

# IDEA Requirements for Preschoolers with Disabilities

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## IDEA Early Childhood Policy and Practice Guide



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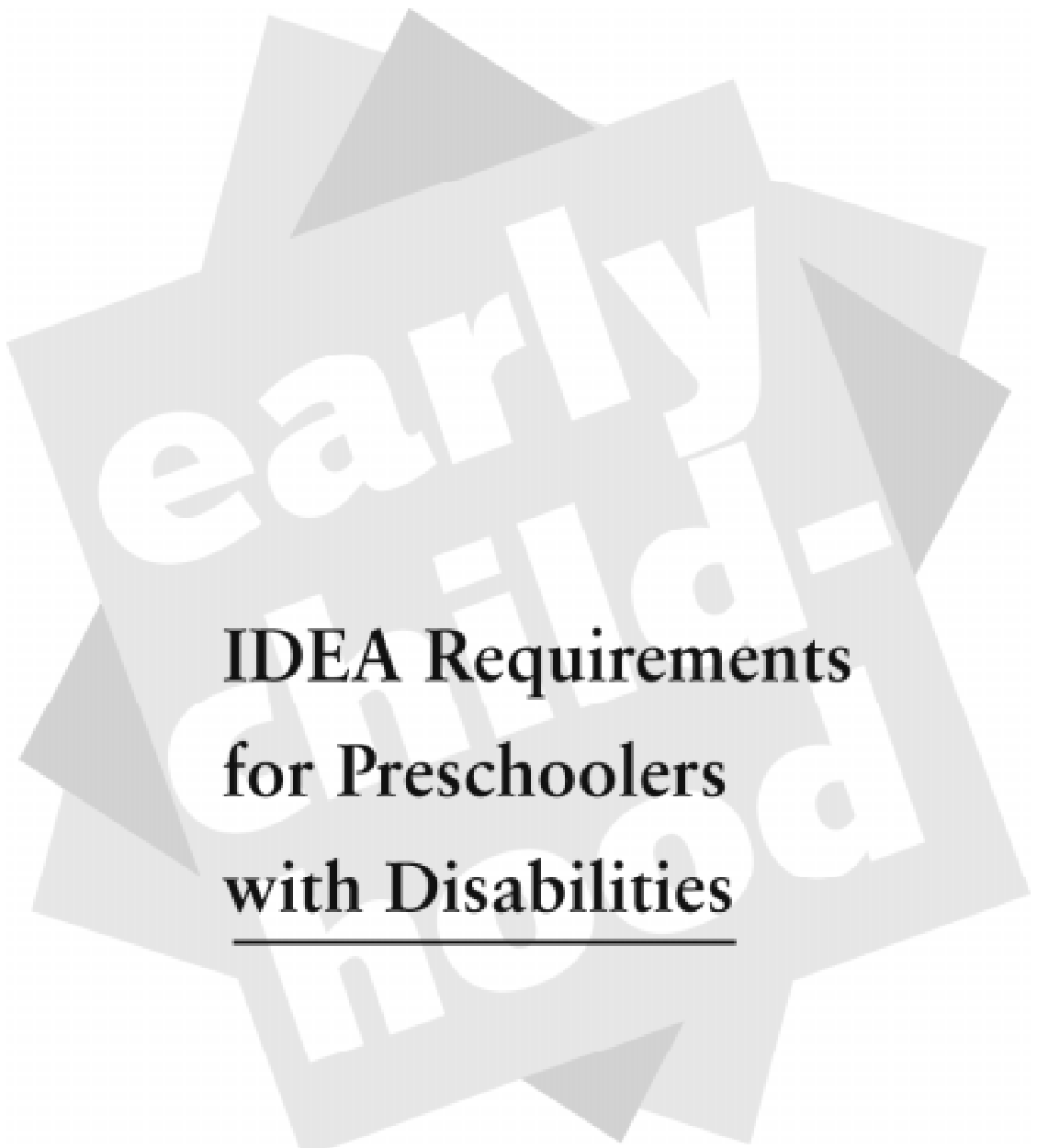
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# **IDEA Requirements for Preschoolers with Disabilities**

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## **IDEA Early Childhood Policy and Practice Guide**

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*of the Division for Early Childhood of The Council for Exceptional Children*



## Acknowledgments

### ASPIIRE

Associations of Service Providers Implementing IDEA Reforms in Education

The Division for Early Childhood of The Council for Exceptional Children is proud to be a primary partner of the ASPIIRE Partnership Project, which involves more than 19 educational and related services associations that are working together to provide needed information, ideas, and technical assistance to implement the Individuals with Disabilities Education Act of 1997 (IDEA '97). The development of this publication was supported by the ASPIIRE Partnership Project, which is funded by the Office of Special Education Programs, U.S. Department of Education. All materials disseminated from this partnership have been reviewed by the Office of Special Education Programs.

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## Division for Early Childhood

*The Division for Early Childhood of The Council for Exceptional Children is a national nonprofit membership organization designed for individuals who work with or on behalf of children with special needs, birth through age eight, and their families. Founded in 1973, DEC is dedicated to promoting policies and practices that support families and enhance the optimal development of children. Children with special needs include those who have disabilities, developmental delays, are gifted/talented, and are at risk of future developmental problems.*

For more information about DEC and DEC resources, contact:

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## Background

The Individuals with Disabilities Education Act (IDEA), previously the Education of the Handicapped Act (EHA), was originally passed by the U.S. Congress in 1975 as Public Law (P.L.) 94-142. Its purpose was to ensure all children and youth with disabilities in the United States access to a free appropriate public education (FAPE).

The legislation was amended in 1986 as P.L. 99-457, and included a new Part H—The Infants and Toddlers with Disabilities program for eligible birth through two year old children with disabilities and their families. It also changed the existing Preschool Incentive Grant program to the Preschool Grants program under Section 619 of Part B for children with disabilities aged three through five. As a result of these federal provisions and significant efforts on the part of professionals, parents, and state and local policy-makers, by 1992 all states were progressing under Part H (now Part C) and all states made FAPE available to all children with disabilities, aged 3 through 5.

In the years that followed, IDEA was amended a number of times with the most significant revisions occurring in 1997 through P.L. 105-17, the IDEA Amendments of 1997. According to the U.S. Department of Education (Federal Register, October 22, 1997, pgs. 55028-55029), this reauthorization, referred to as IDEA '97, was directed at improving the results for children with disabilities by promoting the following improvements to Part B:

- early identification and provision of services;
- Individualized Education Programs (IEPs) that focus on improving results through the general curriculum;
- education with nondisabled children;
- higher expectations for children with disabilities and agency accountability;
- strengthened role of parents and partnerships between parents and schools; and,
- reduced paperwork and other burdens.

## Background (cont'd)

IDEA '97 has four parts:

- **Part A-General Provisions** includes, among other things, purposes of the law and definitions used throughout IDEA;
- **Part B-Assistance for Education of All Children with Disabilities** contains the requirements for providing special education and related services to children with disabilities from 3 through 21 years of age, including rules for evaluation/eligibility, IEPs, Individualized Family Service Plans (IFSP) for preschoolers at state, local and parent discretion and procedural safeguards. Part B also includes Section 619, the Preschool Grants program, that makes funds available to states for special education and related services for children 3 through 5 years of age with disabilities. At a state's discretion, these funds can also be used to provide FAPE to 2-year-olds with disabilities who will turn 3 during the school year;
- **Part C-Infants and Toddlers with Disabilities** includes the requirements for providing services for infants and toddlers with disabilities, birth to age three years and their families, such as evaluation, determination of eligibility, Individualized Family Service Plans (IFSP), service coordination and early intervention services; and,
- **Part D-National Activities to Improve the Education of Children with Disabilities** includes provisions for federal funding to support research, personnel preparation, model demonstration, technical assistance, parent training and information centers and State Program Improvement Grants primarily for training and systems change efforts.

On June 1, 1998, final regulations implementing the administration of the Preschool Grants program were published at 34 CFR Part 301.

On March 12, 1999 final federal regulations for Part B of IDEA were published in the Federal Register. This followed much debate and review of more than 6,000 public comments received by the U.S. Department of Education.

### Related Laws

There are three other major federal laws that impact early childhood services for children with disabilities, aged 3 through 5 years. These three laws are not covered in this guide.

*To obtain a copy of the final Part B regulations, go to the IDEA Partnership's website at [www.idealpractices.org](http://www.idealpractices.org)*

*For a print copy, call toll-free at 1-877-433-7827 or 1-877-576-7734 (TTY/TTD) to request one free copy.*

Two of these laws, the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 and their accompanying regulations provide protections against discrimination of children with disabilities. The third is the Head Start Act that includes responsibilities for children with disabilities enrolled in Head Start and Early Head Start programs. These requirements are found in Head Start Performance Standards which are located at 45 CFR (Code of Federal Regulations) Part 1304 and Part 1308.

