with congressional intent to emphasize that students should receive meaningful educational benefit.

Nonetheless, it is important that special education teachers understand and adhere to the procedural safeguards of the IDEA. In fact, if school personnel violate a student's procedural rights and the violation results in the denial of a FAPE because it (a) impeded the child's right to FAPE, (b) significantly impeded the parents' opportunity to participate in the special education process, or (c) caused a deprivation of educational benefits, a hearing officer or court likely would rule against the offending school district (IDEIA 2004). However, it is important to understand that a procedurally correct individualized education program (IEP) process and document will not meet legal standards if the student's educational program does not result in his or her achieving actual educational benefit (Yell, 2006).

2

Convene legally correct IEP meetings.

Teachers need to ensure that they hold legally correct IEP meetings. That means that (a) the student's parents must be meaningfully involved in the IEP process, (b) the IEP must be developed by a properly constituted IEP team, and (c) the IEP meeting must be held annually. The IEP team must include all the following participants: (a) the parent or parents, (b) a representative of the local educational agency (e.g., principal), (c) a special education teacher, (d) at least one general education teacher, and (e) an individual who can interpret the instructional implications of the assessment results (this can be someone who is already on the IEP team).

The parents or school personnel may also include additional members as long as they have knowledge or special expertise concerning the child. The student should also be invited; this is especially important when transition services are being discussed.

The IDEIA also made several revisions concerning how IEP meetings may be conducted that may significantly reduce the time requirements for school personnel [IDEIA 2004, 20 U.S.C. § 1414 (d)(I) et seq.]. These modifications include the following: (a) attendance and participation of IEP members, (b) modification procedures for an existing IEP, and (c) consolidation of meetings. Members of the IEP can now be excused from an IEP meeting in whole, or in part, if the parent of a student with a disability and school personnel agree that the attendance of the member is not required because

the discussion will not be related to his or her area of curriculum or related services. In addition, an IEP meeting can still be held without a member whose area will be under review, as long as (a) the parent and local education agency (LEA) consent to the excusal and (b) the member submits, in writing to the parent and team, input into the development of the IEP prior to the meeting. Additional flexibility for conducting IEP meetings was provided by permitting alternative means of participation by IEP team members. The parent and LEA may agree to use alternative means of conducting meetings, such as through the use of conference calls and video conferences.

Another IDEIA 2004 revision that school personnel may find beneficial is when it is necessary to modify an existing IEP after the completion of the annual IEP meeting. If the parents and LEA decide to modify an IEP following an annual meeting within that school year, they may agree not to convene an actual meeting. Instead, they can elect to develop a written document to amend the student's current IEP [IDEIA 2004, 20 U.S.C. § 1414 (d)(3)(D)].

3

Develop educationally meaningful IEPs. The purpose of the IEP process is to develop and implement individualized programs designed to meet the unique educational needs of eligible students with disabilities. Furthermore, these special education programs must confer meaningful educational benefit on students. This means that IEP teams must develop educational programs that are (a) based on relevant assessments, (b) contain meaningful and ambitious goals, and (c) include special education services that are based on peer-reviewed research. Moreover, it is important that special education teachers monitor students' progress toward achieving their goals and make programming changes if the student is not progressing.

4

Conduct relevant assessments. The assessment is a crucial component of the IEP process. If the assessment is not done correctly, everything in the IEP that is based on the assessment (i.e., the annual goals and special education services) will be incorrect. There are two major purposes of the assessment. First, an assessment is the means for establishing a student's eligibility for special education. Second, an assessment is the basis for establishing a student's educational program. Too often, the assessment for eligibility purposes takes precedence over the assessment of instructional programming. Thus, the assessment often is made up entirely of standardized norm-referenced achievement tests

that were used to determine eligibility. In such instances, informal assessments, such as curriculum-based assessments, curriculum-based measurement, and functional behavioral assessment, which can provide crucial information to assist the IEP team with instructional planning, may not be included in the process. With the emphasis on accountability in the IDEIA, special educators should emphasize assessments that are directly relevant to instructional planning. It is also important that all areas of need, academic and functional, are assessed during this process.

5 Link assessment results to goals and services. When an assessment of a student detects an area of need, that assessment result must be included in the present levels of academic achievement and functional performance (PLAAFP) section of the IEP (formerly, the present levels of performance). The purpose of the PLAAFP statement is to describe the problems that interfere with the student's education so that (a) annual goals can be developed, (b) special education services can be determined, and (c) a student's progress can be measured [IDEIA 2004, 20 U.S.C. § 1414 (d)(1) (A)(i)(I)]. In effect, the PLAAFPs are the starting points or baselines by which teams develop and measure the success of a student's program of special education. The PLAAFP statements, therefore, must link directly to a special education service or a goal (if the need involves instruction or programming), or both a special education service and a goal.

