

The Special Education Process- FAQs

What does the term , "Free Appropriate Public Education or FAPE, " mean?

The law guarantees that each eligible child with a disability will have available a free appropriate public education, often referred to as FAPE. What precisely does that mean? The law defines FAPE in the following way. "Free appropriate public education.--The term 'free appropriate public education' means special education and related services that--

"(A) have been provided at public expense, under public supervision and direction, and without charge;

"(B) meet the standards of the State educational agency;

"(C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

"(D) are provided in conformity with the individualized education program required under section 614(d)." [Section 602(8)]

Looking at each of the words alone can be a useful way of understanding what FAPE is. "Free" is a vital part of the law's requirement, for the education of each child with a disability must be "provided at public expense...and without charge" to the child or the child's parents. The law, in its definition of special education, us December 14, 2007 lations define the meaning of this phrase, as follows: "'At no cost' means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to March 27, 2009r education program." (34 CFR §300.17)

What is an "appropriate" education differs for each child with a disability. Yet each child with a disability is entitled to an education that is "appropriate" for his or her needs. The law requires this and specifies in some detail how the school and parents are plan the education that each child receives so that it is appropriate. For example, evaluations are conducted to identify as closely as possible what the child's individual needs are. These evaluations are expected to inform the decision making process, so that the school and parents can design an education that responds to the child's needs. Together, the school and parents specify what this education will be and put it down in writing in the Individualized Education Program (IEP). The IEP must be reviewed and, as appropriate, revised each year, to ensure that the education being delivered remains appropriate to the child's needs.

"Public" generally refers to our public school systems. Children with disabilities have the right to attend public school just as other children do, regardless of the nature or severity of their disabilities. The public school system must serve students with disabilities, respond to their individual needs, and help them plan for their futures.

"Education" is what the law is all about. IDEA is, among its credits, an education act. It guarantees that a free appropriate public education is available to eligible children with disabilities and that this free appropriate public education consists of "special education and related services...provided in conformity with an IEP" that meets requirements specified within the law and is based upon the child's individual needs [34 CFR §300.8].

FAPE is an exciting and important principle of the law. While in practice FAPE differs for each child, in principle for each child it is the same: a guarantee of access to a free appropriate public education that indeed opens the doors of opportunity and learning.

*Adapted from material published by the National Information Center for Children and Youth with Disabilities

What does the term, "Least Restrictive Environment or LRE, " mean?

The phrase we usually hear is that the IDEA guarantees each child with a disability a "free appropriate education in the least restrictive environment." Thus, least restrictive environment -- better known as LRE -- is one of the key principles of the law. LRE is: "...the presumption that children with disabilities are most appropriately educated with their nondisabled peers and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." [Section 612(a)(5)(A)]

In a November 23, 1994 memorandum to the Chief State School Officers, the U.S. Department of Education offered clarification regarding IDEA's LRE provisions, which state the legislation's "strong preference for educating students with disabilities in regular classes with appropriate aids and supports" (Heumann & Hehir, 1994, p.3). (Under IDE supplementary aids and services.") This memo made it clear that a student's placement in the general education classroom is the first option the IEP Team must consider.

An integral part of deciding whether or not the student will be educated within the general education classroom is an individualized inquiry into the possible March 27, 2009 ensure that the student can be satisfactorily educated in that environment. If the IEP Team determines that the student can be educated satisfactorily in the general education classroom, "that placement is the LRE for that student" (Heumann, 1994, p. 2). However, the IEP Team may determine that the student cannot be educated satisfactorily in the general education classroom, even when supplementary aids and services are provided. An alternative placement must then be considered. Accordingly, schools have been, and still are, required by law to ensure that "a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services" [34 CFR §300.551(a)]. This continuum includes a range of alternative placements such as "instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions" (Committee on Labor and Human Resources, 1997, p. 11). Thus, a student's LRE is determined based upon that child's individual needs. The starting place of all discussion, however, is the law's presumption that the student should be educated in the regular classroom with nondisabled children, with supplementary aids and services provided as necessary to enable the student to succeed in that setting.

REFERENCES

Committee on Labor and Human Resources. (1997, May 9). Report [to accompany S. 717]. Washington, DC: Government Printing Office.

Heumann, J.E. (1994, September 16). Answers to frequently asked questions about the requirements of the Individuals with Disabilities Education Act (IDEA). Washington, DC: U.S. Department of Education. [NICHCY makes the text available on its Web site (address: www.nichcy.org).]