**Four ADA Resources:**

*“Including All Children: Children with Disabilities in Early Childhood Programs,” the Division for Early Childhood (DEC) and the National Association for the Education of Young Children (NAEYC) available for a nominal fee from the NAEYC (800-424-2460).*

*“Commonly Asked Questions About Child Care Centers and the Americans with Disabilities Act” found at [www.usdoj.gov/crt/ada/childq&a.htm](http://www.usdoj.gov/crt/ada/childq&a.htm)*

*“All Kids Count: Child Care and the ADA” available for a nominal fee from The ARC (800-433-5255 or 800-855-1155 (TDD)).*

*Videotapes and booklets on the ADA and child care, funded by the Department of Justice, are available from Eastern Washington University (509-623-4246).*

**For information on Section 504 of the Rehabilitation Act of 1973,** refer to regulations at 34 CFR Part 104 and to the Office for Civil Rights in the U.S. Department of Education at 800-421-3481 or 877-521-2172 (TDD).

**For information on ADA,** contact the Disability Rights Section of the Civil Rights Division of the U.S. Department of Justice by calling 800-514-0301 or 800-514-0383 (TDD) or check the ADA Home page at [www.usdoj.gov/crt/ada/adahom1.htm](http://www.usdoj.gov/crt/ada/adahom1.htm)

The two most relevant sets of ADA regulations related to the provision of services to young children are contained at 28 CFR Part 35 and 28 CFR Part 36.

**For information on Head Start,** contact the Head Start Publications Management Center at 202-737-1030 or check their website at [www.hskids-tmssc.org](http://www.hskids-tmssc.org)

## Foreword

This IDEA early childhood policy and practice guide is provided by DEC as one of a series to assist early childhood general educators, early childhood special educators, related service providers, parents, administrators and others in understanding what IDEA now requires for young children with disabilities ages birth through 5 years and their families.

This guide addresses the IDEA provisions under Part B as they relate to children ages 3 through 5 years old and their families, and at a state's discretion, to 2-year-old children with disabilities who will turn 3 during the school year. For these 2-year-old children, who begin receiving a free appropriate public education (FAPE) while they are 2 years old, the Part B rules, not the Part C rules, apply. (Note: Throughout this guide the term "preschooler" is used to include these 2-year-old children. (34 CFR §301.1 and §301.6)

Preschoolers with disabilities receive special education and related services in a variety of school and community sites. The team developing the child's Individualized Education Program (IEP) or the Individualized Family Services Plan (IFSP), determines the appropriate placement based upon the child's needs. Many preschoolers with disabilities receive their special education and related services in community settings including Head Start programs, community preschool classes, and child care centers.

### Regulations

The regulations implementing Part B of IDEA '97 apply to children and youth with disabilities ages 3 through 21. The U.S. Department of Education, Office of Special Education Programs (OSEP) is responsible for enforcing these regulations. In this guide, questions and answers are provided to address the Part B requirements from a preschool perspective. Relevant citations from the Part B regulations are included either in the text or in parenthesis at the end of applicable sections. The Part B regulations are published in volume 34 of the Code of Federal Regulations (34 CFR). Within 34 CFR, specific sections are specified as 34 CFR §300.\_\_; example 34 CFR §300.18.

**Other Guidance**

Non-regulatory guidance or helpful suggestions are included in this document in the left-hand margins in small italics. Appendix A to the Part B regulations (Notice of Interpretation) is referenced in this guide as additional guidance from the U.S. Department of Education to assist in the implementation of the Part B regulations. In addition, several quotes from Attachment 1 (Analysis of Comments and Changes) which also accompanied the final Part B regulations (March 12, 1999 Federal Register) are also provided when applicable and helpful.

Finally, effective practice and resource recommendations from the Division for Early Childhood of The Council for Exceptional Children (DEC of CEC) are included throughout the document. These are cited as “**A Note From DEC**” in bold print.



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## General Information

*Q. Where do I find the IDEA requirements for preschoolers with disabilities?*

- A. The requirements for providing special education and related services to preschoolers with disabilities are contained in the Part B regulations at 34 CFR Part 300. The Part B regulations contain rules for providing services to all children and youth with disabilities ages 3 through age 21.

In most cases, the Part B regulations do not address requirements specifically in preschool terms. Nevertheless, these rules still apply. You will find only a few instances in the Part B regulations that specifically mention preschool.

Each state is required to establish policies and procedures, which at a minimum, are consistent with the Part B regulations, to ensure effective implementation of the state's special education program. Note that some state's policies and procedures are more stringent than the federal requirements. In addition, some states also have specific preschool special education guidelines. In addition, local school districts are required to establish and implement policies and procedures consistent with federal and state requirements.

You may want to contact the state special education office in your state capitol to request a copy of the state special education requirements and any preschool guidelines.

*Note:* The federal regulations, at 34 CFR Part 301 contain requirements regarding the Preschool Grants program (known as "Section 619"). Administrative procedures, including procedures for the allocation, distribution and use of these funds, are contained in Part 301.

Preschool Grants funds are no longer distributed on an actual child count basis. Poverty, census and school enrollment are now considered in the allocation and distribution of funds to the state educational agency and to local educational agencies. The amount of funds available for administration and other state level activities was also changed. The allowable age range for the use of these funds was also expanded. (34 CFR Part 301)

*Q. Who is required to educate preschoolers with disabilities under IDEA?*

- A. The Part B regulations apply to each state that receives funds under Part B of IDEA. All states receive funds under Part B and the Preschool Grants program under Section 619 and therefore must ensure the availability of FAPE to all children with disabilities beginning on the child’s third birthday.

The Part B regulations apply to all public agencies of the state that are involved in the education of children with disabilities.

*Note:* “Public agency” is defined in the Part B regulations to include state educational agencies (SEA), local educational agencies (LEA), educational service agencies (ESA), public charter schools, and any other political subdivisions of the state (such as Departments of Mental Health and Welfare, and state schools for children with disabilities that are responsible for providing education to children with disabilities). Use of this term will vary somewhat, state by state. (34 CFR §300.22)

Each public agency in the state is required to follow the Part B regulations regardless of whether the entity receives Part B funds. In addition, if a public agency places a child with a disability in a private school or facility to provide FAPE, that private entity must follow the Part B regulations. (34 CFR §300.2)

*Note:* To ensure the information in this guide reflects the scope of responsibility in the Part B regulations, the term “school district/public agency” is used throughout this document.

In addition, the reader should note that Head Start programs have responsibilities for children with disabilities enrolled in their programs, consistent with federal Head Start Performance Standards. These can be found at 45 CFR Part 1304 and Part 1308.

## General Information (cont'd)

### *Q. When are preschoolers eligible for services?*

- A. A free appropriate public education (FAPE) must be made available either by the state or by the local school district or public agency to each eligible child no later than the child's third birthday. These services can be provided directly by the district or provided through contracts with other public or private entities.

An Individualized Education Program (IEP) or Individualized Family Services Plan (IFSP) must be developed and implemented by the third birthday. (See page 20 of this guide, "Can preschoolers have IFSPs instead of IEPs?" for conditions regarding using an IFSP for a preschooler.) However, if a child's third birthday occurs during the summer, the child's IEP team determines the date when services under the IEP or IFSP will begin. This cannot be later than the beginning of the next school year (§300.121(c)). See page 29 for additional discussion on extended school year services.

Many of the children who are eligible for preschool special education under Part B transition into preschool from the Infants and Toddlers with Disabilities program under Part C of IDEA. There are transition requirements under both Parts B and C that require a smooth and effective transition between the infant and toddler system and the preschool special education program.

The Part C early intervention system must notify the school district before the child reaches the age of eligibility for preschool services. If the child may be eligible for Part B preschool services, the early intervention system must, with the approval of the family, convene a transition planning conference at least 90 calendar days (and at the discretion of the participants, up to 6 months) before the child is eligible for preschool services. School districts must participate in these conferences. (34 CFR §300.132)

*Q. What are the responsibilities of a private preschool program, e.g., child care and community preschool, etc., in which a child with a disability is placed by a school district in order to receive FAPE?*

- A. If a child with a disability is placed in a private school or other community-based setting by a school district/public agency to receive FAPE, the special education and related services must be in conformance with the IEP or IFSP and must be at no cost to the parents. In addition, the child must be provided special education that meets the state standards and must have access to all of the rights of a child with a disability who is served within the school district. (34 CFR §300.401)

*Q. If a child attending a community preschool, a Head Start program, or child care center is found by a school district to have a disability under Part B, can the child receive special education and related services in that setting or must the child go to a school district site?*

- A. In many communities, if appropriate to the needs of the child, school districts provide special education and related services to preschoolers in community programs such as child care, Head Start, or other preschool settings where their parents have placed them. This is typically done by sending school district staff and service providers to the program to provide direct services to the child and/or consultation to staff and families. Some districts find this option beneficial because the child's and family's typical routines and activities are not disrupted.