6 Develop measurable annual goals. The annual goals that are developed for a student and listed in the IEP must be measurable. As the U.S. Department of Education has noted, the annual goals must be written so that the student's "teacher(s) and parents are able to track the child's progress in special education" (U.S. Department of Education, 2006, 34 C.F.R. § Part 300, Appendix C, Question 37). The purpose of the annual goals section of the IEP is to (a) project a student's academic or functional progress over a full academic year and (b) assess the effectiveness of a student's special education service by measuring his or her progress. Goals that can't be measured (e.g., John will improve his reading ability; Stacy will improve her handwriting by 80%; Doug will become responsible for his own behavior) are neither legally correct nor educationally meaningful. To ensure that goals are measurable, three components must be present: (a) the stimulus material or condition (e.g., when

given an oral reading passage or when observed during recess), (b) the target behavior that will be measured (e.g., will read aloud, will interact without hitting), and (c) the criterion for acceptable performance (e.g., 60 words per minute with fewer than two errors, for 10 consecutive days).

7 Determine how you will measure progress toward the goals and develop a schedule for reporting a student's progress to his or her parents. The IDEIA 2004 also requires including statements concerning how a student's progress toward his or her annual goals will be measured. Thus, goals must be measurable. If a student's progress toward a goal cannot be measured, the goals are meaningless because success or failure will be impossible to determine. To accurately measure student progress, data must be collected (e.g., number of words read per minute, on-task rates). Measuring progress by using teacher observation tends to be a euphemism for guessing if the program is working. The IDEIA emphasizes the importance of collecting data to monitor student progress.

In addition, the IEP must include a schedule for providing quarterly reports on the progress a student is making toward the annual goals. For example, a student's teacher could issue quarterly reports or hold parent-teacher conferences. These reports must be issued concurrently with the distribution of report cards.

8 Base services on peer-reviewed research. The IEP must include a statement of special education services, related services, and supplementary aids and services. The purpose of the service statements is to clarify what the school will provide to help a student (a) progress toward his or her annual goals, (b) be involved in and progress in the general education curriculum, and (c) be educated and participate with children with and without disabilities. In the IDEIA 2004, Congress added the requirement that these services must be based on peer-reviewed research [IDEIA 2004, 20 U.S.C. § 1414 (d)(1)(A)(i)(IV)]. This means that the special education services used by teachers should be based on peer-reviewed research whenever possible. Therefore, an intervention shouldn't be used because (a) we have always used it, (b) it sounds good or feels right, or (c) a colleague told us about it. Rather, interventions should be used that empirical research has proven to be successful in teaching functional and academic skills to students with disabilities. (Table 1 lists a number of useful U.S. Department of

TABLE 1
Web Sites Containing Information on Peer-Reviewed Research

Name	URL	Explanation
What Works Clearinghouse	www.whatworks.ed.gov	a clearinghouse established by the USDOE that conducts systematic reviews of scientific evidence concerning what works in education
National Technical Assistance Center on Positive Behavioral Interventions and Supports	www.pbis.org	a center established by the OSEP of the USDOE to give schools information and technical assistance for identifying, adapting, and sustaining effective schoolwide disciplinary practices
National Center on Student Progress Monitoring	www.studentprogress.org	a center established by the OSEP to provide technical assistance and disseminate information on scientifically based student progress monitoring
National Dissemination Center for Children With Disabilities	www.nichcy.org/	a center established by the OSEP to serve as a central source of information on disabilities in infants, toddlers, children, and youth and research-based information on effective educational practices
Promising Practices Network	http://www.promisingpractices.net	PPN, operated by the RAND Corporation, is dedicated to providing quality evidence-based information about what works to improve the lives of children, families, and communities

Note: USDOE = U.S. Department of Education; OSEP = Office of Special Education Programs; PPN = Promising Practices Network.

Education-funded Web sites in which readers can locate effective research-based interventions.)

9 Implement program modifications in the general education classroom. IEP teams must make program modifications and provide supports to school personnel if they are needed to allow students to (a) progress toward their annual goals, (b) be involved in and progress in the general education curriculum, including participation in extracurricular and other nonacademic activities, and (c) be educated and participate with students with and without disabilities. Moreover, these modifications must also be based on peer-reviewed research and be included in student IEPs. These services, and all other services included in the IEP, must be individualized and be written with enough specificity so the extent and amount of services are clear to all participants in the IEP meeting.