Heumann, J.E., & Hehir, T. (1994, November 23). OSERS memorandum to Chief State School Officers: Questions and answers on the least restrictive environment requirements of the Individuals with Disabilities Education Act. Washington, DC: U.S. Department of Education.

Turnbull, H.R., & Turnbull, A. (1993). Free appropriate public education (4th ed.). Denver, CO: Love. (A fifth edition of this book has just been released.)

*Adapted from material published by the National Information Center for Children and Youth with Disabilities

What is a student's "home school" as referred to in the IEP?

Home School refers to the student's neighborhood school that he/she would attend if the delivery of appropriate services did not require a different location. Only a small fraction of students with disabilities are provided services in locations other than their home school. Our intent should always be to serve a child in the home school, if feasible, and, for children served in other than their home schools, to work toward returning to the home school when it becomes feasible. The child's home school should be kept informed of the progress of each of their students.

How soon must completed IEP documents be filed with the Central Records Office at Hawthorne?

All IEPs and supporting documents must be at the Records Office at Hawthorne School within **10** school days after the IEP meeting date. Failure to meet this deadline will result in a reminder being sent out by the Records Secretary. Chronic non-compliance with this deadline is reported to the Director of Special Education.

What are the different types of IEP Meetings?

An " **Initial Eligibility Meeting** " is held for the main purpose of determining whether or not a child has a handicapping condition or disability **and** is in need of specially designed instruction or related services. This type of meeting follows initial referral and evaluation, but may also be appropriate for the student who is new to the district, has a known history of special education services, but whose records are not available, or whose records are insufficient for continuation of services, i.e., would fail to meet basic audit requirements.

A " **Triennial Review Meeting** " is held at least every three years from the date of the "Initial Eligibility Meeting" or the most recent "Triennial Review Meeting." A "Triennial" can be held sooner than the usual three years if it is in the student's best interest and if all of the requirements of this type of meeting are met. If it has been preceded by an "Annual Review Meeting" or an "Eligibility Review Meeting" it cannot exceed one year of the date of that meeting. The main purpose of a "Triennial" is to comprehensively reevaluate the student's need for continued specially designed instruction and related services. There are new re-evaluation requirements stemming from the 1997 reauthorization of IDEA, including developing a plan of reevaluation in advance, giving prior notification and informing parents of procedural safeguards, as well as obtaining parental permission. March 27, 2009 no later than one year after the last Annual Review Meeting, Eligibility Review Meeting, or Triennial Review Meeting, whichever may be the case to review the student's progress toward IEP goals and objectives as well as progress in the general curriculum.

Must there be "Documentation of Assessment Data" completed at every IEP meeting?

Documentation of Assessment Data is not a component of an Annual IEP review.

Documentation of Assessment Data is required for any Initial Eligibility, Eligibility Review or Triennial Review Meeting. Data used to determine eligibility should be current and cannot be from assessments

When must a classroom observation of a referred student be documented in the IEP?

For a child to be eligible as a student with a Perceptual-Communicative Disability (PCD) a classroom observation must have been made by someone other than the classroom teacher.

The observation, its date and the name of the observer (ordinarily a special education resource teacher) along with a brief summary of March 27, 2009f the IEP. A primary purpose is often is whether observation confirms the stated reason for the referral.

Though not necessarily a required assessment method in other types of IEP Meetings, documenting a current classroom observation in the course of a Triennial or an Eligibility Review in the Educational Assessment section of the IEP is good practice.

How should the question involved in eligibility determination , "Can the child/student receive reasonable educational benefit from general education alone?" be addressed?

Regardless of the expertise of the regular or general educator/s with whom the child may be assigned, the team must consider whether the student needs special education in the relevant area of disability in order to receive "reasonMarch 27, 2009child's progress from grade to grade should not be used as the sole indicator of educational benefit. "Each state shall ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child is advancing from grade to grade." IDEA '97 300.121 (e) (1).

Because of changes in the IDEA there are now two additional "concurrent" questions that are considered along with the above question. They are, "Is the child's/student's performance due to the lack of instruction in reading or math?" and, "For the child/student whose primary language is other than English, is limited English acquisition the primary cause of the child's/student's learning problems?"

An answer of December 14, 2007 inue to provide additional educational supports for the child/student within the general education environment and/or further assess the child's needs. A determination of eligibility for an educational disability should be made only when the child's learning problems can not be directly attributed to a lack of instruction or limited English proficiency. If the child/student is receiving reasonable educational benefit solely from the general education environment, the need for special education services is not indicated.

If the answer determines the child is eligible under ESEA Rules as having an educational disability.