Sometimes local school districts contract with community programs to provide the preschooler with special education and related services in that setting. Part B services are provided in accordance with the IEP or IFSP and are used to enhance the developmental opportunities these environments offer. These arrangements provide options for placement in the least restrictive environment (LRE) to school districts,

*(answer continued)*

## General Information (con'td)

particularly for those districts that do not otherwise offer preschool programs to nondisabled children.

After the child is evaluated and determined eligible under Part B, an IEP or IFSP is developed during which the IEP team, including the parent decides the appropriate setting in which to implement the IEP or IFSP.

Any disagreements between the parent and the school district regarding the appropriateness of the program, the least restrictive environment or financial responsibility are subject to the due process procedures under Part B (i.e. the opportunity for a due process hearing or mediation).

*Note:* Head Start programs have responsibilities for children with disabilities enrolled in their programs, consistent with federal Head Start Performance Standards.

It is important to remember that special education is not a place but a system of services and supports for children with disabilities. The IEP team determines where the child receives special education and related services according to the least restrictive environment requirements of Part B.

**A Note From DEC:**

Check the DEC website at [www.dec-sped.org](http://www.dec-sped.org) and select “Position Statements and Policies,” “Position On Inclusion” endorsed by NAEYC.

*The U.S. Secretary of Education provides additional guidance related to least restrictive environment in Attachment 1 (Analysis of Comments), as follows: “The full continuum of alternative placements at 34 CFR §300.551, including integrated placement options, such as community-based settings with typically developing age peers, must be available to preschool children with disabilities.” (p. #12639)*

## Identification, Evaluation and Eligibility

*Q. What are the “child find” requirements for children with disabilities?*

- A. Each state educational agency is required to have child find procedures to ensure that all children with disabilities, from birth through 21 years of age residing in the state, who need special education and related services are located, identified and evaluated. This includes children with disabilities attending private and religious schools and highly mobile children with disabilities (such as migrant and homeless children) regardless of the severity of their disability. (34 CFR §300.125)

*Q. If staff at a child care center or preschool program think a child in their program may need special education, what should they do?*

- A. The state educational agency is responsible for ensuring the location, identification and evaluation of children from birth through 21 years of age in order to determine if the child is eligible for IDEA services. In most states, the responsibility for implementing these child find requirements for children aged three through 21 years rests with the school district in which the child resides. Under Part B, states can develop interagency agreements to address which agency (the state educational agency or the Part C lead agency) will be responsible for child find for children from birth to age 3 years. (34 CFR §300.125)

If staff at a child care or preschool program think a child may need special education, they can contact the local school district. Staff are encouraged to communicate closely with parents so that parents understand the concerns about their child. A referral to the local school district can be made by the child’s parents, by the child’s child care or preschool program, or another individual who believes the child may have a disability.

## Identification, Evaluation and Eligibility (cont'd)

*Q. What evaluation procedures must be followed in order to determine a child's eligibility for services under Part B of IDEA?*

- A. Before providing special education and related services to a child with a disability, each school district/public agency must conduct a full and individual evaluation. This includes at a minimum the following factors:
- Tests and other evaluation materials must be selected and administered so as not to be discriminatory on a racial or cultural basis. These must be provided and administered in the child's native language or other mode of communication unless it is clearly not feasible to do so;
  - Materials and procedures used to assess a child with limited English proficiency must be selected and administered to ensure that they measure the extent to which the child has a disability and needs special education rather than measuring the child's English language skills;
  - A variety of assessment tools and strategies must be used to gather relevant functional and developmental information about the child, including information provided by the parent and information related to enabling the child to participate in appropriate activities. This information is used to assist in determining the child's eligibility and the content of the child's IEP or IFSP;
  - Any standardized tests that are given to a child must have been validated for the specific purpose for which they are used and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests. If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., qualifications of the person administering the test or the method of test administration) must be included in the evaluation report;
  - Tests and other evaluation materials must include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;
  - Tests must be selected and administered to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results must accurately reflect the child's aptitude or achievement level or what-

ever factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure);

- No single procedure can be used as the sole criterion for determining eligibility and an appropriate educational program for the child;
- The child must be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability;
- The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified;
- The school district/public agency must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors; and
- The school district/public agency must use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child. (34 CFR §300.532)

*Q. If a child has already been evaluated prior to referral for special education eligibility, what other evaluations must be completed?*

- A. As part of an initial evaluation, if appropriate, a review of existing evaluation data must be conducted in order to determine if any additional evaluations are needed in order to determine whether the child is eligible under Part B. Current evaluations of the child from other agencies or providers are an excellent source of information for consideration in determining eligibility. The Part B regulations specify which individuals, including the parent, are required to make the decision regarding the need for additional evaluations and how the information is to be used. (34 CFR §300.533)

## Identification, Evaluation and Eligibility (cont'd)

### *Q. How is eligibility determined?*

- A. Upon completing the administration of tests and other evaluation procedures, a group of qualified professionals and the parent of the child determine whether the child is eligible under Part B. The school district/public agency must provide a copy of the evaluation report and the documentation of determination of eligibility to the parent.  
(34 CFR §300.534)

### *Q. Who is eligible for services?*

- A. To be eligible for preschool special education under Part B, a child must meet two criteria:
- First, the child must be identified as having one of the following: autism, deaf-blindness, deafness, emotional disturbance, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, specific learning disability, speech or language impairment, traumatic brain injury, or visual impairment, including blindness.

At state and local discretion, children ages 3 through 9 years may be identified as having a “developmental delay” instead of one of the thirteen categories listed above. The child must be determined to be experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development.

The SEA must set the age range for, and define “developmental delay” before a local district/public agency has the option of using “developmental delay” for any child within the state-defined age range. Local educational agencies may not use “developmental delay” if the SEA has not adopted the term, defined it, and established the eligible age range. If a local educational agency uses the term “developmental delay,” it must conform to both the state’s definition of the term and the age range that has been adopted by the state.

- Second, because of the condition listed in the first criteria, the child must be determined to need special education and related services. (34 CFR §300.7)

It is up to your state and local school district to decide whether to use the category “developmentally delayed” rather than or in addition to the other 13 disability categories. In either case, the child must be “a child with a disability” and also be determined to need special education and related services.

Although IDEA '97 allows “developmentally delayed” to be used for children three through age 9 years, your state educational agency is responsible for determining the state’s age ranges and eligibility criteria from which local school districts would develop their own policy.

**A Note From DEC:**

*Check [www.dec-sped.org](http://www.dec-sped.org) and then select “Position Statements and Policies”, selecting the DEC Position Paper “Developmental Delay As An Eligibility Category.”*

*For additional information on states’ decisions regarding the use of developmental delay as an eligibility criteria, check the website of the National Early Childhood Technical Assistance System (NECTAS) at [www.nectas.unc.edu](http://www.nectas.unc.edu)*

## Special Education and Related Services

*Q. For what services are preschoolers eligible under Part B?*

- A. Eligible children must receive a free appropriate public education (FAPE) under Part B of IDEA. FAPE means special education and related services that meet state standards and are provided based upon an IEP or IFSP.

These services are provided at public expense, under public supervision and direction, without charge to the parents and must be provided in the least restrictive environment (LRE). (34 CFR §300.13 & §300.550)

**A Note From DEC:**

*Check the DEC website at [www.dec-sped.org](http://www.dec-sped.org) and select “Position Statements and Policies” and select the DEC Position Paper “Position on Services For Children Birth To Age Eight with Special Needs And Their Families.”*

*Q. Who is responsible for the cost of special education and related services?*

- A. Special education and related services must be made available at no cost to the parents. While the state and school district are responsible for ensuring that the services in a child’s IEP or IFSP are made available, the requirements are clear that multiple funding sources, including Medicaid and other noneducational public funding sources, are to be used to pay for services. Further, the responsibility of these funding sources must precede the responsibility of the school district.

State interagency mechanisms or agreements define financial responsibilities between the state educational agency and noneducational public agencies, including the state Medicaid agency and other public insurers of children with disabilities. The Part B regulations at 34 CFR §300.142 include detailed provisions for the required use of public resources, including Medicaid, as well as the protections for families regarding the use of these funds.

These provisions include the use of a parent’s private insurance as long as informed parental consent is obtained each time the insurance is used. Parents must be informed that

they may refuse to use their private insurance and their refusal will not affect the provision of FAPE to their child.

There can be no delay in implementing a child's IEP or IFSP while determining who is responsible for providing or paying for services.