10 Provide related services when necessary. Related services are services provided to assist students with disabilities to benefit from their special education programs. There is a variety of related services available for students with disabilities, and the IEP team is responsible for determining what services are needed on an individual basis. Thus, IEP teams need

to be familiar with the many related services that may assist a student with his or her special education. The only services that are prohibited under the related services provision of the IDEIA 2004 are medical treatments provided by a medical doctor and any medical device that is surgically implanted, or the replacement of such device (e.g., cochlear implants).

11 Ensure that students participate in statewide assessments. The IDEIA requires that all students with disabilities participate in district- or state-level assessment programs. The IEP team may determine how students will participate in these assessments; however, they do not decide whether a student will participate. The team could decide that a student will (a) take the assessment on the grade-level standards as is (i.e., with no accommodations), (b) take the assessment on the grade-level standards with accommodations, (c) take an assessment based on modified learning standards, or (d) take an alternate assessment based on alternate learning standards. Issues concerning accommodations are determined by the states; therefore, specific information on a particular state's rules with regard to accommodations will be available from that state's department of special education.

12 Address special factors in the IEP. The IDEA Amendments of 1997 and now IDEIA 2004 require that the IEP team consider special factors when developing a student's IEP. First, the team must consider the strengths of the student, the results of the assessment, and parental input when developing the IEP. If a student has limited English proficiency, then the language needs of the student must be considered. When developing an IEP for students whose behavior impedes their learning or that of others, regardless of the student's category of disability, the team should consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. As a consequence, it is important that students with disabilities who exhibit problem behaviors have behavioral goals and services written into their IEP. In addition, if a student is blind or visually impaired, the IEP must provide for instruction in the use of Braille or explain why this is inappropriate. Similarly, the team must consider the student's communication needs. The IEP team must also consider whether the student needs assistive technology devices or services.

13 Determine a student's placement after developing his or her educational program. A group of knowledgeable persons, usually the IEP team, must determine a student's placement annually. The parents must be involved in this decision. Because the primary mandate of the IDEA is to develop an appropriate program, the IEP should be developed before the placement is determined. The placement must be considered for each student individually and must not be made according to a student's category of disability. The team should also consider the following factors in determining placement: (a) the degree of participation with nondisabled peers, (b) potential harm to the student or the quality of his or her services, and (c) the proximity to his or her neighborhood school. (The law does not require that students be educated in their neighborhood school, but this arrangement is preferred if appropriate.)

14 Place students in the least restrictive environment. When the IEP team decides on a placement, they must consider the continuum of alternative placements (e.g., the regular classroom, self-contained settings, special schools). The primary consideration when determining students' placement is their individual educational needs, however, it is also important to ensure that they are educated with their nondisabled peers to the maximum extent appropriate.

In fact, students should not be removed from the regular classroom unless education in that setting cannot be achieved satisfactorily, even with the use of supplementary aids and services. Do not adopt a policy that all students with disabilities will be placed in a particular setting, whether a self-contained or inclusion setting, because students' placement must be decided according to their individual needs and using the continuum of alternative placements.

15 Monitor student progress on a frequent and continual basis. Special education teachers must continuously collect meaningful data to document students' progress toward their IEP goals and, thus, to document the program's efficacy. This means that data must be collected over the course of instruction so that student progress is continually monitored. The purpose of data collection is to provide objective evidence on student performance that can be used to guide instructional decisions. It is important that team members understand that anecdotal data and other subjective procedures are not appropriate for monitoring progress and should never be the basis of a data collection system. The most appropriate data collection systems are those that can be charted, graphed, and visually inspected to evaluate student progress (Yell, 2006; Yell & Drasgow, 2000). The student's IEP team can ensure an instructional program that confers meaningful educational benefit by collecting useful data and by demonstrating that these data were used to guide sound instructional decisions.

16 Discipline students with disabilities in accordance with the requirements of the IDEIA. The IDEIA 2004 provides greater flexibility for school personnel when disciplining students with disabilities [IDEIA 2004, 20 U.S.C. § 1415 (k)(1)(A)]. School administrators may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension, for not more than 10 school days. School administrators may place students in an IAES for no 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, (b) knowingly possesses or uses illegal drugs, or sells or solicits the sale of illegal drugs, and (c) inflicts serious bodily injury upon another person while at school, on school premises, or at a school function [IDEIA 2004, 20 U.S.C. § 1415 (k)(1)(G)].

