



Virgin Islands
Department of
Education
**SPECIAL
EDUCATION
PROCEDURE
MANUAL**

2022

Virgin Islands Department of Education
State Office of Special Education

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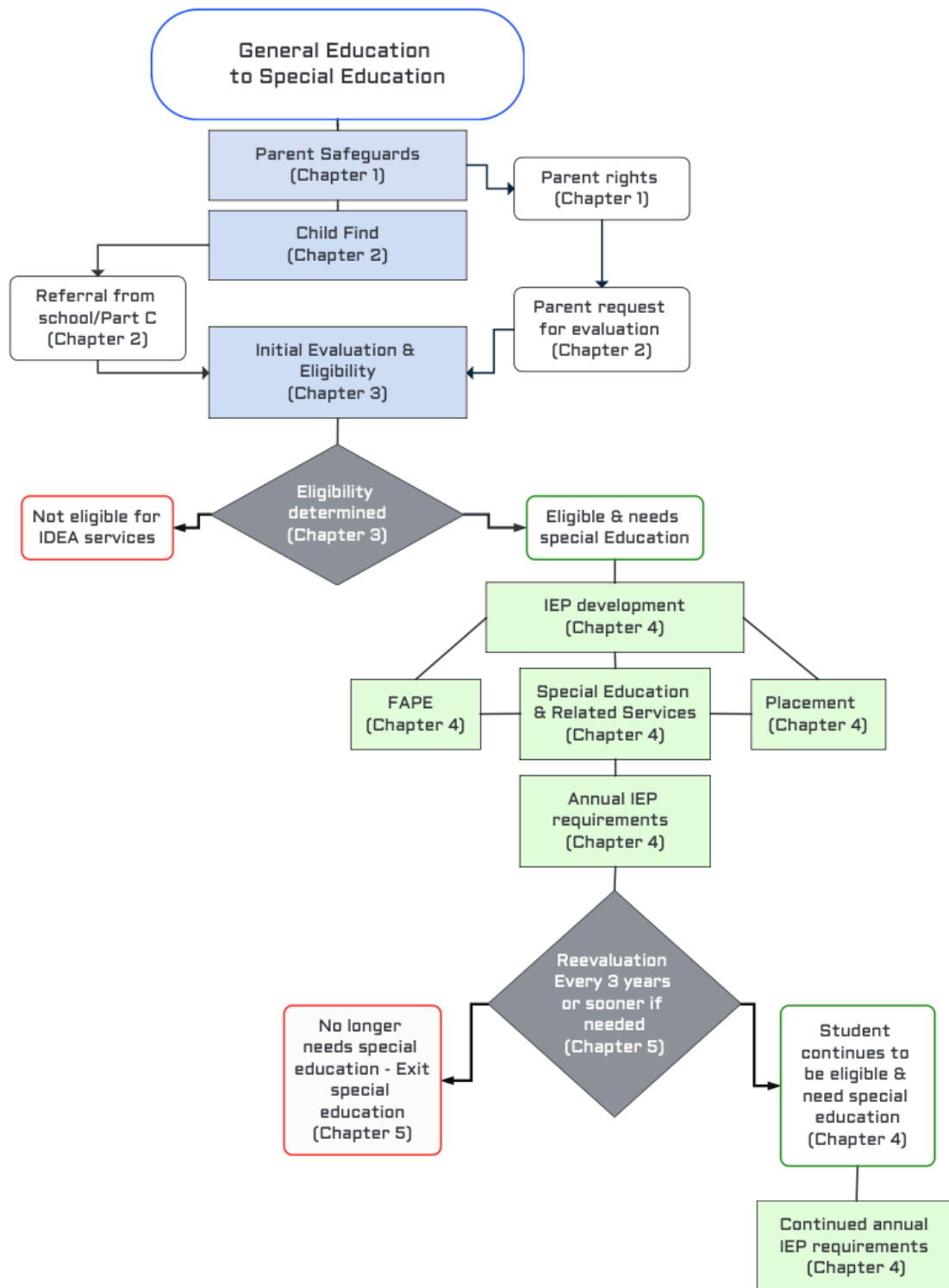
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INTRODUCTION

The Virgin Islands Department of Education, State Office of Special Education (SOSE) developed the Special Education Procedures Manual to assist schools and local education agencies (LEA) in complying with the requirements of the Individuals with Disabilities Education Act (IDEA) and the U.S. Virgin Islands Department of Education's (VIDE) Special Education Rules. Compliance with the IDEA, the federal regulations implementing the IDEA, and the Special Education Rules is required for all public and private agencies providing publicly funded special education services and supports to eligible children with disabilities across the Territory of the U.S. Virgin Islands.

Each school or LEA must develop procedures to ensure IDEA compliant practices on behalf of children with disabilities. This manual is a comprehensive tool to assist in developing and implementing compliant procedures to meet the individual needs of students with disabilities consistent with the IDEA. It is the responsibility of each school and LEA to ensure that staff are knowledgeable about the requirements of IDEA, federal regulations, VIDE rules, and SOSE procedures.

SPECIAL EDUCATION PROCESS FLOWCHART



SPECIAL EDUCATION ACRONYMS

AUT	Autism
BIP	Behavior Intervention Plan
CFR	Code of Federal Regulations
DB	Deaf Blind
DD	Developmental Delay
ED	Emotional Disability
ESY	Extended School Year
FAPE	Free Appropriate Public Education
FBA	Functional Behavioral Assessment
FERPA	Family Educational Rights and Privacy Act
HI	Hearing Impairment
IAES	Interim Alternative Educational Setting
ID	Intellectual Disability
IDEA	Individuals with Disabilities Education Act
IEE	Independent Education Evaluation
IEP	Individualized Education Program
LEA	Local Education Agency
LRE	Least Restrictive Environment
MTSS	Multi-Tiered System of Supports
MD	Multiple Disabilities
MDR	Manifestation Determination Review
OI	Orthopedic Impairment
OHI	Other Health Impairment
PBIS	Positive Behavioral Interventions and Supports
PWN	Prior Written Notice
SEA	State Education Agency
SLD	Specific Learning Disability
SLI	Speech or Language Impairment
SOSE	State Office of Special Education
TBI	Traumatic Brain Injury
V.I.C.	Virgin Islands Code
VIDE	Virgin Islands Department of Education

SPECIAL EDUCATION DEFINITIONS

TERM	DEFINITION
Accommodations	Activities involving adapting instructional strategies and/or the classroom environment for students with disabilities. Accommodations can be made across educational settings, such as the general education classroom, resource, or special class.
Adaptive Behavior	The effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of children of comparable age and cultural group.
Age-Appropriate Transition Assessments	The IEP should include current information regarding the child's strengths and needs related to living, learning, and working after graduating high school. Information may be based on observation, interview, or more formal testing depending on the child. Children for whom little is known or who have expectations that do not appear to match with existing information about their abilities will need more detailed assessments.
Annual goals	A statement of the IEP team's estimate of what the child can reasonably be expected to accomplish with specially designed instruction and/or support for the subsequent 365 day period based on the child's current level of performance, potential for learning, and rate of development.
Annual review	An IEP meeting held to review and/or revise the IEP as appropriate that must be held at least once every 365 days.
Assessment	In the context of comprehensive evaluation, a strategy or instrument used in the evaluation process to gather relevant functional, developmental, and academic information about the child. A single measure or assessment cannot be the sole criterion for determining eligibility or an appropriate educational program for the child.
Assistive Technology Device	Any item, piece of equipment, or product system that is used to increase, to maintain, or to improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted or the replacement of such a device.
Assistive Technology Service	Any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes evaluation of the child's needs; acquiring necessary devices; selecting, designing, fitting, and maintaining devices; coordinating with other therapies or services; training for a child and family; or training for professionals.
Audiology Services	Services provided on behalf of a child, including identification of children with hearing loss; determination of the nature and degree of hearing loss; provision of habilitative services and activities;
Behavior Intervention Plan	A behavior intervention plan is written to address behavior concerns that interfere with the child's ability to gain reasonable benefit from the learning environment. A behavior intervention plan lists positive behavioral interventions that support a child's learning of new behaviors and decreasing problem behaviors. Behavior interventions may include environmental modification, social skills instruction, individual or group support or counseling, adaptations to curriculum materials.

TERM	DEFINITION
Benchmark	Statements of what children should know and do by certain levels or times written in conjunction with an IEP goal for children with disabilities who take alternate assessments aligned to alternative achievement standards. <i>See Objectives.</i>
Change in placement	Occurs when there is a change in a child's special education or related services, or a change in the child's special educational placement. The school must ensure that the parents of a child with a disability are members of any group that makes decisions on the educational placement of their child.
Child Find	The affirmative duty fulfilled by continuous and systematic efforts of the LEA to identify, locate and evaluate children ages 3 to 21 who are in need of special education services.
Consent	Consent means the parent has been fully informed of all information relevant to the activity for which consent is sought, and the parent understands and agrees in writing to the activity. The parent also understands that his or her consent may be revoked.
Consultation	Services may be provided directly to the child or indirectly on behalf of the child. Consultation services are considered "indirect."
Continuum of Alternative Placements	A continuum of educational settings where special education instruction is provided. The continuum of alternative placements includes instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.
Core Academic Subjects	English; reading or language arts; mathematics; science; foreign languages; civics and government; economics; art history; and geography.
Direct Services	Special education and related services provided directly to the child by a special educator or related service provider inside or outside of the regular education classroom.
Course of Study	A multi-year description of coursework to achieve the child's desired post-school goals, from the child's current to anticipated exit year. The course of study is documented in the child's IEP. These courses and activities contribute to the child's preparation for living, learning, and working after high school.
Dispute Resolution	Dispute resolution methods include requesting mediation, filing a state complaint, and filing for a due process hearing.
Due Process Hearing	The most formal of dispute resolution processes, a due process hearing request may be filed by a parent or LEA on any matters relating to identification, evaluation, or educational placement, or the provision of FAPE for a child with a disability. An expedited due process hearing may be requested for matters related to a manifestation determination or disciplinary change in placement. A due process hearing is conducted by a trained hearing officer.
Elementary School	An elementary school means a nonprofit institutional day or residential school, including a public elementary charter school that provides elementary education as determined under Territorial law.
Eligibility Determination	A meeting that is held after a child is evaluated for special education to discuss assessment results and to determine whether the child has a disability and is eligible for special education. If a child is eligible for special education, an IEP may be developed at this meeting.