*Q. What is special education?*

- A. "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. The federal regulations indicate that special education also includes instruction in physical education. A state may also include speech-language pathology services, any other related service, travel training and vocational education in the state's definition of special education. (34 CFR §300.26)

*Q. What is specially designed instruction?*

- A. "Specially designed instruction" means adapting, as appropriate, the content, methodology, or delivery of instruction to meet the needs of an eligible child:
- To address the unique needs of the child that result from the child's disability; and
  - To ensure access of the child to the general curriculum so that he or she can meet the educational standards within the jurisdiction of the school district/public agency that apply to all children. (34 CFR §300.26(b)(3))

## Special Education and Related Services (cont'd)

### *Q. What are related services?*

- A. “Related services” are transportation and such developmental, corrective and other supportive services that are required to assist a child with a disability to benefit from special education. These include, but are not limited to, speech-language pathology and audiological services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes; school health services; social work services in schools; and parent counseling and training. These related services are defined in the Part B regulations. (34 CFR §300.24)

The distinction between special education and related services is extremely important because a child is only eligible under Part B if the child needs special education according to your state’s standards for special education. If a child has one or more of the disabilities under your state’s Part B policies and procedures, and does not require special education, but only needs a related service, such as physical therapy, and that service is not considered special education in your state, the child is not eligible under Part B. Conversely, if your state defines special education to include physical therapy and the child with a disability needs only that service, the child would be eligible for Part B. (34 CFR §300.7(a))

*However, Appendix A to the Part B regulations (Question #34 p. #12479) notes that “The list of related services is not exhaustive and may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to benefit from special education. This could, depending upon the unique needs of a child, include such services as nutritional services or service coordination. These determinations must be made on an individual basis by each child’s IEP team.”*

### *Q. Is service coordination a related service under Part B?*

- A. Service coordination is not specifically listed as a related service in the Part B regulations. (34 CFR §300.24)

However, the Part B regulations contain a reference to the provision of service coordination at 34 CFR §300.244. Under this “Coordinated Services System” provision, school districts may use up to 5% of the agency’s Part B fiscal allocation in any year, in combination with other amounts (which must include amounts other than education funds), to de-

velop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families. Activities may include, among other things, “service coordination and case management that facilitate the linkage of IEPs under Part B of the Act and IFSPs under Part C of the Act with individualized service plans under multiple Federal and State programs...”

*Q. What are “supplementary aids and services?”*

A. “Supplementary aids and services” means aids, services, and other supports that are provided in regular education classes or other education-related settings to the child or on behalf of the child to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with the LRE requirements under Part B. (34 CFR §300.28).

*Q. Must assistive technology devices or services be provided to preschool children with disabilities?*

A. During the development, review and revision of an IEP or IFSP, the IEP team must consider whether the child requires assistive technology devices and services. If required either as special education, related services, or supplementary aids and services, then these must be made available to the child to ensure the provision of FAPE. (34 CFR §300.308)

*Q. Can a child take his/her technology device home?*

A. Yes, the child can take his/her technology device home if the IEP team determines that the child needs this device at home or in settings other than school, in order to receive a free appropriate public education (FAPE). (34 CFR §300.308)

## Individualized Education Programs or Individualized Family Services Plans

### *Q. Can preschoolers have IFSPs instead of IEPs?*

- A. Yes. Individualized Education Programs (IEPs) are required under Part B for children age 3 through 21, and Individualized Family Services Plans (IFSPs) are required under Part C for children birth to age 3. However, if state policy allows and the school district/public agency and the parents agree, an IFSP may serve as an IEP when certain conditions are met.

When an IFSP is used for a preschooler, Part B IEP procedures must be followed in developing an IFSP.

The IFSP must contain the material contained in IFSPs developed under Part C. If an IFSP is used for a preschooler, a detailed explanation of the differences between an IEP and IFSP must be provided to the parent and written informed parental consent must be obtained. (34 CFR §300.342(c))

#### **A Note From DEC:**

*DEC recommends that, if agreeable to the parents, an IFSP be used for the individualized plan for a preschooler with a disability. An IFSP, with its emphasis on family supports for enhancing the child's development, recognizes the importance of the family in the life of a young child.*

*However, if an IEP is used instead of an IFSP, it should provide for the same family services and supports as appropriate to the child. Remember that the list of related services provided in the regulations at 34 CFR §300.24 is not exhaustive and may include other developmental, corrective, or supportive services if they are required to assist a child with a disability to receive FAPE. For instance, related services can include service coordination, social work or family counseling or training for families, etc.*

### *Q. How do we determine what services each child will receive?*

- A. An IEP or IFSP, must be developed for each preschool child who is eligible for special education and related services. The IEP or IFSP determines what special education and related services and supplementary aids and services will be provided to the child or on behalf of the child. (34 CFR §300.341)

Appendix A of the Part B regulations offers additional guidance on this issue (Question #24, p. 12477). "...while a regular education teacher must be a member of the IEP team if the child is, or may be, participating in the regular education environment, the teacher need not (depending on the child's needs and the purpose of the specific IEP team meeting) be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or attend every meeting.

For example, the regular education teacher who is a member of the IEP team must participate in discussions and decisions about how to modify the general curriculum in the regular classroom to ensure the child's involvement and progress in the general curriculum and participation in the regular education environment. ...public agencies and parents should discuss and try to reach agreement on whether the child's regular education teacher who is a member of the IEP team should be present at a particular IEP meeting and, if so, for what period of time. The extent to which it would be appropriate for the regular education teacher member of the IEP team to participate in IEP meetings must be decided on a case by case basis... (continued in column on next page 22)

**Q. Who develops the IEP or IFSP?**

- A. The IEP team develops the IEP or IFSP, if an IFSP is used instead of an IEP. The participants of the IEP team include:
1. The parents of a child with a disability;
  2. At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
  3. At least one special education teacher of the child, or where appropriate, at least one special education provider of the child;

**A Note From DEC:**

DEC recommends that for the preschooler with a disability, the special educator member of the team should be an early childhood special educator. The Personnel Standards recommendations of the Division for Early Childhood (DEC), the National Association for the Education of Young Children (NAEYC) and the Association of Teacher Educators (ATE) state that early childhood special educators should "possess a common core of knowledge and skills with the early childhood educator as well as specialized knowledge and skills regarding young children birth through age 8 with special needs and their families."

**A Note From DEC:**

Check the DEC website at [www.dec-sped.org](http://www.dec-sped.org) and select "Position Statements and Policies," selecting the DEC Position Paper "Personnel Standards for Early Education and Early Intervention: Guidelines for Licensure In Early Childhood Special Education".

4. A representative of the public agency who:
  - is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - is knowledgeable about the general curriculum; and
  - is knowledgeable about the availability of resources of the school district/public agency.

A school district/public agency may designate another school district/public agency member of the IEP team to also serve as the agency representative as long as the criteria included for that team member are met.

## Individualized Education Programs or Individualized Family Services Plans (cont'd)

*(continued from previous column on page 21)*

*The IEP team need not include more than one regular education teacher of the child. If the participation of more than one regular education teacher would be beneficial to the child's success in school (e.g., in terms of enhancing the child's participation in the general curriculum), it would be appropriate for them to attend the meeting...*

*The regular education teacher who serves as a member of a child's IEP team should be a teacher who is, or may be, responsible for implementing a portion of the IEP, so that the teacher can participate in discussions about how best to teach the child...*

*In the case of a child whose behavior impedes the learning of the child or others, the LEA is encouraged to have a regular education teacher or other person knowledgeable about positive behavioral strategies at the IEP meeting. This is especially important if the regular education teacher is expected to carry out portions of the IEP."*

5. An individual who can interpret the instructional implications of evaluation results, who may be another already required member of the team;
6. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. The determination of the knowledge or special expertise of any individual is made by the party (parent or school district/public agency) who invited the individual to be a member of the team; and
7. If appropriate, the child. (34 CFR §300.344)

**Q. What is the role of the regular education teacher on the IEP team?**

- A. The regular education teacher of the child, as a member of the IEP team, must, to the extent appropriate, participate in the development, review, and revision of the child's IEP or IFSP, including assisting in the determination of:
- appropriate positive behavioral interventions and strategies for the child; and
  - supplementary aids and services, program modifications, or supports for school personnel that will be provided for the child. (34 CFR §300.346(d))

However, Appendix A of the Part B regulations provides an answer to this question (Question #3, p. 12472): “If a public agency provides ‘regular education’ preschool services to nondisabled children, then the requirements...apply as they do in the case of older children with disabilities. If a public agency makes kindergarten available to nondisabled children, then a regular education kindergarten teacher could appropriately be the regular education teacher who would be a member of the IEP team, and, as appropriate, participate in IEP meetings, for a kindergarten-aged child who is, or may be, participating in the regular education environment. If a public agency doesn’t provide regular preschool education services to nondisabled children, the agency could designate an individual who, under state standards, is qualified to serve nondisabled children of the same age.”

**Q.** *Who serves as the regular education teacher on the IEP team for a preschooler with disabilities?*

- A. The Part B regulations do not specifically address the regular education teacher for a preschooler’s IEP team.