For the purposes of the IEP, who qualifies as the parent?

According to Colorado's definition of parent under the Exceptional Children's Educational Act (ECEA), 1 CCR 301-8

2.07 Parent and Educational Surrogate Parent.

2.07 (1) Parent shall mean biological parent, adoptive parent, guardian or person having legal custody of the child.

2.)& (2) Educational surrogate parent shall mean a person who has training and is assigned to represent the child in all educational decision-making processes pertaining to the identification, evaluation, educational placement of the child and the provision of a free, appropriate public education to the child whenever the parent of a child with a disability is unknown, cannot be located, is unavailable or the child is a ward of the state.

According to IDEA and OSEP clarification (see [Baker, Letter to ,35 IDELR 10](#)) Part C regulations require the lead agency to appoint a surrogate parent for a child when necessary to protect the child's IDEA rights. However, the agency is prohibited from providing services to the child or to any family members. Employees of state agencies are also ineligible to serve. A foster parent may act as a child's "parent" if permitted by state law and provided IDEA requirements are met. Additional requirements include: The foster parent has an ongoing, long-term parental relationship with the child; and, Has no interest that would conflict with the interests of the child. In the alternative, a guardian may serve as a parent, but not if the state itself is the guardian for a ward of the state.

Contact your special education coordinator if a surrogate parent needs to be appointed.

What is considered "proper and timely" notification of parents of IEP meetings?

Notifying parents/guardians two weeks in advance of the date of the meeting is appropriate. A minimum of three contacts should be made. This may initially take the form of a phone call in order to explain the purpose of the meeting and to reach an agreed upon date and time. The prompt mailing of the Notice of Meeting form specifying the purpose, time, location and other information would count as the second contact. A direct phone call to the parent in the days preceding the scheduled meeting would count as the third contact.

All phone contacts in the above procedure should be documented on the Parent Contact form and a copy submitted with other IEP documents.

What procedure is to be followed when a parent/guardian fails to appear for a scheduled IEP meeting and has not requested a delay?

When proper and timely (at least 2 weeks prior) notice has been given to the parent/guardian (with documentation, which must include dates and times of telephone contacts) and they have not requested a change of date or time, the Team should hold the meeting as though the parent were present. A designated team member should arrange a face-to-face meeting with the parent to summarize findings and recommendations. If the parent agrees, then get their signatures at that time. Parent consent is required at the time of initial assessment and re-assessment, but approval for placement in special education is required only upon initial placement. Courtesy and cooperation call for parent signatures

after those times. If a face-to-face meeting is not possible the appropriate documents should be sent by registered mail from the Hawthorne Special Education Records Office to the parent/guardian with directions to sign and return the appropriate documents to the school. If the meeting in question is an Initial Eligibility Meeting, services should not begin until the documents have been approved.

What is to be done in an Initial Eligibility Meeting when a parent/guardian refuses all recommended special education services for an eligible child ?

The parent or guardian would check NO next to the statement, "Consent is given for my child/student to receive special education and related services," found in the Parental Consent section of the IEP. Upon receipt of a copy of Parental Rights and Procedural Safeguards in Special Education, they would also check YES next to the statement, "I have been informed of (in my primary language) and understand my special education rights and procedural safeguards," also found in the Parent Consent section of the IEP.

It is understood that the IEP document would accurately reflect what services are being recommended and why they are thought to be necessary for the child to receive FAPE.

Team members should take their own notes regarding the parent's/guardian's reasons for the refusal.

The parent should be advised that their decision for refusal of all services is reviewed by the proper administrative authorities in the school district and that the district reserves the right to initiate a due process hearing.

The matter should be reported if he/she did not attend the meeting and to the director or area director of special education by their designee if they were not in attendance at the meeting.

When is a "surrogate parent " to be appointed to represent the interests of the child in the IEP process?

Whenever the parent of a child with a disability is unknown, cannot be located, is unavailable or the child is a ward of the state (i.e., is in the custody of the local Department of Social Services) a "surrogate parent" must be appointed by the Office of Special Education. It's important to understand how ECEA and IDEA define the term "parent," however. Please review that information found in the following [question and answer](#).

The most frequent point of confusion arises when a child with a disability (or suspected of a disability and referred for a special education evaluation) is in the custody of the Department of Social Services and "education decision-making rights" have been given to the agency by court order. This clearly pertains to the agency's right to enroll the child in a school, communicate with school staff about the child, etc. However, the "education decision-making" rights given to the agency do not apply when IDEA and special education processes (e.g., referral, consent for evaluation, consent for placement, consent for re-evaluation) are involved. State or local laws cannot supercede federal law.