TERM	DEFINITION
Employment	A domain for students of transition age that encompasses full or part-time employment in the competitive labor market in an integrated setting at or above the minimum wage.
English Learner	The Every Student Succeeds Act (ESSA) replaced the term “limited English proficient” with the term “English learner,” defined as: Who is ages 3 through 21; Who is enrolled or preparing to enroll in an elementary school or secondary school; Who was not born in the United States or whose native language is a language other than English; is a Native American or Alaska Native, or a native resident of the outlying areas, and who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the state's proficient level of achievement on state assessments, the ability to successfully achieve in classrooms where the language of instruction is English, or the opportunity to participate fully in society. 34 C.F.R. §300.27.
Evaluation	Procedures used in accordance with Part B of the IDEA and the Virgin Islands Special Education Rules to determine whether a child has a disability, and the nature and extent of the special education and related services that the child needs.
Extended School Year (ESY)	Any special education and related services that are provided to a child with a disability that are beyond the normal school year of the school, in accordance with the child's IEP, at no cost to the parents of the child, and meet the standards of the Virgin Islands Department of Education. ESY is for maintaining learned skills derived from the child's IEP goals.
Free Appropriate Public Education (FAPE)	Special education and related services that: Are provided at public expense, under public supervision and direction and without charge; Meet the standards of the Virgin Islands State Office of Special Education and Part B of the IDEA; Include an appropriate preschool, elementary school, and secondary school education in the U.S. Virgin Islands; and Are provided in conformity with an IEP that meets the requirements of Part B of the IDEA and the Virgin Islands Special Education Rules. 34 C.F.R. §§300.17 & 101.
General Education Curriculum	The same curriculum as that provided for nondisabled children.
Homeless Children	The term “homeless children” has the meaning given the term “homeless children and youths” in section 725 of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. § 11431 et. seq.
Independent Living Skills	A domain for students of transition age that encompasses skills or tasks contributing to the successful independent functioning of an individual in adulthood in the areas of leisure/recreation, maintenance of home and personal care, and community participation.

TERM	DEFINITION
Indirect Services	Special education and related services provided indirectly to the student by a special educator or related service provider such as co-teaching or consultative services.
Individualized Education Program (IEP)	A written statement for a child with a disability that is developed in accordance with IDEA regulations for children identified as having an IDEA disability and in need of special education services. An IEP must be reviewed at least once every 365 days. See <i>Annual Review</i> .
IEP Team	A group of individuals, including the parent, who develop, review, and revise a child's IEP. Team membership is prescribed by 34 C.F.R. §300.321 .
Individualized Family Service Plan (IFSP)	A written plan for provided services to an infant or toddler with a disability and the family under Part C of the IDEA.
Least Restrictive Environment	The setting where a child with disabilities receives his or her special education and related services. 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 not disabled. Special classes, separate schooling, or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 C.F.R. §300.114 .
Local Education Agency (LEA)	LEA means a public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools. In the U.S. Virgin Islands, the two (2) LEAs are the St. Croix LEA and the St. Thomas/St. John LEA.
Manifestation Determination	A meeting held within 10 school days of any decision to make a disciplinary change in placement for a child. A disciplinary change in placement occurs when a child is removed from his or her current placement for 10 consecutive days due to a violation of a school code of conduct; or is subjected to a series of removals that constitute a pattern.
Mediation	A method of dispute resolution that allows parties in a special education dispute to resolve the issue through a mediation process conducted by an impartial mediator at no cost to the parents, school LEAs or agencies. If the parties come to an agreement in mediation, the parties execute a legally binding agreement that sets forth the resolution and is enforceable in any State court of competent jurisdiction or in a United States court.
Modifications	Activities involving changing the program/curriculum when reasonable accommodations will not be effective in allowing the child to participate in the general education classroom. Modifications are greater or more extensive changes that significantly alter the scope or content of the general education curriculum based on the child's needs.
Native Language	The term "native language" means the following: • The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child. • In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. 34 C.F.R. §300.29 .

TERM	DEFINITION
Objectives	Statements of what children should know and do by certain levels or times written in conjunction with an IEP goal for children with disabilities who take alternate assessments aligned to alternative achievement standards. See Benchmarks.
Occupational Therapy	A related service provided by a qualified occupational therapist that includes (i) improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; (ii) improving ability to perform tasks for independent functioning if functions are impaired or lost; and (iii) preventing, through early intervention, initial or further impairment or loss of function.
Parent	A person generally authorized to act as the child's parent or authorized to make educational decisions for the child, e.g., guardian(s) and educational surrogate parent(s) consistent with the definition at 34 C.F.R. §300.30 .
Physical Therapy	A related service provided by a qualified physical therapist.
Placement	The provision of special education and related services, and the educational setting in which a child with a disability receives those services as determined by the child's IEP team.
Positive Behavioral Interventions	Approaches such as changing systems, altering environments, teaching skills and appreciating positive behavior used to decrease a child's problem behavior and increase prosocial behaviors.
Postsecondary Goals	Postsecondary goals are required for the domains of postsecondary education and/or training, employment, and independent living skills as appropriate.
Present Levels of Academic Achievement and Functional Performance (PLAAFP)	Statements describing the child's current level of academic achievement and functional performance based on the results of assessment findings and recent performance data in all relevant academic and non-academic areas in which the child requires specialized instruction. The statements should include how the child's disability affects the child's involvement in the general education curriculum and should be stated in measurable terms and allow for clear determinations of progress toward annual goals.
Prior Written Notice (PWN)	A record for the child, parent, and school of special education decisions that have been made, the basis for those decisions, and actions such as evaluation, change in placement, or disciplinary change in placement that will or will not be taken.
Procedural Safeguards Notice	A notice that informs parents of special education students of their rights. This notice must be provided: (i) at least once a school year; (ii) upon initial referral or parent request for evaluation; (iii) upon receipt of the first state complaint/due process complaint in a school year; (iv) in accordance with IDEA discipline procedures, and (iv) upon parent request.
Progress Reporting	A description of when periodic reports on the student's progress toward meeting the annual goals will be provided. The frequency of progress reporting may be on a calendar basis (e.g. quarterly) or concurrent with other school progress reporting such as report cards.
Public Agency	A public agency includes the State Office of Special Education, the LEAs, schools, and any other political subdivisions of the Territory that are responsible for providing education to children with disabilities. 34 C.F.R. §300.33 .
Qualified Personnel	Personnel who have met the VI Department of Education (VIDE) and VI Board of Education (VIBE) training requirements and state certification, licensing, registration, and other qualification standards (including paraprofessional standards adopted by the VIDE

TERM	DEFINITION
	and/or VIBE), or other comparable requirements that apply to the area in which the individual(s) is providing special education or related services.
Reevaluation	Conducted in accordance with evaluation procedures, a reevaluation must occur at least once every 3 years unless the parent and the administrative unit agree that reevaluation is unnecessary.
Referral	A formal process for reviewing information related to children who are suspected of having disabilities and who show signs of needing special education and related services. A special education referral is the initial step of the special education initial evaluation process.
Related Service	Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting 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, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. §300.34.
Screening	A quick checklist, survey or probe about a child's development or skills conducted by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation.
Secondary School	Means a non-profit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12. 34 C.F.R. §300.36.
Services Plan	A written statement that describes the special education and related services the administrative unit will provide to a child with a disability, enrolled in a private school, who has been designated to receive services, including the location of the services and any transportation necessary.
Special Education	Means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. Specially designed instruction means adapting, as appropriate to the needs of a child with a disability, the content, methodology, or delivery of instruction 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 the child can meet the educational standards of the VIDE in conformity with the requirements of 34 C.F.R. §300.39.
Surrogate Parent	An individual who has training and is assigned to represent the child's interest and make all special education decisions when no parent can be identified, a parent cannot be located by the administrative unit of attendance, or the child is a ward of the state or homeless and no other parent can be identified. A Surrogate Parent has the responsibility to ensure that the school provides the child with a free appropriate public education. A Surrogate Parent attends and participates in school meetings, participates in eligibility determinations and IEP development, signs or withholds consent for assessment or

TERM	DEFINITION
	placement, and may file a complaint or request mediation or due process hearing.
Special Factors	Certain IDEA factors considered by the IEP team. The IEP team determines whether the factors could impede the child's learning and/or have instructional implications then develops a plan to address the factors in the IEP meeting. These factors include: behavior, limited English proficiency, blindness or visual impairment, communication for children who are deaf or hard of hearing, assistive technology, physical or health impairments, and special transportation needs.
Speech Language Pathology Services	A special education service that includes: • Identification of children with speech or language impairments; • Diagnosis and appraisal of specific speech or language impairments; • Referral for medical or other professional attention necessary for the habilitation of speech or communicative impairments; • Provision of speech and language services for the habilitation or prevention of speech or communicative impairments; and Counseling and guidance of parents, children, and teachers regarding speech and language impairments.
State Complaint	A method of dispute resolution in which any individual or entity may file a written complaint with VIDE SOSE if they believe that a school within an LEA, the LEA, or VIDE is violating a special education law. A state complaint is investigated by SOSE.
State Education Agency (SEA)	Means the state agency primarily responsible for the supervision of public elementary schools and secondary schools. The Virgin Islands Department of Education (VIDE) is identified as the SEA.
Supplementary Aids and Services	Aids, services and other supports that are provided in general education classes, other education- related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate.
Transition Services	A coordinated set of activities for a child with a disability that are designed within a results-oriented process focused on improving the academic and functional achievement of the child with a disability in order to promote movement from school to post school activities documented on a child's IEP beginning at age 16.
Transportation	A related service that includes travel to and from or between schools; travel in and around school buildings; and specialized equipment if required to provide transportation to a child with a disability.
Ward of the State	A child who, as determined by the State where the child resides, is—(i) a foster child; (ii) a ward of the State; or (iii) in the custody of a public child welfare agency. Ward of the State does not include a foster child who has a foster parent who meets the definition of “parent” above. 34 C.F.R. §300.45 .

CHAPTER 1

PROCEDURAL SAFEGUARDS

INTRODUCTION

The Individuals with Disabilities Education Act (IDEA) includes important safeguards for children with disabilities and their parents. These safeguards are sometimes referred to as “procedural safeguards” or “parent rights.” This chapter will focus on the procedural safeguards related to the identification, evaluation, and educational placement decisions. Later chapters will address procedures regarding dispute resolution processes, such as due process hearings, mediation and formal complaints to the state department of education.