**A Note From DEC:**

DEC recommends that the “regular educator” for a preschooler with a disability be an early childhood educator. The Personnel Standards for DEC, NAEYC and ATE state “Early childhood educators should possess a common core of knowledge and skills that includes content specific to young children, birth through age 8, both with and without disabilities.” (See [www.dec-sped.org](http://www.dec-sped.org) “Position Statements and Policies”).

*For a child in an early care and education setting, the early childhood educators (ECE) from that program who are working with the child could appropriately serve as the “regular education teacher.”*

*If the child is receiving services only from a special educator, (e.g. in the home or center program) and that person is dually certified in early childhood education and special education, or certified as an Early Childhood Special Educator (ECSE), that person may be able to serve in both roles as “regular educator” and “special educator”.*

*However, if the special educator is not dually certified or certified in ECSE, i.e., certified only in special education, DEC recommends that a regular early education teacher be included and participate on the child’s IEP team to address relevant early childhood curriculum and developmental issues.*

*DEC further recommends that, generally, if the child does not have a regular education teacher or an ECSE teacher, someone who is knowledgeable in early childhood curriculum, whether that individual knows the child or not, should be a participating member of the child’s IEP team.*

## Individualized Education Programs or Individualized Family Services Plans (cont'd)

However, Appendix A of the Part B regulations provides an answer to this question (Question #30, p. 12478).

“Although Part B does not expressly require that the IEP team include related services personnel as part of the IEP team, it is appropriate for those persons to be included if a particular related service is to be discussed as part of the IEP meeting...If a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting or otherwise be involved in developing the IEP...A public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child’s unique needs, and ensure the provision of FAPE to the child, participate in the child’s IEP meeting.”

### Q. Must related services personnel attend IEP or IFSP meetings?

- A. The Part B regulations do not specifically address whether or not related services personnel must attend IEP meetings.

**A Note From DEC:**

The Personnel Standards of the Division for Early Childhood (DEC), the National Association for the Education of Young Children (NAEYC) and the Association of Teacher Educators (ATE) state that related services professionals working with young children with disabilities should “possess a common core of knowledge and skills specific to young children with special needs and their families, along with specialized knowledge and skills in their own professional discipline.” See [www.dec-sped.org](http://www.dec-sped.org) - “Position Statements and Policies”

### Q. What must be included in an IEP?

- A. The IEP is a written statement for each child with a disability that must be in effect at the beginning of each school year and must include:

1. A statement of the child’s present levels of educational performance, including:
  - how the child’s disability affects the child’s involvement and progress in the general curriculum. General curriculum is defined as “the same curriculum as for nondisabled children.”

Appendix A of the Part B regulations provides additional guidance on determining present levels of educational performance as follows: “The IEP team’s determination of how each child’s disability affects the child’s involvement and progress in the general curriculum is a primary consideration in the development of the child’s IEP. In assessing children with disabilities, school districts may use a variety of assessment techniques to determine the extent to which these children can be involved and progress in the general curriculum, such as criterion-referenced tests, standard achievement tests, diagnostic tests, other tests, or any combination of the above.”(p.12471)

Appendix A of the Part B regulations includes a definition of appropriate activities. It is: “Appropriate activities, in this context, refers to age relevant developmental abilities or milestones that typically developing children of the same age would be performing or would have achieved.” (p. 12471)

- for preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities.

**A Note From DEC:**

DEC recommends the following definition of appropriate activities: “appropriate activities refers to activities, materials and environments, that are chronologically age relevant, and developmentally and individually appropriate.”

*Appendix A of the Part B regulations provides guidance on the use of short-term objectives and benchmarks. "IEP teams may continue to develop short term instructional objectives, that generally break the skills described in the annual goals down into discrete components. The revised statute and regulations also provide that, as an alternative, IEP teams may develop benchmarks, which can be thought of as describing the amount of progress the child is expected to make within specified segments of the year. Generally, benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals. An IEP team may use either short term objectives or benchmarks or a combination of the two depending on the nature of the annual goals and the needs of the child."*  
(p. 12471)

*Appendix A of the Part B regulations states "While the Act and regulations recognize that IEP teams must make individualized decisions about the special education and related services, and supplementary aids and services, provided to each child with a disability, they are driven by IDEA's strong preference that, to the maximum extent appropriate, children with disabilities be educated in regular classes with their nondisabled peers with appropriate supplementary aids and services."*  
(p. 12470)

2. A statement of measurable annual goals, including benchmarks or short-term objectives, related to:
  - meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum or for preschool children, as appropriate to participate in appropriate activities; and
  - meeting each of the child's other educational needs that result from the child's disability.
3. A statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided in order for the child:
  - to advance appropriately toward attaining the annual goals;
  - to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and
  - to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph.
4. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular education class and in extracurricular and other non-academic activities.
5. A statement of any individual modifications in the administration of state- or district-wide assessments of student achievement that are needed in order for the child to participate in these assessments; and if the IEP team determines that the child will not participate in a particular state- or district-wide assessment of student achievement (or part of such an assessment), the IEP must include a statement of:
  - why that assessment is not appropriate for the child; and
  - how the child will be assessed.
6. The projected date for the beginning of services and modifications and the anticipated frequency, location, and duration of these services and modifications.
7. A statement of how the child's progress toward the annual goals will be measured; and how the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed

*(answer continued)*

## Individualized Education Programs or Individualized Family Services Plans (cont'd)

of their nondisabled children's progress. Parents must be informed of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year. (34 CFR §300.347)

### *Q. What factors must be considered in the development of the IEP or IFSP?*

- A. In developing each child's IEP or IFSP, the IEP team must consider:
- The strengths of the child and the concerns of the parents for enhancing the education of their child;
  - The results of the initial or most recent evaluation of the child; and
  - As appropriate, the results of the child's performance on any general state- or district-wide assessment programs.

The IEP team must also consider the following special factors:

- For a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior;
- For a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP or IFSP;
- For a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;
- For a child who is deaf or hard of hearing, consider the child's language or communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction and the child's language and communication mode; and
- Consider whether the child requires assistive technology devices and services.

If, as a result of these considerations, the team determines that a child needs a particular device or service (including an intervention, accommodation or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP or IFSP. (34 CFR §300.346)

*Appendix A of the Part B regulations provides further clarification to this question (Question #2, p. 12472). "Yes. The IEP for each child with a disability (including children who are educated in separate classrooms or schools) must address how the child will be involved and progress in the general curriculum. However, Part B regulations recognize that some children have other educational needs resulting from their disability that also must be met, even though those needs are not directly linked to participation in the general curriculum...Thus, the IEP team for each child with a disability must make an individualized determination regarding (1) how the child will be involved and progress in the general curriculum and what needs that result from the child's disability must be met to facilitate that participation; (2) whether the child has any other educational needs resulting from his or her disability that also must be met; and (3) what special education and other services and supports must be described in the child's IEP to address both sets of needs."*

**Q. *Must a child's IEP or IFSP address his or her involvement in the general curriculum, regardless of the nature and severity of the child's disability and the setting in which the child is educated?***

A. The statement of annual goals and objectives must be related to meeting the child's needs to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities. Nature and severity of a child's disability are not factors in participation in the general curriculum.

## Individualized Education Programs or Individualized Family Services Plans (cont'd)

Appendix A of the Part B regulations provides further clarification to this question (Question #4, p. 12472):  
 "...a public agency is not required to include in an IEP annual goals that relate to areas of the general curriculum in which the child's disability does not affect the child's ability to be involved in and progress in the general curriculum. If a child with a disability needs only modifications or accommodations in order to progress in an area of the general curriculum, the IEP does not need to include a goal for that area; however, the IEP would need to specify those modifications or accommodations.

However, Appendix A of the Part B regulations provides an answer to this question (Question #9, p. 12473).  
 "The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions...Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parent's concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority 'vote'.

**Q. Must the measurable annual goals in a child's IEP or IFSP address all areas of the general curriculum, or only those areas in which the child's involvement and progress are affected by the child's disability?**

- A. Part B requires that the IEP contain:
1. A statement of the child's present levels of educational performance including:
    - How the child's disability affects the child's involvement and progress in the general curriculum (i.e. the same curriculum as for nondisabled children); or
    - For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
  2. A statement of measurable annual goals, including benchmarks or short term objectives, related to:
    - Meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum (i.e. the same curriculum as for nondisabled children), or for preschool children, as appropriate, to participate in appropriate activities; and
    - Meeting each of the child's other educational needs that result from the child's disability.
- (34 CFR §300.347(a)(1)&(2))

**Q. How are decisions made at an IEP or IFSP meeting?**

- A. The Part B regulations do not specifically address this question.