Provisions of the IDEIA 2004 also require that the school district is legally obligated to conduct functional behavioral assessments (FBA) and implement a behavioral intervention plan (BIP) only when the behavior is determined to be a manifestation of a student's disability. If the behavior is deemed not to be a manifestation of a student's disability, BIPs are not legally mandated. Specifically, if a student's behavior is determined to be a manifestation of his or her disability, the IEP team must (a) conduct an FBA and (b) develop and implement a BIP plan for the student.

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Conduct appropriate manifestation determinations. The manifestation determination is a central component to many disciplinary decisions because, often, the disciplinary actions

that may be used are dependent on the existence of a relationship between the misconduct and the disability. The manifestation determination is only required by law when a student with disabilities is being considered for long-term suspension or expulsion. In the IDEIA 2004, Congress simplified the manifestation determination by requiring IEP teams to review relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents. Teams must then determine whether the conduct in question was (a) caused by or had a direct and substantial relationship to the child's disability or (b) the direct result of the local educational agency's failure to implement the IEP [IDEIA 2004, 20 U.S.C. § (k)(1)(E) (i)]. If the conduct was a manifestation of the student's disability, the student may not be suspended or expelled. If, however, the conduct was not related to the student's disability, he or she may be disciplined just as a nondisabled student would be disciplined, except that educational services cannot be discontinued.

18

Provide educational services to students who are expelled, suspended (long-term), or being placed in an IAES. When a student

with a disability is removed from his or her current placement because of weapons, drugs, or infliction of injury or because of school code violation, irrespective of whether the behavior is determined to be a manifestation of the student's disability, the IEP team must determine the IAES and determine the services that the student will receive in the IAES. The services provided to the student must enable him or her to (a) participate in the general education curriculum, although in a different setting; (b) progress toward his or her annual goals; and (c) receive the services required in the IEP. In addition, the IEP team should conduct an FBA and

develop behavioral interventions and services designed to address the behavior violation (this requirement also applies to exclusions of more than 10 days cumulative in a school year). The IEP team must determine the specific educational services that will be provided to the student.

19

Provide comparable services to transfer students. In the IDEIA 2004, Congress also

addressed the issue of what to do when students with IEPs transfer to a new school district [IDEIA 2004, 20 U.S.C. § 1414 (d)(2)(c)(i)(I)]. Specifically, in the case of an eligible child with an IEP who transfers school districts within the same academic year within the same state, the district is obligated to provide the child with FAPE, including services comparable to those described in the previous IEP, in consultation with the parents until the district adopts the previous IEP or develops, adopts, and implements a new IEP.

A school district is obligated to provide an IEP for a student who transfers in from another state with a FAPE, including services comparable to those described in the previous IEP. Moreover, the receiving district must consult with a student's parents in such situations where these services must be provided. The school district may conduct an evaluation of the student, if determined to be necessary, and develop a new IEP, if appropriate.

20

Do not make services contingent on students taking medication. The IDEIA prohibits state

educational agencies (SEA) and school district personnel from requiring a student with a disability or suspected of having a disability to obtain a prescription for a medication covered by the Controlled Substance Act (1970) as a condition for either (a) attending school, (b) receiving an evaluation, or (c) receiving any type of special education or related services [IDEIA 2004, 20 U.S.C. § 1412(a)(25)]. This provision does not prevent schools or their personnel from dispensing medications or consulting with parents concerning the efficacy of medications that their child is taking with respect to his or her academic, functional, or behavioral performance in the classroom or school.

Summary

The IDEIA continues the evolution of the law from an emphasis on access in 1975 (i.e., the Education for All Handicapped Children Act) to an emphasis on quality programming and accountability. In the IDEIA, Congress stressed the importance of providing and

documenting meaningful educational benefit in special education programs for students with disabilities. It is possible that (a) schools and IEP teams are now going to be held to a higher standard in providing a FAPE, and (b) they must be prepared to meet this challenge.

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References

- Controlled Substance Act, 21 U.S.C. § 801 et seq. (1970).
- Individuals with Disabilities Education Act, 20 U.S.C. § 1401 et seq. (2004).
- Individuals with Disabilities Education Improvement Act, H.R. 1350, 108th Cong. (2004).
- U.S. Department of Education. (2006, August 3). *Individuals with Disabilities Education Act regulations*. Retrieved August 3, 2006, from <http://www.ed.gov/policy/speced/guid/idea/idea2004.html>
- Yell, M. L. (2006). *The law and special education* (2nd ed.). Upper Saddle River, NJ: Pearson/Merrill Education.
- Yell, M. L., & Drasgow, E. (2000). Litigating a free appropriate public education: The Lovaas cases. *Journal of Special Education, 33*, 206-215.