The procedural safeguards specified in the IDEA were primarily designed to help schools and parents work together to develop effective educational programs for children with disabilities. In [*Board of Education of the Hendrick Hudson Central School v. Rowley*, 102 S.Ct. 3034 \(1982\)](#), the United States Supreme Court said:

“...we think that the importance Congress attached to these procedural safeguards cannot be gainsaid. It seems to us no exaggeration to say that Congress placed every bit as much emphasis upon compliance with procedures giving parents and guardians a large measure of participation at every stage of the administrative process ... as it did upon the measurement of the resulting IEP against a substantive standard. We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP, as well as the requirements that state and local plans be submitted to the Commissioner for approval, demonstrate the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP.”

This chapter provides information to assist schools in ensuring that the rights of parents and children are protected as required by IDEA and the federal regulations. [*34 C.F.R. §300.1*](#). The following topics will be covered:

- Definition of Parent
- Parent Participation
- Procedural Safeguards Notice
- Prior Written Notice (PWN)
- Parent Consent
- Notice of IEP Meeting
- Transfer of Parental Rights
- Independent Educational Evaluation (IEE)

DEFINITION OF PARENT

[34 C.F.R. §300.30](#)

School personnel must determine the appropriate person(s) to make educational decisions on behalf of the child. Those individuals have a right to receive notice, give or revoke informed consent, file formal complaints, request mediation, file for a due process hearing, give or deny permission for release of records, etc.

DEFINITION

Parent is defined as:

- A biological or adoptive parent;
- A foster parent (unless otherwise prohibited by valid court order);
- A guardian generally authorized to act as the child's parent or otherwise authorized to make educational decisions for the child;
- An individual acting in place of the biological or adoptive parent with whom the child resides;
- An individual who is legally responsible for the child's welfare; or
- A duly appointed surrogate parent.

PRESUMPTION

If there is more than one party qualified to act as a parent, and the biological or adoptive parents attempt to act as the parent, the biological or adoptive parents must be presumed to be the parent, unless they do not have legal authority to make educational decisions for the child as determined by valid court order.

A judge may decree or order a person acting as a parent or a legal guardian or other persons to act as the "parent" to make educational decisions for the child. When presented with a valid court order, the school must recognize this person(s) as the legal decision maker for the child.

SHARED CUSTODY

If parents are unmarried and share legal custody, consent from one parent is sufficient. If one parent provides consent under the IDEA and the other denies consent, the school is deemed to have received consent and must fulfill its obligation to provide FAPE to the child. The parent who denies consent has the right to utilize dispute resolution options under IDEA.

When one parent revokes consent over the objection of the other parent, the school must accept the revocation. The parent who objects to the revocation of consent has the right to offer consent and commence the special education process anew.

SURROGATE PARENT

The LEA is responsible for appointing a surrogate parent for a child. [34 C.F.R. §300.519](#).

The IDEA requires that schools afford parents the opportunity to be members of any special education decision-making team for their child, including an initial evaluation, eligibility, reevaluation, and development and review of an IEP for the provision of FAPE. [34 C.F.R. §300.322](#). Schools must ensure that parents have the opportunity to be members of the IEP team that makes decisions about their child, including decisions regarding educational placements. [34 C.F.R. §300.501](#). Schools recognize the contributions that parents can make to the process and how they can help ensure their child's educational progress.

RIGHT TO NOTICE

Parents must be provided notice of meetings (consistent with section F below) related to eligibility, evaluation, reevaluation, IEP development, provision of a FAPE for their child and educational placement decisions, to ensure that they have the opportunity to participate in the meetings. [34 C.F.R. §§300.322 \(b\)\(c\) and 300.501\(b\)\(2\)](#).

If parents are unmarried and share legal custody, the school must provide notice of meeting to both parents, even if only one parent has the right to consent, unless a valid court order prevents this from happening. This applies to all special education notice requirements, including PWNs.

REASONABLE EFFORTS

A school must make reasonable efforts to ensure that the parents understand, and have the opportunity to participate in these meetings, including arranging for an interpreter for parents with deafness, or for parents whose native language is something other than English. [34 C.F.R. §300.322\(e\)](#). The parent and the school may agree to use alternative means of meeting participation, such as video conferences or conference calls. [34 C.F.R. §300.322\(c\)](#).

These meeting requirements do not apply to informal or unscheduled conversation of school personnel on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. [34 C.F.R. §300.501\(b\)\(3\)](#).

NOTICE OF PROCEDURAL SAFEGUARDS | [34 C.F.R. §300.504](#)

To ensure that parents have knowledge about their rights under the IDEA, schools are required to provide a copy of the Notice of Procedural Safeguards to parents. [34 C.F.R. §300.504](#). The Notice of Procedural Safeguards must include a full explanation of all procedural safeguards available under IDEA. Schools are advised to use the SOSE model form.

WHEN

The Notice of Procedural Safeguards must be provided:

- At least one time in a school year; and
- Upon a referral or parent request for initial evaluation;
- Upon a first formal complaint or due process complaint filed in a school year;
- Upon a disciplinary removal from school that constitutes a change in placement; and
- Upon parent request.

UNDERSTANDABLE LANGUAGE

The notice is to be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so. If the language or mode of communication is not a written language, the school must translate the notice orally or use another mode of communication so that the parent understands the content of the notice. [34 C.F.R. §§300.503\(c\)](#) and [300.504\(d\)](#).

ELECTRONIC DELIVERY

Parents may elect to receive the Parent Rights Notice by electronic mail communication, if the school makes that option available. [34 C.F.R. §300.505](#). If the Notice of Procedural Safeguards is provided electronically, the school may want to retain a copy of the email sent to the parent and documentation that the notice was received. The school may place a current copy of the Notice of Procedural Safeguards on its website if one exists. [34 C.F.R. §300.504\(b\)](#). However, simply putting the notice on the school's website does not fulfill a school's obligation to provide notice to the parents.

MODEL FORM

SOSE developed a model Notice of Procedural Safeguards that schools should use. The Notice of Procedural Safeguards is available in English, Spanish, and French Creole at the [Virgin Islands Department of Education, State Office of Special Education's website](#).

One of the important mandatory procedural safeguards afforded to parents is Prior Written Notice (PWN). The purpose of PWN is to provide a comprehensive notice to parents about decisions regarding their child's special education program and/or services. The IDEA requires that PWN be given to parents at certain times during the special education process.

WHEN

PWN must be provided to parents within a reasonable amount of time before the date the school proposes to initiate or change an aspect of the:

- Identification;
- Evaluation,
- Educational placement; or
- Provision of FAPE to their child.

PWN is also provided when the school refuses a parent's request to initiate or change the identification, evaluation, educational placement, or the provision of FAPE to the child.

CONTENTS

The PWN must contain specific information:

- A description of the action proposed or refused;
- An explanation of why the school proposes or refuses to take the action;
- A description of each evaluation procedure, assessment, record, or report the school used as basis for proposed or refused action;
- A description of the other options the school or IEP team considered and reasons why they were rejected;
- A description of any other factors relevant to the proposal or refusal;
- A statement that the parents have parental rights under the law; and
- Sources for parents to contact to assist in understanding their rights.

UNDERSTANDABLE LANGUAGE

The notice is to be provided in language understandable to the general public, and in the native language of the parent unless it is clearly not feasible to do so. Additionally, if the native language or other mode of communication of the parent is not a written language, the school must take steps to ensure:

- The notice is translated orally, or by other means, to the parent in his or her native language or other mode of communication (such as sign language);
- The parent understands the content of the notice; and

- There is written documentation that these requirements are met.

PARENT RESOURCES

In addition to school staff, there are other resources parents can contact for more information to understand their parent rights. Schools are encouraged to include any additional resources, including local resources that are knowledgeable and available to parents, including the following:

Disability Rights Center of the Virgin Islands <https://www.drcvi.org>

MAIN Office
63 Cane Carlton
Frederiksted, VI 00840
(340) 772-1200
(340) 772-1280

STT Office
9003 Havensight Mall
St Thomas, VI 00802
(304) 776-4303

Virgin Islands Developmental Disabilities Council <https://www.viddc.org>

P.O. Box 6324
Christiansted, VI 00823
(304) 719-0076
viddcouncil@gmail.com

Under the IDEA, consent must be fully informed. PWN is the vehicle for informing the parent of the reasons for which consent is sought. PWN must accompany the request for consent for each proposed special education action. [34 C.F.R. §300.9](#).

DEFINITION

Consent means that: [34 C.F.R. §300.9](#)

- The parent has been fully informed of all information relevant to the activity for which consent is being sought, in his or her native language, or other mode of communication.
- The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

CONSENT TO CONDUCT AN INITIAL EVALUATION

The school must obtain informed consent from the parent before an initial evaluation to determine whether a child is a child with a disability. [34 C.F.R. §300.300\(a\)](#).

The school must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability. If the child is a ward of the State and is not residing with the child's parent, the school is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if—

- Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with Virgin Islands law; or
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with Virgin Islands law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

[34 C.F.R. §300.300\(a\)\(2\)](#).

If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the school may, but is not required to, pursue the initial evaluation of the child by utilizing the dispute resolution procedures (including the mediation procedures under [§300.506](#) or the due process procedures under [§§300.507 through 300.516](#)), if appropriate. The school does not violate its child find obligation if it declines to pursue the evaluation. [34 C.F.R. §300.300\(a\)\(3\)\(i\) and \(ii\)](#).

PARENTAL CONSENT FOR SERVICES

A school that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. The school must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

If the parent fails to respond or refuses to consent to initial services, the school cannot use dispute resolution procedures, including mediation or due process, to obtain agreement or a ruling that the services may be provided to the child. Under these circumstances, the school does not violate its obligation for the provision of FAPE to the child for failure to provide the child with the special education and related services for which the school requested consent. In addition, the school is not required to convene an IEP meeting or develop an IEP for the child. [34 C.F.R. §300.300\(b\)](#).

CONSENT TO CONDUCT A REEVALUATION

The school must obtain informed parental consent prior to conducting any reevaluation of a child with a disability. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using dispute resolution to override the parent's refusal. The school does not violate its child find obligation if it declines to pursue the evaluation or reevaluation. [34 C.F.R. §300.300\(c\)\(1\)](#).

Informed parental consent for reevaluation need not be obtained if the school can demonstrate that it made reasonable efforts to obtain such consent; and the parent has failed to respond. [34 C.F.R. §300.300\(c\)\(2\)](#).