*If the team cannot reach consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step, without resorting to a due process hearing."*

**Q.** *Must the services in the IEP or IFSP be provided and is anyone accountable for the child's progress?*

- A. Each school district/public agency must provide special education and related services to a child with a disability in accordance with the child's IEP or IFSP and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP or IFSP. Part B does not require that any agency, teacher or other person be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives. States or public agencies may have their own accountability systems.
- Parents have a right to ask for revisions of their child's IEP or IFSP or to invoke due process procedures if they feel that the good faith efforts required are not being made. (34 CFR §300.350)

*Additional clarification on this question related to children turning three during the summer can be found in Attachment 1, Analysis of Comments and Changes which accompanied the Part B regulations on p. 12577. "The IEP or the IFSP will specify whether services must be initiated on the child's third birthday for children with disabilities who transition from the Part C to the Part B program, if the child turns three during the summer. This means that ESY services would be provided in the summer if the IEP or IFSP of a child with a disability specifies that the child must receive ESY services during the summer."*

**Q.** *Are preschoolers eligible for extended school year services?*

- A. Extended school year services (ESY) must be provided for an eligible preschooler if a child's IEP team determines that the services are necessary to ensure the child receives a free appropriate public education (FAPE). Extended school year services means special education and related services that are provided to a child with a disability:
- beyond the normal school year of the school district/public agency;
  - in accordance with the child's IEP or IFSP;
  - at no cost to the parents of the child; and
  - meet the standards of the state. (34 CFR §300.309)

## Individualized Education Programs or Individualized Family Services Plans (cont'd)

*Q. How do the child's teachers know what their role is in implementing the IEP or IFSP?*

- A. The IEP or IFSP must be accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation. Each of these individuals is to be informed of his or her specific responsibilities related to implementing the child's IEP or IFSP, and of the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP or IFSP. (34 CFR §300.342)

*Q. When must IEPs or IFSPs be developed and how often are IEPs or IFSPs reviewed or revised?*

- A. Within a reasonable period of time following a parent's consent for initial evaluation, the child must be evaluated and if determined eligible, special education and related services must be made available to the child in accordance with an IEP or IFSP. A meeting to develop the IEP or IFSP for a preschool child must be conducted within 30 calendar days of the determination that the child is eligible for special education and related services.

The timeline between initial consent for evaluation and the determination of eligibility is not defined under the Part B regulations. However, in some cases, individual states have established specific timelines.

Each child's IEP or IFSP must be reviewed periodically but not less than annually to determine whether the annual goals are being achieved. The IEP or IFSP must be revised as appropriate to address:

- any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
- the results of any reevaluations conducted;
- information about the child provided to or by the parents;
- the child's anticipated needs; or
- other matters. (34 CFR §300.343)

*Q. What role do parents play in the IEP or IFSP process?*

- A. Each school district/public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP or IFSP meeting, or are afforded the opportunity to participate, including notifying the parents of the meeting early enough to ensure they have an opportunity to attend, and scheduling the meeting at a mutually agreed upon time and place.

The notice must include the purpose, time, and location of the meeting and who will be in attendance. The notice must also inform the parents about their right to invite other individuals who they believe have knowledge or special expertise about the child.

If neither parent can attend, the school district/public agency must use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent in attendance if the school district/public agency is unable to convince the parents that they should attend. In this case, the school district/public agency must have a record of its attempts to arrange a mutually agreed upon time and place, such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents, and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits.

The school district/public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP or IFSP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

The school district/public agency must give the parent a copy of the child's IEP or IFSP at no cost to the parent. In addition, the parent(s) must be members of any group that makes decisions on the educational placement of the child with a disability. (34 CFR §300.345 and §300.501(c))

## Least Restrictive Environment (LRE)

### *Q. Where are special education and related services provided to preschool aged children?*

- A. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled. Further, special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR §300.550)

The Part B regulations clarify that the LRE requirements apply to preschoolers ages 3 through 5 with disabilities. A continuum of alternative placements must be available to meet the needs of children with disabilities. The continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions and in other settings. The continuum must make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with regular class placement. (34 CFR §300.551)

The placement decision for a preschooler with a disability must be made by a group of persons including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The placement must be determined at least annually, be based on the child's IEP or IFSP, and be as close as possible to the child's home.

Unless the IEP or IFSP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled. In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs.

In addition, a new provision has been added to the regulation on placement to indicate that “a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.” (34 CFR §300.552)

*Appendix A of the Part B regulations provides further guidance on the LRE requirements, stating that: “Part B’s LRE principle is intended to ensure that a child with a disability is served in a setting where the child can be educated successfully. Even though IDEA does not mandate regular class placement for every disabled student, IDEA assumes that the first placement option considered for each student by the student’s placement team, which must include the parent, is the school the child would attend if not disabled, with appropriate supplementary aids and services to facilitate such placement. Thus, before a disabled child can be placed outside of the regular educational environment, the full range of supplementary aids and services that, if provided, would facilitate the student’s placement in the regular classroom setting, must be considered. (p. 12471) Finally, the U.S.*

*Secretary of Education provides additional guidance in Attachment 1 – Analysis of Comments that was published with the Part B regulations as follows: “The full continuum of alternative placements at 34 CFR §300.551, including integrated placement options, such as community-based settings with typically developing age peers, must be available to preschool children with disabilities.” (p. 12639)*

**A Note From DEC:**

Check the DEC website at [www.dec-sped.org](http://www.dec-sped.org) and select “Position Statements and Policies” for the DEC “Position On Inclusion.”

*Q. If a child is receiving special education and related services in a community-based setting, must the personnel in that setting meet the requirements of IDEA related to personnel standards?*

A. State educational agencies must establish personnel standards to ensure that personnel providing special education and related services are qualified. (34 CFR §300.136)

**A Note From DEC:**

*The personnel standards requirements under 34 CFR §300.136 are “applicable to the profession or discipline in which a person is providing special education or related services.”*

*Therefore, if staff from that community-based setting are responsible for special education and related services according to the IEP or IFSP, then those individuals must meet the state’s standards for that profession or discipline.*

*If, on the other hand, staff from the school district are responsible for the provision of special education and related services according to the IEP or IFSP, and staff from the community-based setting are assisting in or following through on activities to support the achievement of the child’s IEP or IFSP goals and objectives, then only the school district’s staff must meet the state standards. The community-based staff must meet any applicable standards for their position, but these standards may be from a state agency other than the SEA.*

*For example, consider a child with an IEP or IFSP in a Head Start program. The school district is providing an itinerant special education teacher to the program one day a week to work with the staff and the child to support the achievement of the child’s IEP or IFSP goals. The itinerant special education teacher must meet the state special education personnel standards. The Head Start personnel, even though they are carrying out activities developed in consultation with the itinerant special education teacher, do not have to meet state special education standards, as they are not responsible for the special education and related services. However, they must meet Head Start personnel standards.*

## Least Restrictive Environment (LRE) (cont'd)

- Q. What role does the state educational agency play in ensuring that children with disabilities receive special education and related services in the least restrictive environment?*
- A. The state educational agency (SEA) must ensure that children with disabilities receive special education and related services in the least restrictive environment. Several important state level requirements assist in this regard, including the following:
- The SEA must ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing the LRE provisions and are provided with technical assistance and training. (34 CFR §300.555)
  - The SEA must monitor to ensure that public agencies make placements that are consistent with the LRE provisions. If there is evidence that a school district/public agency makes placements that are inconsistent with the LRE, the state must review the school district/public agency's justification for its actions and assist in planning and implementing any necessary corrective action. (34 CFR §300.556)
  - In addition, if the state uses a funding formula to distribute state funds on the basis of the type of setting where a child receives services, that funding formula may not result in placements that violate the LRE requirements. (34 CFR §300.130)

## Procedural Safeguards

*Q. Do parents have a right to attend meetings involving their child?*

A. Yes. The parents of a child with a disability must be given the opportunity to participate in meetings related to their child's identification, evaluation, educational placement or the provision of FAPE. (34 CFR §300.501(c))

*Q. When must a parent's consent be obtained?*

A. Informed parental consent must be obtained before conducting an initial evaluation or reevaluation and before the initial provision of special education and related services to a preschool child with a disability. (34 CFR §300.505) In addition, parents must be given written prior notice a reasonable time before the school district/public agency proposes or refuses to initiate or change the identification, evaluation, educational placement or the provision of a free appropriate public education to a child. (34 CFR §300.503) Also, written informed consent must be obtained if an IFSP, instead of an IEP, is developed for the child. (34 CFR §300.342(c))

*Q. Do parents have the right to see their child's education records?*

A. Yes. The parents of a child with a disability must be given an opportunity to inspect and review all education records related to the identification, evaluation, educational placement or provision of FAPE to their child. (34 CFR §300.501(a))

In addition, under regulations for the Family Educational Rights and Privacy Act of 1974 (FERPA) at 34 CFR Part 99, there are requirements protecting the confidentiality of all children's educational records. These regulations include provisions such as who has access to the child's record, and when consent is required to release the record.