Keep in mind that sometimes a child is in the custody of the Department of Social Services but the parents retain "education decision-making rights," in which case they would

represent the interests of the their child when IDEA and special education processes are involved.

As applied to reevaluations, what does "review of existing data" mean?

Because of significant changes in IDEA '97 regarding Triennial reevaluations IEP teams place more emphasis on the "review of existing data" than before. Specifically, IDEA states that when faced with reevaluating a student with an IEP the team must first review existing data to determine if there is a need for additional data to answer the following questions: Does the child continue to have a disability? What are the child's present levels of performance? Does the child continue to need special education and related services? Are modifications or additional services needed? and, Is this child's current level of service adequate to meet IEP goals and progress in the general curriculum?

Canter, Hurley and Reed (2000) refer to existing data as including assessment data and other information provided by parents, current classroom-based assessments, and classroom observations by teachers and related services personnel. Prior assessments, including initial assessments, are assumed to be included in "existing evaluation data." the initial (and any subsequent) evaluation and determination of eligibility is important in answering the question, Is this a child who continues to have a disability and to require special education support.? It is recommended that a problem solving approach to planning the reevaluation be used, i.e., define the concerns, review existing data iMarch 27, 2009that are needed to move toward IEP goals, and then identify strategies to gather the information.

Reference:

Canter, And better IDEA for reevaluation. In C Telzrow and M. Tankersley (Eds.) *IDEA Amendments of 1997: Practice guidelines for School -Based Teams* (pp 105- 150). Washington, D.C. : Natinal Association of School Psychologists

In a reevaluation, what if the IEP Team decides, following "review of existing data," that no additional data are needed?

Following discussion and review of existing data , the IEP team may conclude that "no additional data are needed" to determine that the child still has a disability requiring special education. In this event, formal reevaluations would not be required unless requested by the parent. However, information from the parents is required in reviewing data to determine reevaluation needs. Additionally, the parents must be notified of their right to request formal reevaluation. *Teams are expected to document a comprehensive review of existing information to justify the decision when no additional data are needed.*

Example: of documenting in the IEP a comprehensive review of existing information

Legal Name of Child/Student: Johnny Lang Date of Meeting : 4-19-01

DOCUMENTATION OF EVALUATION DATA AND PRESENT LEVEL OF
EDUCATIONAL PERFORMANCE AND NEEDS

EDUCATIONAL (How does this child/student perform within the general curriculum (content standards) and on age appropriate tasks and benchmarks?)

Names/Types of Formal and Informal Names and Titles of Evaluators	Scores/Results	Dates of Evaluations
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<u>Comprehensive Review of Existing Data</u> <u>see below</u> <u>Team: Smith/Jones/Wells</u>	<u>4-5-01</u>	<u>SE</u>
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As an eighth grader with a history of difficulty with reading and writing skills Johnny's previous and most recent IEPs have included goals for improving skills in these areas. His initial evaluation in second grade indicated well below grade level skills in word recognition and spelling as reported by his referring classroom teacher. Testing on the Woodcock-Johnson Tests of Achievement-Revised (WJTA-R) upon initial referral in second grade (3-15-95) and upon reevaluation in fifth grade (3-10-98) obtained well below age and ability expectation scores in these areas. Review of his IEP goals in seventh grade indicated that slow progress was being made toward goals in reading and written language. Relative improvement is also evident in review of his last two NWEA score reports, although skill levels remain deficient relative to content standards for his grade level. Review of his report card grades thus far this year and last year reveals no failing grades in any area. His language arts teacher reviewed her record of his daily grades and weekly test scores which were quite variable, ranging from typically higher daily grades and lower test grades. His Science teacher reported that Johnny is often motivated to effectively use the various accommodations, modifications, and supports when it comes to demands on his reading and spelling skills as outlined in his current IEP.

Johnny's mother was interviewed by phone by SE Team member Smith on 4-6-01. His mother stated that she and his father are pleased with his progress in developing improved reading and spelling skills. She reported that she is particularly pleased to find him reading the newspaper for information about sports and entertainment despite his difficulties. It was explained to her that SE staff had reviewed past and current data needed to determine if Johnny continued to have a disability requiring special education and to determine IEP needs and found that updating formal testing in academic achievement levels was not needed. She agreed with this determination.

Johnny's Triennial Meeting was held on 4-19-01 following a "comprehensive review of existing data" on 4-5-01.