

IDEA 2004

SEACOM

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What is IDEA 2004?

- IDEA is the federal special education statute
- Originally enacted in 1975 as the Education for All Handicapped Children Act
- Congress revisits the statute periodically. Name changed to Individuals with Disabilities Education Act (IDEA) during 1990 amendment; most recent amendment before this one occurred in 1997.

IDEA 2004

- Individuals with Disabilities Education Improvement Act of 2004 (Pub. L. 108-446, 118 Stat. 2647) was enacted on November 19, 2004. The President signed the bill into law on December 3, 2004.
- Takes effect on July 1, 2005, with few exceptions (e.g., provisions re “highly qualified teachers” took effect at enactment)
- Result of a three-year process

IDEA distinguished from other sources of special education law

- Federal special education regulations (34 C.F.R. Part 300): current version promulgated pursuant to IDEA '97; revision in process
- State special education statute, Mass. Gen. Laws ch. 71B (“Chapter 766”)
- State special education regulations, 603 CMR 28.00 (revision proposed, then withdrawn)

State law in relation to IDEA

- A state that accepts federal funding for special education must comply with IDEA
- Thus, state special education law and regulations cannot conflict with IDEA
- IDEA has been interpreted by the U.S. Supreme Court as providing a federal minimum standard or “basic floor,” which the states are free to exceed. A state can grant more extensive rights (substantive and/or procedural) if it chooses. Under IDEA 2004, state must identify such rights in writing to LEAs.

Overall framework of IDEA remains same

- Requirement that the states ensure provision of free appropriate public education (FAPE) in least restrictive environment (LRE)
- Special education process includes evaluation/re-evaluation, determination of eligibility, development of IEP and provision of services
- Procedural protections, up to and including right to due process hearing

IDEA is still not fully funded

- In 1975, Congress promised to reach full funding (i.e., 40% of cost of special education) by 1981.
- Has never happened. In 2004, level was less than 19%.
- IDEA 2004 (Sec. 611(i) authorizes an increase each year, 2005-2011 (“glide path”), but not mandatory.

Evaluations

- Now specifies who can refer (parent, state agency, LEA; Mass. regulation is broader)
- Timeline added: within 60 (calendar) days of receiving parental consent, or within time established by the state
- Can state's timeline be longer than 60 days?
- Massachusetts: 30 school working days would usually be shorter

Evaluations, cont'd

- When child changes districts during the evaluation period, the deadline does not apply to the new district, as long as new LEA is making sufficient progress to ensure prompt completion, and parents and new LEA agree to a specific date for completion.
- Deadline also does not apply if parents repeatedly fail or refuse to produce child for evaluation.

Evaluations, cont'd

- Screening “by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation” not considered to be an evaluation for special education and related services.

Eligibility Determination

- Definition of “child with a disability” remains the same
- Provisions added re specific learning disability: first, in determining eligibility, LEA “**shall not be required** to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability” in reading, math, etc. (Sec. 614(b)(6)(A)). (emphasis supplied)

Eligibility, cont'd

- Second, re specific learning disability: to determine eligibility, LEA “may use a process that determines if the child responds to **scientific, research-based intervention as a part of the evaluation procedures**” (Sec. 614(b)(6)(B)). (emphasis supplied)
- Part of an overall increased emphasis on scientifically-based instructional practices (see, e.g., Secs. 601(c)(5)(E),(F); 614(d)(1)(A)(i)(IV)).

General prohibition on requiring medication

- States to prohibit LEAs from requiring a child to obtain a prescription for a controlled substance “as a condition of attending school, receiving an evaluation . . . , or receiving services under this title.” (Sec. 612(a)(25)(A))
- Addresses abuses that had occurred, particularly re children with ADHD.

IEP Meetings

- Team meetings: LEA to encourage consolidation with re-evaluation meetings whenever possible (Sec. 614(3)(E)).
- Parents and LEA may agree that meetings can be held by “alternative means, such as video conferences and conference calls” (Sec. 614(f)) (also applies to “resolution session” and mediation under Sec. 615).

Members of IEP Team

- IEP Team members: same as under current law, but attendance can be excused (Sec. 614(d)(1)(C):
 - If the individual's area is not being modified or discussed, and parents and LEA agree in writing that the individual is excused
 - If the individual's area is being modified or discussed, but the individual submits written input to parents and LEA prior to meeting, and parents and LEA agree in writing to excuse.