## Procedural Safeguards (cont'd)

*Q. What vehicles are available for resolving disagreements related to IDEA?*

- A. There are a number of processes available in Part B to resolve disagreements. The Part B regulations contain specific procedures and timelines for these processes which include the following:
- A parent or a school district/public agency may initiate an impartial due process hearing when disagreements relate to the identification, evaluation, educational placement or the provision of FAPE to the child. A trained impartial hearing officer conducts a hearing and renders a written decision. Both parties have rights in this process including the right to appeal the hearing decision.
  - Mediation is available to both parties and is encouraged as a way of resolving disputes without the more adversarial due process hearing. Parents must be informed of the availability of mediation when a hearing is requested. (34 CFR §300.506-507)
  - Organizations or individuals may file a written complaint under the state's complaint process. The complaint includes a statement that a school district/public agency has violated a Part B requirement. Each state must have procedures in place to ensure that each complaint is investigated and a written decision is rendered. (34 CFR §300.660-662)

## Challenging Behavior

### **A Note From DEC:**

*Discipline provisions in IDEA '97 were developed in response to increasing national concern and debate surrounding how to address school safety and discipline. The regulations implementing Part B were developed primarily with school-age children and youth in mind. However, these regulations also apply to preschool children with disabilities.*

*It is important to note that the following questions and answers have been developed from a preschool perspective beginning with a discussion of the preferred focus on preventive strategies for addressing challenging behavior. Following that, the Part B procedures that deal with more serious situations are discussed. Implementation of these procedures must ensure that the environment remains safe for all children and the needs of the preschooler with a disability continue to be met. Because disciplinary procedures are triggered only after a child has been removed for more than 10 school days in the same school year, it is expected that these procedures will rarely be used in situations involving preschoolers.*

*Issues related to challenging behaviors and the strategies to address them in the child's current placement should be dealt with through the IEP process. In many situations, the addition of supports and use of strategies may enable the child to effectively stay in their current placement. If a preschool child with a disability is exhibiting challenging behaviors and a new placement is agreed to by the group making the placement, including the parents, the disciplinary procedures would not be triggered. It should be noted that changes in placement might not always be to a more restrictive setting.*

*DEC has a position statement on interventions for challenging behavior and it is based on three major principles:*

- *Many young children engage in challenging behavior in the course of early development. The majority of these children respond to developmentally appropriate management techniques.*
- *DEC believes strongly that many types of services and intervention strategies are available to address challenging behavior.*
- *DEC believes strongly that families play a critical role in designing and carrying out effective interventions for challenging behavior.*

*Check the DEC website for the full text of the DEC Position Paper at [www.dec-sped.org](http://www.dec-sped.org) and select "Position Statements and Policies;" select the DEC position statement and concept paper on interventions for challenging behavior and other references on preventing or addressing challenging behavior in young children. See DEC's new product: "Practical Ideas for Addressing Challenging Behaviors," for strategies for preventing and reducing challenging behaviors.*

## Challenging Behavior (cont'd)

*Q. Do the discipline procedures in the Part B regulations apply to preschoolers with disabilities?*

- A. Yes. The discipline procedures in the Part B regulations apply to all children with disabilities ages 3 through 21 years. These requirements are found in 34 CFR §300.519-529. The requirements apply even if the school district/public agency places a child in a non-district program, e.g. child care, Head Start, etc. in order to provide FAPE.

Each state must have in effect a policy that provides for the provision of a free appropriate public education for all children with disabilities including those who have been suspended or expelled from school. (34 CFR §300.121(a))

*Q. Are there protections for children not yet eligible for special education and related services who have engaged in behavior that violated any rule or code of conduct of the school district?*

- A. The discipline procedures in the Part B regulations include protections for children who have not been determined eligible for special education and related services but who have engaged in behavior that violated any rule or code of conduct of the school district. These provisions apply in the case of a preschool child currently enrolled in the public school system, (e.g. enrolled in a district kindergarten or a prekindergarten program).

The regulations specify that the child's parents can assert any of the protections included in the discipline procedures in the Part B regulations, if the district had knowledge that the child was a child with a disability. Generally, the school district is assumed to have "knowledge" if:

- the parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) that the child is in need of special education and related services;
- the behavior or performance of the child demonstrates the need for special education and related services;
- the parent has requested an evaluation; or
- the teacher of the child or other personnel of the school district has expressed concern about the behavior or perfor-

mance of the child to the director of special education of the agency, or to other district personnel in accordance with the district's child find or special education referral systems.

The regulations also include exceptions and conditions that apply if there is no basis of knowledge by the school district. (34 CFR §300.527)

**A Note From DEC:**

*If a child is enrolled in a non-school district program, e.g. child care, etc. and not yet considered Part B eligible, and engages in such behavior, the program and/or the parents may choose to use the occasion as a referral to the school district/public agency for evaluation to determine eligibility under Part B.*

**Q. Do the Part B regulations contain provisions that promote preventive measures for addressing discipline problems?**

A. Yes. There are specific provisions in the Part B regulations that assist in proactively addressing challenging behaviors (see fold-out chart) including:

- The state's Comprehensive System of Personnel Development (CSPD) must include personnel training activities that address enhancing the ability of teachers and others to use strategies, such as behavior interventions, to address the conduct of children with disabilities that impedes the learning of these children and others. The CSPD must also provide for the joint training of parents and special education, related services, and general education personnel. (34 CFR §300.382(f) and (j)).
- In developing the IEP or IFSP, the team must consider if the child has challenging behaviors that impede the learning of the child or others. In the case of a child whose behavior impedes his or her learning or that of others, the team must consider, if appropriate, positive behavioral interventions, and other supports to address that behavior. If, as a result of these considerations, the team determines that a child needs a particular device or service (including an intervention, accommodation or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP or IFSP. (34 CFR §300.346(a)(2)(i) and (c)).

*(answer continued)*

## Challenging Behavior (cont'd)

*The introduction section of the Part B regulations, “Discipline for Children with Disabilities” which states that “If a child has behavior problems that interfere with his or her learning or the learning of others, the IEP team must consider whether strategies, including positive behavioral interventions, strategies, and supports are needed to address the behavior. If the IEP team determines that such services are needed, these must be added to the IEP and must be provided.” (Question #2, p 12415)*

*Additional clarification on this issue can be found on p. 12620 in Attachment 1 (Analysis of Comments and Changes), which accompanied the Part B regulations: “If IEP teams are proactively addressing a child’s behavior that impedes the child’s learning or that of others in the development of IEPs, those strategies, including positive behavioral intervention, strategies, and supports in the child’s IEP will constitute the behavioral intervention plan...”*

*The introductory section of the Part B regulations, “Discipline for Children with Disabilities” discusses how schools can address challenging behaviors through appropriate instructional and/or related services, including conflict management, behavior management strategies, and measures such as timeouts and restrictions in privileges, so long as these are not inconsistent with the child’s IEP. (Question #4, p. 12415)*

- As a member of the IEP team, the regular education teacher of a child with a disability must, to the extent appropriate, participate in the development, review and revision of the IEP or IFSP, including assisting in the determination of:
  - appropriate positive behavioral interventions and strategies for the child; and
  - supplementary aids and services, program modifications or supports for school personnel that will be provided for the child. (34 CFR §300.346(d))
- The discipline procedures require the development of a “behavioral intervention plan” for the child proactively, as a part of the IEP process within 10 business days of (1) when the child is first removed for more than 10 school days in a school year, and (2) whenever the child is subject to a disciplinary change of placement. This plan is to be based upon a “functional behavioral assessment”. These two terms are not defined in the regulations. (34 CFR §300.520(b)).

**A Note From DEC:**

*According to the Journal of Positive Behavior Interventions: (1999, Vol. 1, No. 1) the concept of positive behavior intervention refers to: a) reducing difficulties such as excessive problem behavior and b) improving social or activity engagement through the use of positive intervention strategies. Positive strategies emphasize agreeable interactions, are non-aversive, and do not rely on coercion or punishment. Positive strategies are designed to build new competencies so that beneficiaries are better equipped to handle future circumstances...Implicit is the treatment of individuals with respect and dignity.*

**Q.** *What can I do if a child with a disability in a preschool setting is exhibiting challenging behaviors that are interfering with the activities of the child and the other children in that setting?*

- A.** The most important thing to remember is to discuss behavior as a part of the IEP process. The development of a behavioral intervention plan, if appropriate, can address current challenging behavior and include strategies for preventing future behavioral problems. If the child manifests the behavior after the IEP has been developed, then the IEP team should be reconvened to determine the appropriate next steps in addressing the behavior. This could include additional evaluations, conducting a functional behavior assessment, or amending the IEP or changing the child’s placement.

**Q.** *Can a child be removed from his/her program for engaging in challenging behaviors?*

- A. There may be instances when a child may be removed from his or her current placement for not more than 10 consecutive school days, whenever such discipline is administered consistent with the removal of nondisabled children.

Additional removals of not more than 10 consecutive school days in that same school year for separate instances of misconduct are permissible as long as those removals do not constitute a change in placement (see below).