CONSENT FOR EVALUATION IN PRIVATE SCHOOLS

If the parent of a child who is placed in a private school by the parents at their own expense does not provide consent (refuses) for an initial evaluation or reevaluation, or the parent fails to respond to a request to provide consent, the school may not use dispute resolution procedures, including mediation or due process, to obtain consent. [34 C.F.R. §300.300\(d\)\(4\)](#). When the school requests consent for an initial evaluation, a reevaluation or for initial services and the parents of a private school or child fails to respond or refuses to give consent, the school has met its obligation for child find.

CONSENT WITHOUT PWN

The following requests for parent consent do not require the school to provide PWN as described above. However, schools must provide sufficient information so that a parent understands the reasons for which consent is sought.

- Consent to excuse an IEP team member from IEP team meeting: A required member of the IEP team, may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent and the school consent to the excusal in writing; and the IEP team member submits, in writing, to the parent and the IEP Team, input into the development of the IEP prior to the meeting. [34 C.F.R. §300.321\(e\)](#). (See Chapter 4, Individualized Educational Program.)

- Consent to invite outside agency: When the IEP team is considering a child's postsecondary goals and transition services needed to assist the child in reaching those goals, the school is required to invite a representative of any agency that is likely to provide or pay for transition services. The school must obtain parental consent to invite the representative from that agency because confidential information about the child would be shared at the meeting. [34 C.F.R. §300.321\(b\)](#). (See Chapter 4, Individualized Educational Program.)

NO PARENTAL CONSENT NEEDED

No parental consent is needed to engage in these limited activities:

- Review existing data as part of an initial evaluation or a reevaluation; or
- Administer a test or other evaluation that is administered to all children unless consent is required of parents of all children.

[34 C.F.R. §300.300\(d\)](#).

REVOCATION OF CONSENT

Parent consent is voluntary and may be revoked by the parent at any time. Revocation of consent must be in writing. It does not negate any action that has occurred after the previous consent was given and before the previous consent was revoked.

If, at any time after the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the school:

- May not continue to provide special education and related services to the child, **but must provide PWN in accordance with [§300.503](#) before ceasing the provision of special education and related services**;
- May not use the dispute resolution procedures to challenge the revocation;
- Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- Is not required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services.

[34 C.F.R. §300.300\(b\)\(4\)](#).

Further, the LEA is not required to amend the child's education records to remove any reference to the child's receipt of special education and related services because of the revocation of consent. [34 C.F.R. §300.9\(c\)\(3\)](#). If a parent who revoked consent for all special education and related services later wishes his or her child to be reenrolled in special education, the school must first conduct an initial evaluation to determine whether the child qualifies for special education. *VIDE Special Education Rules, Section 5(f)(3)(i)(D)*.

If a parent attempts to revoke consent for only some of the services or placement in the child's

IEP, the school must determine whether the child could receive FAPE without the service or placement. If the IEP team determines that the child could still receive FAPE without the service or placement, the team should honor the parent's request and remove the service or placement from the child's IEP. If the team determines that the child is unable to receive FAPE without the service or placement, the school must not remove the service or placement from the IEP. [73 Federal Register 73011](#). The parent may pursue due process or mediation to attempt to remove the services or placement at issue from the child's IEP. The school shall not deny any other service on the IEP.

NOTICE OF IEP TEAM MEETING | [34 C.F.R. §300.322](#)

The school must take steps to ensure that one or both parents are present at each IEP meeting or are otherwise afforded the opportunity to participate in the IEP meeting. The school must provide notice of an IEP meeting to the parents for the initial IEP meeting and any subsequent IEP meetings.

PARENT OPPORTUNITY TO PARTICIPATE

The school must ensure afford parents the opportunity to participate in an IEP team meeting, including:

- Notify the parent of the meeting early enough to ensure that they will have an opportunity to attend; and
- Schedule the meeting at a mutually agreed on time and place.

[34 C.F.R. §300.322\(a\).](#)

CONTENTS OF THE NOTICE

The written notice must indicate:

- The purpose of the meeting;
- The date and time of the meeting;
- The location of the meeting;
- The titles or positions of the persons who will attend on behalf of the school (The school must notify the parents about who will be in attendance at an IEP team meeting, but individuals may be indicated by position only. The school may elect to identify participants by name, but the school has no obligation to do so.);
- That the parents have a right to invite to the IEP meeting individuals whom the parents believe to have knowledge or special expertise about their child; and
- That if their child was previously served in Part C, parents may request that the local Part C coordinator or other representative be invited to participate in the initial IEP meeting to ensure a smooth transition of services.

[34 C.F.R. §300.322\(b\)\(1\).](#)

In addition, beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, the notice must:

- Indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services;
- Indicate that the school will invite the child; and
- Identify any other agency that will be invited, with parent consent.

[34 C.F.R. 300.322\(b\)\(2\).](#)

TRANSFER OF RIGHTS | [34 C.F.R. §300.520](#)

Under the IDEA and consistent with the Virgin Islands Special Education Rules, the rights and procedural safeguards guaranteed to parents automatically transfer to an adult student at the age of 18 years, including the power to offer informed consent or revoke consent under the IDEA.

NOTIFICATION

At the annual IEP meeting held when the child is 17 years of age, one year before a child's 18th birthday, the IEP shall include a statement that the child has been informed of all rights under the IDEA that will transfer to the adult student upon reaching 18 years of age. [34 C.F.R. §300.320\(c\)](#).

EXPLANATION

The IEP team shall provide a written explanation to the parent and the child that all rights afforded to parents under the IDEA and the Virgin Islands Special Education Rules transfer to the adult student (unless the adult student is under guardianship). [34 C.F.R. §300.520\(a\)\(2\)](#).

EXCEPTION

This transfer of rights occurs automatically unless the adult student is declared incompetent by a court of competent jurisdiction. In this case, the person appointed as the adult student's legal guardian will be considered the parent under IDEA. [34 C.F.R. §300.520\(a\)](#).

FUTURE NOTICES

When a child reaches 18 years of age, school personnel must provide all required special education notices to both the adult student and the parent. [34 C.F.R. §300.625\(c\)](#). Parents are not entitled to attend the IEP meeting unless either the school or the adult student invite the parents to attend IEP meetings as persons who are knowledgeable about the adult student.

When a court has judged a student to be unable to fulfill these responsibilities, schools must provide PWN and obtain informed consent from the person whom the court has appointed as the legal guardian.

INDEPENDENT EDUCATIONAL EVALUATION | [34 C.F.R. §300.502](#)

An independent educational evaluation (IEE) means one or more individual assessments, each completed by a qualified examiner who is not employed by the LEA responsible for the education of the child in question.

THE RIGHT

A parent has the right to obtain an IEE at public expense if the parent disagrees with an evaluation obtained or conducted by a school within the LEA. [34 C.F.R. §300.502](#).

- The parent is not entitled to an IEE at public expense before the school within an LEA is permitted conduct its own evaluation.
- The parent is entitled to only one IEE at public expense for each LEA evaluation.
- The parent has the right to an independent evaluation at his or her own expense at any time, and the school must consider the results of each individual assessment completed.

THE CRITERIA

If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

The LEA's IEE criteria may include the following information:

- The location for the evaluation;
- The required qualifications of the examiner;
- The eligibility requirements for the specific disability categories; and
- Reasonable cost containment criteria applicable to personnel for specific assessments to limit excessive fees. LEAs may establish a schedule of reasonable fees for IEEs. If the maximum allowable fees are established, the fees must:
 - Not simply be an average of the fees customarily charged in the area.
 - Only eliminate excessive fees, while still allowing for the parents to choose from qualified examiners in the area.
 - Allow the parents an opportunity to demonstrate unique circumstances that justify an IEE that exceeds the criteria or maximum fee schedule. If the LEA has established a cost ceiling that is reasonable for the type of evaluation requested and the IEE exceeds the ceiling, the LEA must pay up to the ceiling amount.

PROCEDURES FOR REQUESTING AN IEE

The parent may request an IEE either verbally or in writing. If a parent requests an IEE at public expense, the school or LEA may ask why the parent disagrees with the evaluation conducted or

obtained by the school, but the school cannot require an explanation. The school must provide the parent with the criteria under which an IEE may be obtained.

RESPONSE TO AN IEE REQUEST

The school has a duty to respond to a parent's request for an IEE. Upon receipt of a parent's request for an IEE, the school must, **without unnecessary delay**:

- Provide the parent with the criteria under which an IEE may be obtained.
- Provide the IEE at public expense, or
- Request a due process hearing to show that its evaluation of the child was appropriate.

SCHOOL'S OBLIGATION TO CONSIDER AN IEE

If the parent obtains an IEE at public expense or shares an evaluation obtained at private expense, the results of the evaluation -

- Must be considered by the school within the LEA, if it meets agency criteria, in any decision made with respect to the provision of a free appropriate public education; and
- May be presented by any party as evidence at a hearing on a due process complaint.

CHAPTER 2

CHILD FIND

INTRODUCTION

Child find is the affirmative, ongoing obligation of LEAs to identify, locate, and evaluate all children with disabilities residing within the jurisdiction who are in need of special education and related services. LEAs must have policies and procedures in effect to ensure that all children with disabilities who are in need of special education and related services under IDEA, regardless of the severity of their disability, are identified, located, and evaluated. [34 C.F.R. §300.111](#). This includes children who attend public or private schools, who are home schooled, are highly mobile including migrant and homeless, are wards of the State, or are in correctional facilities. The child find requirement applies to children ages birth through 21.

Each LEA shall adopt and implement policies and procedures to identify, locate, and evaluate all children age birth through 21 residing within its jurisdiction who are suspected of being a child with an IDEA disability in need of special education, regardless of the severity of the disability, including—

- Children attending private and/or parochial schools within the LEA's boundaries, regardless of where the child resides;
- Children who are wards of the U.S. Virgin Islands;
- Children who are highly mobile, including migrant and homeless children;
- Children who are suspected of having an IDEA disability and the need for special education, even though they are advancing from grade to grade;
- Children who are participating in Part C programs for infants and toddlers with disabilities under the IDEA; and
- Children who are home-schooled.

This chapter includes information on the following topics:

- Annual Public Notice for Child Find
- Collaboration with Infants and Toddlers Program (Part C)
- Preschool Screening
- General Education Interventions for Public School Students
- Parentally-Placed Private School Children

ANNUAL PUBLIC NOTICE FOR CHILD FIND | [34 C.F.R. §300.612\(b\)](#)

The first step in the child find process is to provide information to the public concerning the availability of special education services children with disabilities under the IDEA, including procedures for accessing these services. This public notice is usually provided at the beginning of the school year and must be repeated annually. Copies of the information from child find activities must be kept on file as documentation for implementing policies and procedures.