IEP

- Annual goals still required, but benchmarks and short-term objectives can be eliminated, except for children who take alternate assessments (Sec. 614(d)(1)(A)(i)).
- If child takes alternate assessment, need to explain why, and explain why the alternate tool selected is appropriate.
- Emphasis on “academic achievement and functional performance” (instead of “educational”).

IEP, cont'd

- Special education, related services, and supplementary aids and services are to be “based on peer-reviewed research to the extent practicable”(Sec. 614(d)(1)(A)(i)(IV)).
- Start to focus on transition at age 16, rather than 14.

Duration of IEP

- Pilot project allows up to 15 states (Mass. isn't one) to offer the option of “a comprehensive multi-year IEP, not to exceed 3 years, that is designed to coincide with the natural transition points for the child” (Sec. 614(d)(5)(A)(i)).
- Multi-year IEP must be optional for parents.
- Multi-year IEP must include annual goals and a process for review and revision.

Multi-year IEPs, cont'd

- Process for review must include:
 - Review by the Team at natural transition points
 - In other years, an annual review, with a requirement to amend IEP as appropriate
 - If Team on review determines that the child isn't making sufficient progress, Team must perform a more thorough review within 30 days
 - If parent requests, Team must conduct a review “rather than or subsequent to” annual review.

Amendment of IEP

- Changes to the IEP may still be made by the entire Team
- Or, Parents and LEA may agree not to convene a meeting for the purpose of making changes, “and instead may develop a written document to amend or modify the child’s IEP” (Sec. 614(d)(3)(D)).
- LEA need not redraft entire IEP unless parent requests.

Delivery of services

- If parent refuses or fails to consent to provision of services, LEA shall not provide same, and shall not utilize the procedures in Section 615 (mediation, hearing) in order to provide.
- But in that circumstance, LEA shall not be considered to be in violation of FAPE requirement, nor shall it be required to convene an IEP meeting or develop an IEP.

Re-evaluation

- Eliminates absolute 3-year rule.
- Re-evaluate (a) if LEA determines that the child's needs, "including improved academic achievement and functional performance," warrant, or (b) if parent or teacher requests (Sec. 614(a)(2)).
- Subject to provisions regarding frequency.

Re-evaluation, cont'd

- Evaluate at least once every 3 years, unless parent and LEA agree it's unnecessary.
- Not more frequently than once per year, unless parent and LEA agree otherwise.
- Must re-evaluate before determining that a child is no longer eligible (Sec. 614(c)(5)).
 - Exception: child is aging out or graduating (in which case, summary and recommendations must be prepared).

Children who change districts

- Within state, in same academic year, with IEP: new LEA to provide “comparable” services until LEA adopts old IEP or develops and implements new one (Sec. 614(d)(2)(C)(i)(I)).
- Into state, in same academic year, with IEP: same, except that new LEA may conduct evaluation (Sec. 614(d)(2)(C)(i)(II)).

Young children

- States are permitted to develop a policy that would permit parents of children who have received Early Intervention, and who are eligible for special education, to continue in EI from third birthday until eligible to enter kindergarten (Secs. 611(e)(7), 613(f), 635(c)).
- Such children are not assured of FAPE.
- Parents must have right to elect either EI or special education.

Private school students

- Child find requirement
- Proportionate amount of federal funds to be expended on provision of services
- May include direct services
- Requirement that the LEA, private school representatives, and parents of private school students consult to determine \$ amount, meaningful participation, and apportionment if funds insufficient

Regular education students

- LEA may devote up to 15% of IDEA funds to supportive services for students who have not yet been identified as eligible for special education.

Standards for related services personnel and paraprofessionals

- Must be consistent with state certification or licensure requirements in the individual's professional discipline
- Certification or licensure requirements must not have been waived on emergency or temporary basis
- Paraprofessionals and assistants, appropriately trained and supervised, must be allowed to assist in provision of special education and related services.