It is important to note that once a school district/public agency removes a child for more than 10 school days in a school year (regardless of whether they were consecutive), **on the 11<sup>th</sup> day of removal**, additional protections apply for the child in terms of the provision of services and involvement of the IEP team. This is discussed in the next several questions. (34 CFR §300.520)

An important reminder in an introductory section of the Part B regulations, “Discipline for Children with Disabilities” states that “If a child’s IEP or behavior intervention plan addresses a particular behavior, it generally would be inappropriate to utilize some other response, such as suspension to address that behavior.” (Question #4, p. 12415)

**Q.** *What services must the school district/public agency provide to a preschool child with a disability who has been removed or suspended for up to, but not more than, 10 school days in a school year?*

- A. School districts are not required to provide any services to a preschool child who has been removed from his or her current placement for 10 school days or less in a school year if services are not provided to a student without disabilities who has been removed for the same reasons and for the same number of days.

**Q.** *What services must a school district/public agency provide for a preschool child with a disability who is removed or suspended for more than 10 school days in a school year?*

- A. As long as no change in placement has occurred (see below), a school district/public agency is required to provide

*(answer continued)*

## Challenging Behavior (cont'd)

services beginning on the 11th day of removal and any removal thereafter, to the extent necessary to enable the child to progress appropriately in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP or IFSP. School personnel, in concert with the child's special education teacher, make these determinations about progress in the general curriculum and advancement towards achieving IEP or IFSP goals. There is no requirement that the parents be involved in these decisions, but school districts should, as best practice, include parents when making these decisions. By this time, a functional behavioral assessment and intervention plan should either be developed or reviewed by the IEP team which includes the parents of the child. (See below.)

*Q. Under the discipline procedures in the Part B regulations, when must a functional behavioral assessment and behavioral intervention plan be developed and/or reviewed?*

- A. Within 10 business days after first removing the child for more than 10 school days in a school year (i.e., the 11th day of removal or when a removal constitutes a change in placement), the following actions must be taken by school district personnel:
- If the district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in removal occurred, the district must convene an IEP meeting to develop an assessment plan. Once a functional behavioral assessment is completed, the IEP team must convene to develop appropriate behavioral interventions; and
  - If the child already has a behavioral intervention plan, the IEP team must meet to review the plan and its implementation and modify it as necessary to address the challenging behavior.

Subsequent IEP or IFSP reviews may be necessary to review/modify the behavioral intervention plan. If one or more members of the IEP team believe that modifications are needed in the plan, the IEP team must meet to modify the plan and its implementation to the extent the team determines necessary.

*Additional clarification on this issue can be found in Attachment 1, (Analysis of Comments and Changes), which accompanied the final Part B regulations in the March 12, 1999 Federal Register on p. 12619: “Portions of a school day that a child had been suspended would be included in determining whether the child had been removed for more than 10 cumulative school days or subjected to a change of placement.”*

**Q.** *How do the IDEA discipline requirements define a “change in placement”?*

- A. A change of placement for disciplinary purposes occurs if:
- the removal of the child is for more than 10 consecutive school days; or
  - the child is subject to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removal to one another. (34 CFR §300.519)

**A Note From DEC:**

*DEC believes that effective services and intervention strategies are available to prevent or address the challenging behaviors of young children. Practices such as sending a child home for portions of a particular day or days because of challenging behaviors would be considered a disciplinary action that could rise to the level of removal or change in placement. The IEP or IFSP is the appropriate vehicle for addressing challenging behavior.*

**Q.** *Can I change a preschooler’s placement because of behavior?*

- A. As in any situation in which the placement or the services and supports being provided may not be appropriate, the IEP team should be reconvened and with school district and parent agreement, a change in placement may occur. The discipline procedures would not be necessary in this case.

**Q.** *What disciplinary procedures can be used when the child is exhibiting dangerous behavior and the school district and the parents do not agree?*

- A. School personnel may request that an independent hearing officer consider a change in placement of a preschool child who is exhibiting dangerous behaviors. If the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, the district can place the child in an interim alternative educational setting for no more than 45 calendar days.

*(answer continued)*

## Challenging Behavior (cont'd)

This alternative setting is one that is proposed by school personnel who have consulted with the child's special education teacher. In making this decision, the hearing officer must consider the appropriateness of the child's current placement and whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement including the use of supplemental aids and services.

The criteria for determining the setting is further described in the regulations. At the conclusion of the period specified by the hearing officer (no more than 45 calendar days), if the district does not invoke any additional discipline procedures, the child returns to the placement he/she was in when the behavior occurred. It would be reasonable to expect that the parents and school district personnel, during the period of time the child is in the interim alternative setting, had been meeting to discuss and determine additional strategies for dealing with the child's challenging behaviors. (34 CFR §300.521)

*Q. What disciplinary procedures can be used if a child has a weapon or drugs at school?*

- A. In the rare instance that a young child possesses a weapon or drugs, the Part B provisions apply. If a child with a disability brings a weapon to school or knowingly possesses, uses or sells drugs at school or during a school function, school personnel may order a change in placement of the child to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 calendar days.

The interim alternative educational setting for weapons and drug violations must be determined by the IEP team. At the conclusion of the time period specified by school personnel (not more than 45 calendar days), if the district does not invoke any additional discipline procedures, the child returns to the placement he/she was in when the behavior occurred. It would be reasonable to expect that the IEP team,

during the period of time the child is in the interim alternative setting, would meet to determine future strategies for dealing with the child's challenging behaviors. (34 CFR §300.520 and §300.522)

*Q. What procedures must a school district/public agency follow when a change in placement is being considered or is ordered by a hearing officer during disciplinary procedures?*

- A. If a district is considering, or a hearing officer has ordered, a change of placement for a preschool child because of challenging behaviors, the school district/public agency must:
- Provide the parents with the procedural safeguards notice required under Part B of IDEA no later than the date on which the decision to remove the child is made; and
  - Conduct a review of the relationship between the child's disability and the behavior subject to the disciplinary action. This review, called a manifestation determination, must be conducted immediately, if possible, but no later than 10 school days after the date on which the decision to remove the child is made. (34 CFR §300.523)

*Q. What are the procedures for conducting a manifestation determination under the discipline procedures?*

- A. The IEP team, including the parents and other qualified personnel, must meet to conduct the review. The procedures for conducting the review are contained in the Part B regulations at 34 CFR §300.523. After reviewing all relevant information on the child, including information supplied by the parent and from observations of the student, the team determines:
- if the IEP or IFSP and the current services and placement are appropriate;
  - if the child understood the impact and consequences of the behavior; and
  - if the child could control the behavior.

*(answer continued)*

## Challenging Behavior (cont'd)

If the team determines that any of the above standards were not met, the behavior must be considered a manifestation of the child's disability. If the review identifies deficiencies in the child's IEP or IFSP or placement or in their implementation, the school district/public agency must take immediate steps to remedy those deficiencies. (34 CFR §300.523)

- Q. If the manifestation determination review concludes that the child's behavior is not related to the child's disability, what disciplinary procedures apply?*
- A. If the IEP team and the other appropriate professionals conclude that there is no relationship between the child's disability and the behavior, then the relevant district procedures applicable to children without disabilities apply. The IEP team determines the extent to which services are necessary to enable the child to appropriately progress and meet the goals of their IEP or IFSP. The parent may appeal these decisions, including the manifestation determination or the placement decision. Specific procedures related to expedited due process hearings and the child's placement during the appeal are contained in the Part B regulations. (34 CFR §300.524-526)
- Q. How can I address a preschooler's challenging behavior through the evaluation, IEP, personnel development and discipline procedures of IDEA?*
- A. See the pull-out chart attached to the inside back cover.

## Accountability

*Q. Are there accountability requirements in Part B that compare to the new literacy and performance standards emphasis in early childhood?*

- A. Yes. States must establish goals for the performance of children with disabilities that promote the purposes of Part B, primarily to ensure that all children with disabilities have available a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and ultimately prepare them for employment and independent living.

These goals must be consistent, to the maximum extent appropriate, with other goals and standards for all children established by the state.

In addition, the state must establish performance indicators that will be used to assess progress toward achieving the goals that, at a minimum, address the performance of children with disabilities on assessments, and for older students, dropout rates, and graduation rates. Every two years, the state must report to the U.S. Department of Education and the public on the progress of the state, and of children with disabilities in the state, toward meeting the goals established by the state. (34 CFR §300.137)

*Q. Do preschoolers with disabilities participate in statewide assessments?*

- A. Part B regulations require that all children ages 3 through 21 with disabilities must be included in general state- and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary.

As appropriate, the state or local school district must develop guidelines for the participation of children with disabilities in alternative assessments for those children who cannot participate in state- and district-wide assessment programs. Beginning not later than July 1, 2000, the state or local school district must develop alternative assessments and conduct those assessments. (34 CFR §300.138)

See Pull-Out Panel





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