LOGISTICS

By November 1st of every school year, the LEA must revise the Annual Public Notice, as needed, and provide the funding necessary for distribution and dissemination to stakeholders and others responsible for the care and education of children and youth ages 3 to 21 according to the following:

- The notice must inform all schools, childcare facilities, public agencies and the general community about the right to, and availability of, special education and related services for any child identified as, or suspected of, having a disability.
- The notice must be calculated to reach the general public, particularly parents and guardians within the LEA, school personnel, and all other persons responsible for the education and care of children.
- Efforts must be documented to provide primary health care providers (especially pediatricians and family practitioners) in hospitals, clinics, private offices, and other medical facilities with the annual public notice information for distribution.
- The notice must include a segment advising individuals how to obtain further information and assistance as necessary to facilitate equitable access to all services provided by the LEA by persons who are deaf, hard of hearing, vision impaired, who primarily speak a language other than English, and/or who do not read or easily understand English.

CONTENT OF NOTICE

The content of the Annual Public Notice must include all of the following information:

- The disabilities that qualify as disabling conditions under Part B of the IDEA;
- The rights of children with disabilities to a FAPE;
- The diagnostic and educational services available to children with disabilities;
- Confidentiality protections and procedural safeguards; and
- Contact persons in the LEA and schools regarding referrals, evaluations, and services.

DISSEMINATION

The public notice may be provided through a variety of methods. Informational materials may be distributed to all schools in the area, including private schools, other agencies and to professionals who would likely encounter children with a possible need for special education. LEAs must publish yearly notices in local newspapers, provide pamphlets, furnish information on the Internet,

broadcast announcements on radio or television and provide information at parent-teacher conferences. [34 C.F.R. §300.612\(b\)](#).

Dissemination methods may include a variety of the following modes of communication, venues and media forms: public meetings; community seminars; posters; LEA website publication; brochures; newspapers; radio; television; group e-mails; workshops; presentations and/or dissemination of Child Find materials to community groups, childcare centers, schools and agencies; houses of worship, homeless organizations and events; and mass mailings to public housing facilities.

LEA staff must annually collaborate with school and childcare center staff, organizations, agencies, and individuals who are charged with ensuring that the educational needs of children are met to develop a training schedule and conduct in-service seminars and activities.

The LEA must ensure that all state-approved referral forms are disseminated on a regular basis to public and private schools (including parochial schools) educating children and youth ages three (3) to twenty-one (21), as well as to agencies included in the inter-agency agreement (such as the Infants and Toddlers Programs, Maternal Child Health and Department of Human Services).

The LEA must maintain an annual record of outreach efforts and general public awareness (e.g., clippings from newspapers, and copies of brochures, correspondence, videotapes, and attendance logs from any presentations made).

Part B's child find requirements begin at birth and overlap with Part C's child find requirements. The LEA shall have policies and procedures to ensure that children participating in early intervention programs under Part C who will participate in programs under Part B of the IDEA experience a smooth transition with an IEP in effect by the child's third birthday.

COORDINATION

The LEA shall maintain regular contact throughout the year with administrators of the Department of Health, Infants and Toddlers Program (Part C) to ensure that the LEA is notified according to the Interagency Memorandum of Understanding (MOU) of scheduled transition meetings for children with an active Individualized Family Services Plan (IFSP) under Part C who may be eligible to receive special education and related services under Part B.

TRANSITION PLANNING CONFERENCE

Pursuant to the MOU, the Department of Health Infants and Toddlers Program, must establish a transition plan in the IFSP no fewer than 90 days before the child's third birthday. [34 C.F.R. §303.209\(d\)\(2\)](#). The lead agency must convene a transition planning conference not fewer than 90 days before the child's third birthday. [34 C.F.R. §§300.101\(b\)\(1\)\(ii\)](#) and [303.209\(c\)\(1\)](#).

The LEA shall ensure that a representative of the LEA attends Part C transition meetings. [34 C.F.R. §303.209\(c\)\(1\)](#). The LEA representative shall receive (with parental permission) written communication specifying the parent's request for a referral packet for an evaluation to determine his or her child's eligibility for Part B special education and related services.

REFERRAL

The LEA must receive a referral packet from the Infants and Toddlers Program representatives and the parent of the child referred to Part B in a **timely manner**. The referral packet submitted by the Infants and Toddlers Program to the LEA's Division of Special Services/Educational Diagnostic Center coordinator shall contain the following:

- A copy of the Transition Conference Meeting Notice;
- A release of information form signed by the child's parent or legal guardian;
- A copy of the IFSP if the child received Part C services;
- The results of hearing and vision screenings completed within the past year, if available;
- The results of a speech/language screening completed within the past year, if available;
- A general health screening form containing the results of the child's last physical exam, if available; and
- Any available evaluation reports or other information that may be helpful to the diagnostic team in establishing performance baselines, determining what progress has been made with interventions, and determining eligibility for special education and related services.

The LEA must ensure that all children with disabilities, including preschool children, regardless of the severity of their disability, who are in need of special education and related services, are identified, located, and evaluated. Preschool screening is one way for an LEA to fulfill its child find obligation.

COLLABORATION

The LEA must collaborate with Head Start, day care centers, and other agencies responsible for serving children between the ages of three and five years. The purpose of the collaboration is to plan and strategize twice yearly preschool screening activities throughout the LEA.

DEFINITION

Preschool screening is defined as a LEA-wide activity to identify children with disabilities and in need of special education (ages 2 1/2 to 5) in the general population, who may or may not be participating in formal educational and childcare programs.

Areas to be screened include developmental skills, adaptive skills, speech/language, vision, and hearing. Parent input shall be obtained. Children whose primary language is other than English should be screened in a manner that does not penalize them for differences in language exposure.

EXCEPTION

Screening shall not be considered a comprehensive evaluation for eligibility for special education and related services. [34 C.F.R. §300.302](#). Screening alone shall not be used to make diagnostic, eligibility, or placement decisions.

DATA

Post-screening data and the information gathered during the screening process shall be utilized by the multidisciplinary team to determine which children are in need of early intervention and/or a referral to special education for an initial comprehensive evaluation to determine eligibility for special education.

GENERAL EDUCATION INTERVENTIONS | [34 C.F.R. §300](#)

The Every Student Succeeds Act (ESSA) and the IDEA place a strong emphasis on using evidence-based instruction and interventions, as appropriate, for children in general education. ESSA defines evidence-based as an activity, strategy, or intervention that—

- Demonstrates a statistically significant effect on improving student outcomes or other relevant outcomes based on—
 - Strong evidence from at least 1 well-designed and well-implemented experimental study; or
 - Moderate evidence from at least 1 well-designed and well-implemented quasi-experimental study; or
 - Promising evidence from at least 1 well-designed and well-implemented correlational study with statistical controls for selection bias; or
- Demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes; and
- Includes ongoing efforts to examine the effects of such activity, strategy, or intervention.

[20 U.S.C.8101\(21\).](#)

PROBLEM SOLVING TEAMS

As a part of a child's referral to determine eligibility for special education and related services, the School Based Student Support Teams (Child Study Teams) must document any educational or behavioral interventions that have been implemented and those interventions have proven effective or ineffective. Evaluation, monitoring and documenting the child's response to regular education interventions can support a school within the LEA in determining which children are suspected of having a disability and should be referred for an evaluation.

The problem solving conducted by these teams may vary, however, there should be at least four basic steps common to the process used by schools. All steps should include parent involvement – not just informing parents, but also including them in decision-making whenever possible. Additionally, parents must be provided with copies of the child data collected as interventions are tried and monitored for children.

The following outlines the four basic steps of problem solving and briefly indicates what happens at each step.

STEP 1. PROBLEM IDENTIFICATION

- Precisely define the problem.
- Measure the skill or behavior in the natural setting to establish baseline performance.

- Estimate the severity of the problem (use age norms or compare to peers).
- Establish expectations for the child.

STEP 2. PROBLEM ANALYSIS

- Analyze antecedent, situational, and consequent conditions.
- Use ICEL components (instruction, curriculum, environment, learner) to analyze the problem.
- Collect additional data as needed to understand the cause of the problem.

STEP 3. DEVELOP AND IMPLEMENT AN INTERVENTION PLAN

- Formulate a plan that uses scientific research-based interventions designed to target the cause of the presenting problem.
- Establish intervention goals.
- Develop a plan for monitoring progress, which specifies the child data to be collected, and the schedule for collecting it. Decide how the data will be displayed (e.g. chart/graph) to facilitate evaluation.
- Implement the plan with treatment integrity and frequent monitoring of progress.

STEP 4. EVALUATE AND REVISE PLAN

- Review progress-monitoring data to determine if enough progress has been made by repeating Step 1.
- If expectations have not been met, repeat Step 2 to further analyze the problem.
- Revise current intervention or select a new intervention including components of Step 3.

COORDINATED EARLY INTERVENING SERVICES

If the school is providing coordinated, early intervening services (CEIS) with regular progress monitoring, then progress monitoring data may also be used in determining which children are suspected of having a disability and may need to be referred to special education.

- CEIS may include interagency financing structures for children in kindergarten through grade 12 (with a particular emphasis on children in kindergarten through grade 3) who are not currently identified as needing special education or related services, but who need additional academic and behavioral supports to succeed in a general education environment. [34 CFR §300.226\(a\)](#).
- Each special education division that develops and maintains CEIS must report annually on the number of children served and the number of children who received CEIS and who subsequently were referred to special education Part B services during the preceding two (2) year period.

In implementing coordinated, early intervening services under this section, a school may carry out activities that include—

- Professional development (which may be provided by entities other than schools) for teachers

and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

- Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

[34 C.F.R. §300.226\(b\).](#)

EXCEPTIONS

Interventions may not be used to deny or delay a comprehensive special education evaluation when the school has reason to suspect that the child has a disability and the need for special education.

In some instances, a School Based Student Support Team may find it necessary to refer a child directly for an evaluation to determine eligibility for special education due to the severity of the child's disability. In this case, data can be collected regarding response to interventions during the evaluation period.