Rights brochure

- Written notice of rights less frequent (only once per year, except for initial referral, evaluation at parents' request, or filing of due process complaint)

PROCEDURAL SAFEGUARDS

Section 615

- 2-year statute of limitations for filing of due process complaint (hearing request)
- Complaint must be filed “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 within such time as state law allows if state law has an explicit time limitation for requesting hearings

Massachusetts currently has no explicit applicable limitations period

- Courts and hearing officers have “borrowed” from other statutes of limitations; have used 3-year limitations period
- New statute of limitations takes effect on July 1, 2005, for IDEA claims
- Related claims under other state or federal laws may still have different limitations periods

Exceptions to two-year IDEA statute of limitations

- IDEA sets forth two exceptions to the two-year statute of limitations for IDEA claims:
- Specific misrepresentations by the school district that it had resolved the problem forming the basis of the complaint
- The school district withheld information from the parent that was required to be disclosed

DUE PROCESS COMPLAINT NOTICE

- The notice (hearing request) shall be considered sufficient unless the receiving party notifies the hearing officer and other party in writing within 15 days of receipt that the receiving party believes it to be insufficient.
- Within 10 days of receiving such notification, the hearing officer shall determine the sufficiency and issue a written ruling.

Obligation to Respond

*The School District's Obligation, when
Parents File Hearing Request:*

- District is only obligated to respond if the district has not sent a prior written notice to the parent regarding the subject matter contained in the complaint.

- If the school district has not, it must respond to the complaint with:
- An explanation of why the agency proposed or refused to take the action raised in the complaint;
- Description of other options considered by the team and why rejected;
- Description of each evaluation, assessment, etc. used as the basis for action or refusal to act; and
- A description of the factors that are relevant to the district's proposal or refusal.

*The Parents' Obligation to Respond, when
School District Files Hearing Request:*

- Within 10 days of receiving the complaint, the non-complaining party shall respond specifically addressing the issues raised in the complaint.

AMENDED COMPLAINTS

Allowed to Amend, if:

- Other party consents in writing and is given the opportunity to resolve the complaint through a “Resolution Session” or,
- If the Hearing Officer allows the amendment. Note that the Hearing Officer cannot allow an amendment brought within 5 days of the hearing.

MANDATORY RESOLUTION SESSION

Within 15 days of receiving the complaint and prior to the hearing, the school district shall convene a meeting with the parents, and relevant member(s) of the team, including:

- School district decision maker
- The school district's attorney only if the parents have an attorney present
- The opportunity to discuss and resolve the complaint

- The Mandatory Resolution Session can only be waived if both the school district and parents agree in writing or if both agree to use the mediation process

Written Settlement Agreement – If the parties resolve their dispute in the Resolution Session, the parties shall

- Execute a written agreement signed by both parties
- That is enforceable in any state or federal court
- May be voided within 3 business days of its execution

BASIS OF HEARING OFFICER'S DECISION

In matters alleging a “**Procedural Violation,**” a hearing officer may find a denial FAPE based on procedural violations only if those violations:

- Impeded the child’s right to FAPE; or
- Significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of FAPE; or
- Caused a deprivation of educational benefits.

RIGHT TO APPEAL

- After the issuance of the hearing officer's decision, a party may appeal to court within 90 days of the decision, unless the State has a different timeline.
- M.G.L. c. 71B doesn't specify a timeline, but M.G.L. c. 30A, Sec. 14 contains a general requirement that a complaint for judicial review of an agency's decision be filed within 30 days of receipt of the final decision.

ATTORNEYS' FEES

Under IDEA 2004, a prevailing school district may recover attorneys' fees from a parent's attorney who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation or who continued to litigate after the litigation clearly became frivolous, unreasonable or without foundation.

A school district may also recover attorneys' fees from either the parent or the parents' attorney if the 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."

DISCIPLINE

- “Stay put” right eliminated for alleged violations of school code of conduct that may result in removal from current placement for more than 10 days (previously, eliminated only for drugs, weapons, or hearing officer determination by “substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or others”)
- School personnel may unilaterally remove a child to interim alternative educational setting (“IAES”) for up to 45 school (not calendar) days, not only for drugs and weapons but now also for “inflicting serious bodily injury.”

Manifestation Determination

- Burden has now been shifted to the parents to show that the child's behavior was caused by or had a direct and substantial relationship to his or her disability (previously, burden was on district to show that the behavior was not a manifestation) determination by the school district.
- Offenses for which a child may be removed to IAES: without regard to manifestation.

Deemed knowledge

In situations where the child has not been found eligible for special education, but the parents assert that the behavior was a manifestation of his/her disability:

- The district will not be deemed to have knowledge of that disability if parent has not allowed an evaluation of the child, or has refused services, or if the child was evaluated and found ineligible

Other provisions

- Provision added that school personnel in the disciplinary context “may consider any unique circumstances on a case-by-case basis” when determining whether to order change in placement
- Functional behavioral assessments and behavioral intervention plans still required
- Child in alternative placement must still receive FAPE.