PARENT REQUEST

The parent has a right to request an evaluation of his/her child. The right of a parent to request an evaluation for a child shall not be denied due to the need for general education interventions. If the school concurs with the parent that there is reason to suspect a disability and the need for special education, the school shall, without delay, commence the comprehensive evaluation process. If the school disagrees with the parent that an evaluation is warranted, the school shall decline the parent's request by issuing a thoroughly drafted PWN explaining the reasons for the school's decision. If a parent disagrees with the decision of the school, the parent has a right to use IDEA's dispute resolution procedures, including filing a state complaint, using mediation, or filing a due process hearing request in order to challenge the decision.

Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located within the boundaries of the LEA. [34 C.F.R. §300.131\(a\)](#). The child find process for parentally placed private school children must be designed to ensure:

- Equitable participation of parentally placed private school children,
- An accurate count of those children, and

Child find activities for parentally placed private school children shall be similar to the activities undertaken for the LEA's public school children. [34 C.F.R. §300.131\(c\)](#).

CONSULTATION

The LEA shall engage in the following activities:

- No later than the end of May of each school year, the LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parents in private, including religious schools, to ensure the equitable participation of parentally placed private school children with disabilities, including an accurate count of such children. Evaluations of parentally placed private school children must be completed within the timelines established for public school children.
- Through a consultative process with private school representatives and parents of parentally placed private school children with disabilities, the LEA must design and develop a child find process, including:
 - How parentally placed private school children suspected of having a disability can participate equitably, and
 - How parents, teachers, and private school officials will be informed of the process.

[34 C.F.R. §300.134.](#)

PROCEDURES

The LEA shall utilize the following procedures:

- The LEA must initiate at least an annual consultation with private school officials and representatives of parents of parentally placed private school children with disabilities.
- The annual meetings with private school officials and parent representatives must include discussion of how the process will operate throughout the school year to ensure that parentally placed children suspected of having or having disabilities identified through the Child Find process can participate equitably in special education and related services.
- These annual meetings must also include discussion of how the private schools and parent representatives can meaningfully participate in the decisions concerning apportionment of special education and related services.

- The annual meetings must also cover how, where, and by whom special education and related services will be provided for parentally placed private school children, including without limitation: the types of services (direct, consultation, alternative service delivery mechanisms); how special education and related services will be apportioned; and how and when those decisions will be determined.

REFERRAL

Children identified through this consultation process who are suspected of having a disability shall be referred for an evaluation to determine eligibility for special education.

CHAPTER 3

INITIAL EVALUATION & ELIGIBILITY

INTRODUCTION

The school must conduct a full and individual initial evaluation before determining a child eligible for special education and related services under the IDEA. [34 C.F.R. §300.301](#). The purpose of an evaluation is to gather relevant information to determine whether the child is a child with a disability pursuant to [34 C.F.R. §300.8](#) and the educational needs of the child. [34 C.F.R. §300.301\(\(c\)\(2\)\)](#).

An initial evaluation involves the use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information to assist in determining if the child is eligible for special education. A two-pronged test for eligibility: (1) whether the child is a child with a disability; and (2) by reason thereof, has a need for special education and related services, has driven eligibility decisions for many years.

This chapter includes information on the required elements of the process to conduct an initial evaluation and determine eligibility. The initial evaluation process begins when a referral for initial evaluation is made and applies to all children beginning at age 3 (or at least 90 days before a child's third birthday if transitioning from Part C).

The following topics related to initial evaluation are discussed within this chapter:

- Referral for Initial Evaluation
- The Multidisciplinary Team
- Timeline for Conducting the Initial Evaluation
- Conducting the Evaluation
- Eligibility Determination and Documentation
- Prior Written Notice for Identification

Either the parent of a child or a public agency, i.e. LEA, Part C Program, Corrections, etc., may initiate a request for an initial evaluation to determine if a child is a child with a disability. [34 C.F.R. §300.301\(b\)](#). **Parent consent is not required in order to process a referral.** Parental consent is required at the evaluation stage after the referral is processed.

REFERRAL SOURCES

Referrals for initial evaluation may come from a variety of sources. These include:

- Early Childhood Screening;
- Part C Infant-Toddler Program;
- Public Schools, including preschools or Head Start;
- General Education Intervention Team, Building Level Student Support Team, or Child Study Team;
- Parents or other legal guardians;
- Self-referral by adult student; or
- Special education transfer student from outside the Virgin Islands.

A referral for an initial evaluation shall be made whenever it is suspected that a child may be a child with a disability and in need of special education. For a preschool child the referral may be a result of screening, or from a Part C Infant-Toddler program.

PROCEDURAL PROTECTIONS

Upon referral for an initial evaluation, regardless of the source, the first action the school must take is to provide the parents, or the adult student, a copy of the Notice of Procedural Safeguards covered in Chapter 1 as required by [34 C.F.R. §300.504](#).

DATA MANAGEMENT

Each school and LEA shall use the special education data management system to log and track all children who are referred for evaluations, students evaluated; and who are determined eligible to receive special education and/or related services.

Each LEA must provide referral data electronically to the SOSE when requested and in the manner requested. All data submissions must be accurate, reliable, timely and without duplication.

REFERRAL PACKET

The referral packet starts the referral process and provides current information for the assessment team to begin its review. The referral packet will include documentation of the presenting problem(s), any attempts at alleviating or addressing the difficulties of a child suspected of having a disability, and any documentation of pre-existing (e.g. vision, hearing, medical, etc.) conditions related to the presenting difficulties.

PROCESS THE REFERRAL

When a referral packet is received by a school within the LEA, it is stamped and the child's demographics are logged and entered into the special education data management system, ensuring that the "referral received date" is accurately documented in the file created for the child.

The school and relevant LEA staff must thoroughly review the referral and all supporting documentation. Based on that review, the school must determine the appropriateness of the referral. If the school or LEA has no reason to suspect that the child is a child with an IDEA disability, the school or LEA must provide the parent a Prior Written Notice prepared according to [34 C.F.R. §300.503](#) memorializing the reasons for its decision.

If the school or LEA suspects that the child may have a disability and the need for special education, the school must commence the initial evaluation process within a reasonable period of time (15 calendar days) by convening a multidisciplinary team, including the parent, to review existing data and plan an initial evaluation. Although this review may take place without a meeting, the parent must be included. The review is conducted as described in the next sections.

Members of the multidisciplinary team are the same members of an IEP team once a child has been deemed eligible. As part of a comprehensive evaluation process, the assessment team must review already existing data. This step in the evaluation process does not require parent consent. [34 C.F.R. §300.300\(d\)](#).

COMPREHENSIVE EVALUATION PROCESS

The purpose of a thorough, comprehensive evaluation is to consider the whole child in order to discover and measure all educational needs that result from an IDEA disability. The use of evaluations for the purpose of assessing only one skill area is discouraged and can lead to noncompliance with the requirements of IDEA. When looking at the whole child, an assessment team asks critical questions in multiple areas to probe a child's current functioning level across environments through a review of existing data in order to determine what additional or unanswered questions exist regarding the child's disability or educational needs. The Evaluation Wheel depicted below is a useful tool for guiding the multidisciplinary team's inquiry into the whole child.

Evaluation Wheel



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REVIEW EXISTING DATA

As part of an initial evaluation, the assessment team, including the parent, must review existing evaluation data on the child, including:

- Evaluations and information provided by the parents;
- Current classroom-based, local, or state assessments, and classroom-based observations; and
- Observations by teachers and related service providers.

[34 C.F.R. §300.305\(a\)\(1\).](#)

The assessment team also reviews formal and informal information from a variety of sources, such as:

- Information provided by parents and children;
- School-based problem solving data;
- General education intervention data;
- Anecdotal records;
- Classroom observations;
- Cumulative records (attendance, discipline, report cards, achievement scores, and/or transcripts); or
- Private evaluation information, if available.

Based on that review, and with input from the child's parent, identify what additional data, if any, are needed to determine:

- Whether the child is a child with a disability under the IDEA, and the educational needs of the child;
- The present levels of academic achievement and related developmental needs of the child;
- Whether the child needs special education and related services, and
- Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

[34 C.F.R. §300.305\(a\)\(2\).](#)

NO ADDITIONAL DATA NEEDED

If the multidisciplinary team, including the parent, determines that no additional data are needed to determine eligibility (or continued eligibility) and the educational needs of the child, the school must notify the child's parents of that determination, including the reasons for the decision, and the right of the parent to request assessments to determine whether the child has an IDEA disability and the educational needs of the child. [34 C.F.R. §300.305\(d\).](#)

ADDITIONAL ASSESSMENT DATA NEEDED

The multidisciplinary team shall document its decision to seek additional assessments, the areas to be assessed, and the reasons for the evaluation in a PWN seeking the parent's informed consent to conduct assessments as proposed in an evaluation plan. Only after a thorough explanation of the evaluation plan in a PWN that meets the requirements of [34 C.F.R. §300.503](#) may the school seek the parent's consent.

PARENTAL CONSENT FOR INITIAL EVALUATION

A parent's informed consent must be obtained prior to proceeding with an initial evaluation. Only a parent, legal guardian, or other person authorized to serve as a parent under the IDEA can provide consent for an initial evaluation.

If the parent refuses to provide consent for the initial evaluation, the LEA *may* request mediation or a due process hearing to try to obtain parental consent on behalf of the school. However, if the LEA does not do so, it cannot be found to be in violation of its duty to provide FAPE to a child with a disability. [34 C.F.R. §300.300](#).

A parent who has provided written informed consent for an initial evaluation may revoke that consent at any time, even during the evaluation process. However, the parent's revocation of consent does not undo an action that has already occurred after consent was given but before it was withdrawn, and the school does not have to amend or remove the record of any completed evaluations from the child's files (permanent record, data management system, cumulative file).

The school is required to conduct thorough, comprehensive evaluations within the 45 day timeframe established by the Virgin Islands. This timeline was established by the 2007 [Nadine Jones Consent Decree](#) in an effort to ensure that children with disabilities in the Virgin Islands are timely evaluated for special education eligibility. The abbreviated timeline remains in effect and requires that schools work diligently to conduct thorough, comprehensive evaluations within the 45 days from receipt of the parent's consent.

45 DAYS

The comprehensive evaluation must be conducted as proposed in the PWN and completed within 45 days of receipt of the parent's consent. *Virgin Islands Special Education Rule, Section 7(a)(2)*. The school's receipt of the parent's informed consent commences the evaluation timeline.

Although the time in which to conduct an initial evaluation is abbreviated, the school, in conjunction with the LEA, remains obligated to conduct a comprehensive evaluation in all suspected area(s) of disability and collect sufficient evaluative information to determine the contents of the child's IEP, if determined eligible.

EXCEPTIONS

The timeframe above does not apply to a school if—

- The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or
- The child enrolls in a school of another LEA after the evaluation timeframe has begun, but prior to a determination by the child's previous school as to whether the child is a child with a disability under IDEA.

The full and comprehensive evaluation process must consist of procedures to:

- Determine if the child is a disability and eligible for special education; and
- Determine all educational needs of the child.

[34 C.F.R. §300.301\(c\).](#)

EVALUATION PROCEDURES

In conducting a legally compliant evaluation under IDEA, the school must—

- Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—
 - Whether the child is a child with a disability under [34 C.F.R. § 300.8](#); and
 - The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities).
- Use assessments that reflect a variety of evaluation sources, which yields a comprehensive look at the child's area(s) of suspected disability.
- Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
- Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- Ensure assessments and other evaluation materials used to assess a child under this part—
 - Are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer. It is important to administer assessments in a manner that does not simply measure the child's English language skills and minimizes the impact of limited English language skills;
 - Are used for the purposes for which the assessments or measures are valid and reliable;
 - Are administered by trained and knowledgeable personnel; and
 - Are administered in accordance with any instructions provided by the producer of the assessments.

- Ensure assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- Ensure assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other 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).
- Ensure the child is 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 abilities. Refer to and utilize the Comprehensive Evaluation Wheel explained above.
- Ensure assessments of a child who transfers from one LEA to another LEA in the same school year are coordinated with the child's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with [34 C.F.R. § 300.301\(d\)\(2\) and \(e\)](#), to ensure prompt completion of full evaluations.
- In evaluating each child with a disability, ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified.
- Ensure assessment tools and strategies that provide relevant information that directly assist in determining the educational needs of the child are provided.

[34 C.F.R. §§300.301 through 300.311.](#)

A Comprehensive Evaluation Probe is included at the end of this chapter to assist teams in conducting a comprehensive evaluation.

ADDITIONAL PROCEDURES FOR SPECIFIC LEARNING DISABILITY

The IDEA establishes additional procedures for evaluating children with Specific Learning Disability (SLD). [34 C.F.R. §§300.307 through 300.311.](#)

The determination of whether a child suspected of having SLD is a child with a disability must be made by the multidisciplinary team, including the child's parent, and at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. [34 C.F.R. § 300.308.](#)

ASSESSMENT DATA

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 exceptionality category being considered for the child. If the child is found eligible, this information translates into the present levels of academic achievement and functional performance (PLAAFP) and forms the basis for identifying needs and services in the IEP. This information assists the school in determining other

appropriate instruction and supports for the child.

Ultimately, at the close of an evaluation, the multidisciplinary team should have enough information to support the child whether or not the child is eligible for special education. The team should be able to describe where the child is currently performing within the general education curriculum and standards as well as be able to describe how (or if) the child's unique learning characteristics are impacting the child's ability to access and make progress in the general education curriculum (or for preschool, to participate in appropriate activities). Other issues that are impacting the child's ability to function in the learning environment should also be described so that the extent of the child's needs may be realized.

EVALUATION REPORT

Each evaluator who participates in the evaluation is responsible for documenting assessment conditions, results, and recommendations, which shall be synthesized into an evaluation report. [34 C.F.R. §300.306](#). The evaluation report shall contain:

- Reason for referral;
- Background, social, emotional, and familial information;
- Assessment instruments and procedures used;
- Results of the various assessments; and
- Recommendations for meeting the child's educational needs.

COPY OF THE REPORT

A copy of the evaluation report shall be given to the parent at no cost. The original evaluation report shall be maintained in the child's special education record. [34 C.F.R. §300.306\(b\)](#).

COMPREHENSIVE EVALUATION PROBE

COMPREHENSIVE EVALUATION PROBE

34 C.F.R. §§300.301 – 300.306

Student ID #: _____ Grade: _____ Disability Category: _____ NOTES:

- | | | | |
|---|---|---|-----|
| 1. Include a review of existing data | Y | N | |
| 2. Planned with evidence of team input (PWN) | Y | N | |
| 3. Sufficient to determine eligibility, including: | | | |
| a. Variety of assessment tools used | Y | N | |
| b. No single measure as sole criterion | Y | N | |
| c. Technically sound instruments | Y | N | |
| d. Valid and reliable instruments | Y | N | |
| e. Adequately trained personnel | Y | N | |
| f. Culturally and racially nondiscriminatory | Y | N | N/A |
| g. Administered in native language | Y | N | |
| h. Tailored to assess specific areas of need | Y | N | |
| 4. Sufficiently comprehensive to identify needs, including: | | | |
| a. Assessed in all areas of suspected disability | Y | N | |
| b. Identifies all special ed. & related service needs | Y | N | |
| 5. Rule out exclusionary factors | Y | N | |
| 6. Include observation(s) or review of observations | Y | N | |
| 7. Eligibility supported by data collected/reviewed | Y | N | |
| 8. Evidence of team decision-making, including parent | Y | N | |
| 9. Consider outside evaluations | Y | N | N/A |

1-9 are mandatory considerations. Any "NO" indicates that the evaluation was not comprehensive. A determination must be made whether the violation is material or interfered with parent participation.

10. Reevaluations – Consider additional factors. At least one "yes" must be present.
- | | | | |
|---|---|---|-----|
| a. Based on inadequate or unexpected progress | Y | N | NA |
| b. In response to parent or teacher request | Y | N | NA |
| c. At least every three years, or | Y | N | N/A |
| d. Agreement that reevaluation is unnecessary | Y | N | N/A |

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Upon completion of the administration of assessments and other evaluation measures, the multidisciplinary team and the parent of the child determine whether the child is a child with a disability as defined in [34 C.F.R. §300.8](#) and the Virgin Islands Special Education Rules, Section 5(e).

DEFINITION

A child with a disability under the IDEA means:

A child evaluated in accordance with [17 V.I.C. § 287\(f\)](#) and [34 C.F.R. §§ 300.304 through 300.311](#) as having one of the disabilities defined below, and who, by reason thereof, needs special education and related services. If it is determined, through an appropriate evaluation under [34 C.F.R. §§ 300.304 through 300.311](#), that a child has one of the disabilities identified below but only needs a related service and not special education, the child is not a child with a disability under the IDEA.

If the related service required by the child is considered special education rather than a related service under Virgin Islands standards consistent with the definition of *special education*, the child shall be determined to be a child with a disability under the IDEA.

DISABILITY CATEGORIES

- *Autism* (AUT) means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.
 - Autism does not apply if a child's educational performance is adversely affected primarily because the child has an *emotional disturbance*, as defined in paragraph (e)(1)(v) of this section.
 - A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this section are otherwise satisfied.
- *Deaf-blind* (DB) means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.
- *Deaf* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.
- *Developmental delay* (DD) means a child with a disability for children aged three through seven—

- Who is experiencing developmental delays as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas—
 - Physical development,
 - Cognitive development,
 - Social or emotional development, or
 - Adaptive development; and
- Who, by reason thereof, needs special education and related services.
- *Limitation.* Prior to exceeding the age of seven years, the LEA shall either comprehensively evaluate the child to establish eligibility as a child with a disability in a different category or exit the child from special education.
- *Emotional disturbance* (ED) means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance. Symptoms include—
 - An inability to learn that cannot be explained by intellectual, sensory, or health factors.
 - An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
 - Inappropriate types of behavior or feelings under normal circumstances.
 - A general pervasive mood of unhappiness or depression.
 - A tendency to develop physical symptoms or fears associated with personal or school problems.
 - Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance as defined in this section.
- *Hearing impairment* (HI) means impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.
- *Intellectual disability* (ID) means significantly sub average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.
- *Multiple disabilities* (MD) means concomitant impairments (such as intellectual disability - blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf- blindness.
- *Orthopedic impairment* (OI) means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by diseases such as poliomyelitis, bone tuberculosis, and

impairments from other causes such as cerebral palsy, amputations, and fractures or burns that cause contractures.

- *Other health impairment* (OHI) means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome that adversely affects a child's educational performance.
- *Specific learning disability* (SLD) means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.
- *Speech or language impairment* (SLI) means a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance.
- *Traumatic brain injury* (TBI) means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The terms "traumatic brain injury" applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.
- *Visual impairment, including blindness* (VI) means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

MULTIDISCIPLINARY TEAM

The multidisciplinary team shall be convened for the purpose of determining eligibility for special education and related services. This team will be comprised of the evaluator(s), parent(s), and other qualified individuals as appropriate. If a child is determined to be a child with specific learning disabilities, the child's general education teacher must participate in the eligibility meeting.

In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, the team must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and ensure that information obtained from all of these sources is documented and carefully considered.

ELIGIBILITY REPORT

A written eligibility report must be prepared to document that a child is qualified as a child with a disability with educational needs resulting in the need for special education and related services. The report must summarize the information from all of the evaluations.

The eligibility report must include at least the following information:

- The date of the report (for an initial evaluation, this date represents the date the child is determined eligible for special education);
- The name, birth date, and gender of the child;
- A list of the members of the multidisciplinary team consisting of qualified professionals and a parent or guardian of the child;
- The signatures of team members in attendance and the date of the meeting;
- A description of the child's present levels of academic achievement and functional performance;
- A description of environmental, cultural, or economic factors, if appropriate. Prior to finding that a child has specific learning disabilities, these factors *must* be considered and ruled out. These factors *should be considered* for children potentially identified as having emotional disturbance, intellectual disabilities and speech/language impairments;
- A summary of the team's discussions; and
- The disability category under which the child qualifies for special education, the child's educational needs, and a statement of whether the child requires special education and related services.

ADDITIONAL DOCUMENTATION FOR SLD DETERMINATION

In making the determination that a child has SLD, the multidisciplinary team, including the parent, must ensure that the eligibility report contains a statement which includes:

- Whether the child has a specific learning disability;
- The basis for making the determination, including an assurance that the determination was made in accordance with [34 C.F.R. §300.306\(c\)](#);
- Any relevant behavior noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- The educationally relevant medical findings, if any;
- Whether the child does or does not achieve adequately for his/her age to meet the Virgin Islands Department of Education grade level standards and whether the child does or does not make sufficient progress to meet age or State-approved grade-level standards consistent with [34 C.F.R. §300.309](#);

- The determination of the group concerning the effects of a visual, hearing, motor disability, or an intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and
- If the child participated in a process that assesses a child's response to evidence-based interventions,
 - The instructional strategies that were used, including a summary of the child centered data collected; and
 - To the extent feasible, that evidence-based materials were used for educational interventions and documentation that the child's parents were notified consistent with the requirements of [34 C.F.R. §300.311\(a\)\(7\)\(ii\)](#).

Each team member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the team member must submit a separate statement presenting the member's conclusions.

ELIGIBILITY EXCEPTION

A child must not be determined to be a child with a disability if the determinant factor for the child's educational difficulty is a lack of appropriate instruction in reading, including the essential components of reading instruction; lack of appropriate instruction in math; or Limited English proficiency; and if the child does not otherwise meet the eligibility criteria.

COPY OF THE REPORT

A copy of the eligibility report and documentation of eligibility shall be given to the parent at no cost. The original, signed eligibility report shall be maintained in the child's special education record.

After the eligibility determination is made, the school is required to provide PWN to the parent of the following:

- The school proposes to initially identify the child as a child with disability; and
- The child requires special education and related services to be developed with the IEP team and documented in an IEP.

If the multidisciplinary team determines that the child is not eligible, the school must give PWN to the parent explaining the team's decision that the child is not eligible for special education or related services.

The required content of the PWN is identical to the content described earlier in Chapter 1.

Parent consent is not required for the eligibility determination.

CHAPTER 4

INDIVIDUALIZED EDUCATION PROGRAM

INTRODUCTION

Once a child is determined eligible for special education, the Individual Educational Plan (IEP) process begins.

Development of an IEP is a collaborative process including the parent(s) of a child with a disability, the child when appropriate, and education professionals. IEPs must be designed to meet both procedural and substantive compliance. Asking two critical questions will put the IEP team on a path to compliance with the IDEA, and most importantly, improve outcomes for a child with a disability.

- Has the IEP been developed using a process compliant with federal and state laws?
- Is the IEP reasonably calculated to provide educational benefit in light of a child's unique circumstance?

[*Board of Education of Hendrick-Hudson Central School v. Rowley*. 458 U.S. 176 \(1982\).](#)

DEFINITION

The IEP is a written document outlining educational needs and the services and supports a child needs to access and make progress in the general education curriculum in the least restrictive environment. The IEP serves to inform all service providers of their responsibilities to the child and inform parents of the school's commitment to the child. The IEP is developed, reviewed, and revised by a team in accordance with the regulatory requirements. The IEP team must continually ask critical questions regarding current educational needs of a child and be responsive to a child's changing educational needs. It is best viewed as a living, evolving document designed to help IEP teams propose and provide FAPE to an eligible child with a disability.

The IEP is not a performance contract or a guarantee by the school or a teacher that the child will progress at a specified rate. However, the school must ensure that all services set forth in the child's IEP are provided in conformity with the IEP. Any variations from the services, supports, and placement documented in the IEP may result in a finding of a denial of FAPE.

Having a strong, healthy IEP team leads to better outcomes for children with disabilities through collaborative, multi-disciplinary planning and decision making. The IEP team, comprised of parents and professionals, determines the content of a child's IEP. The IDEA prescribes minimum IEP team membership as well as the purpose of the IEP team.

IEP TEAM COMPOSITION

The IDEA requires that a school ensure an IEP team for an eligible child includes:

- The parents of the child.
- Not less than one general education teacher of the child (if the child is or may be participating in the general education environment).
- Not less than one special education teacher of the child or, where appropriate, no less than one special education provider of the child.
- A school or LEA representative 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 education curriculum; and
 - Is knowledgeable about the availability of school or LEA resources.
- An individual who can interpret the instructional implications of evaluation results.
- At the discretion of the parent or the school, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.
- Whenever appropriate, the child.

[34 C.F.R. §300.321\(a\).](#)

It is possible for one member of the team to serve in more than one role as long as each role's criteria is met. [34 C.F.R. §300.321\(a\)\(5\).](#)

TRANSITION SERVICE PARTICIPANTS

- The school must invite the child with a disability to attend the IEP team meeting if the purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist in reaching those goals. [34 C.F.R. §300.321\(b\)\(1\).](#)
- If the child does not attend, or the team agrees that it is not appropriate for the child to attend the meeting, the school must take other steps to ensure that the child's preferences and interests are considered. [34 C.F.R. §300.321\(b\)\(2\).](#)
- To the extent appropriate and with consent of the parent or adult student, the school must invite a representative of any agency that is likely to provide or pay for transition services. [34 C.F.R. §300.321\(b\)\(3\).](#)

The IEP team must focus (and refocus) on the educational needs of a child. In order to do so, the team must have a clear understanding of the child's educational needs described in terms of the child's current skill level across environments, skill gaps compared to grade level expectations, and the resulting educational needs to be addressed in the IEP. The IEP team drives this process.

Parents are partners with schools in developing, reviewing, and revising the IEP for their child. The role of parents in developing the IEP includes:

- Providing critical information regarding the strengths of their child;
- Expressing their concerns for enhancing the education of their child so that the child can receive FAPE;
- Participating in discussions about the child's need for special education and related services;
- Participating in the determination of how the child will be involved in and progress in the general curriculum, including participation in the statewide assessment program and in the LEA-wide assessments;
- Participating in the determination of what services a school within the LEA will provide to the child and in what setting; and
- Participating in the determination of which course of study leading towards a standard diploma the child will pursue.

SCHEDULING

Parents have the right to participate in IEP team meetings. A school must take affirmative steps to ensure that one or both parents are present at each IEP team meeting, or at a minimum, are given the opportunity to participate. Documented efforts of the school must include:

- Schedule the meeting at a mutually agreed upon time and place.
- Inform the parents of the meeting early enough in advance to ensure that the parents will have an opportunity to attend.
- Provide notice of the meeting that includes:
 - The purpose of the meeting,
 - The time and date of the meeting,
 - Who will be in attendance at the meeting, and
 - Inform the parents of their right to include other team members with knowledge or special expertise about the child.

- Offer alternate means of participation if the parent is unable to attend an IEP meeting. Other methods schools may offer to ensure parent participation include conference calls and video conferences.

[34 C.F.R. §§300.322](#) and [300.328](#).

It is recommended that schools follow the following scheduling procedures:

- The special education teacher who works with the child (in the capacity of providing direct, indirect or consultation services,) takes the lead role in planning, scheduling and notifying IEP team members of the IEP team meeting.
- The special education teacher establishes a mutually agreed upon time, date, and location for the IEP team meeting to be held that is acceptable to parents, teachers, and other members of the IEP team.
- Invitations, which are created in the Student Management System, are to be sent to all IEP team members at least ten days prior to the meeting for initial evaluations and thirty (30) days prior to the expiration of the current IEP. The parent notification must include all information required by [34 CFR §300.322\(b\)](#), and when appropriate, [34 CFR §300.322\(b\)\(2\)](#).
- The special education teacher will then confirm for his/her supervisor the agreed upon date and time for the IEP team meeting.
- A draft of the proposed IEP must be prepared and sent to the appropriate supervisor thirty (30) days prior to the IEP team meeting for all annual IEP team meetings. No placement recommendations must be indicated in the draft proposed IEP, as placement cannot be determined prior to completing the IEP. Decisions regarding type, duration, and frequency of services, the need for ESY services, and parental concerns should also not be included in the draft IEP, as these are issues that must be discussed by the IEP team at the meeting.
- The supervisor must review the draft IEP within three (3) days of its receipt and return it to the special education teacher for revisions, if any. If the supervisor finds that the draft IEP is sufficient, he/she must indicate this as well.
- The special education teacher must forward the draft IEP to the parent for review prior to the team meeting.

IEP MEETINGS WITHOUT PARENTS

Because a school is ultimately responsible for the child's IEP, a school may conduct an IEP meeting without a parent when it is unable to convince the parent that he or she should attend the meeting. The school must keep a record of its attempts to arrange a mutually agreed upon time and place, which might include:

- 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 outcome of those visits.

[34 C.F.R. §300.322\(d\).](#)

MANDATORY TEAM MEMBER EXCUSAL PROCESS

Some members of the IEP team are considered mandatory participants, meaning that their participation is a critical aspect of team decision-making under the IDEA. Mandatory participants include the special education teacher, the general education teacher, a school representative, and an individual who can interpret the instructional implications of evaluation results. [34 C.F.R. §300.321\(a\)\(2\) through \(a\)\(5\)](#). Mandatory IEP team members are required to be present throughout the entire IEP meeting. However, it is permissible for one mandatory member to substitute for another during a meeting. For example, one regular education teacher may participate and provide relevant input during a portion of the meeting and leave after another regular education teacher arrives to substitute for the departing member.

It is also possible to excuse a mandatory team member's participation in an IEP team meeting for all or part of the meeting. Excusal may occur only if the following are met:

- A mandatory participant would not be required to attend an IEP team meeting, *in whole or in part*, if the parent and school agree, in writing, that the attendance of that member is not necessary because the member's area of the curriculum or related service is not being modified or discussed in the meeting; or
- A mandatory participant may be excused from attending an IEP meeting, *in whole or in part*, when the meeting involves a modification to or discussion of the member's area of the curriculum or related service, if:
- The parent, in writing, and the public agency consent to the excusal; and
- The member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

[34 C.F.R. §300.321\(e\).](#)

Excusal should occur infrequently, as each team member has an important role and brings expertise to share on behalf of a child. The steps required for excusal of an IEP team member must be completed before the IEP team meeting commences.

CONCLUDING THE IEP TEAM MEETING

- The IEP team leader must summarize the IEP meeting, including the contents of the IEP, such as the proposed educational setting, academic and functional goals, objectives, related services, transition needs and/or transition plan, the discussion that took place during the meeting, and the meeting notes.
- Signatures of all participants must be obtained being sure to include the date the document was signed.
- The parent or an adult student must sign and indicate if he/she agrees or disagrees with the IEP by checking the appropriate box on the IEP.

- A copy of the final IEP must be given to the parent before adjourning the meeting. In the event a final copy cannot be printed and provided to the parent, it must be mailed or available for pick-up within two (2) school days.

RECORDING AN IEP MEETING

IEP meetings may be video or audio recorded if all participants are made aware of the intent to record prior to commencing the recording. This requirement exists with in-person and virtual meetings.

USE OF INTERPRETERS

The school must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. [34 C.F.R. §300.322\(e\)](#).

In addition, it may be necessary to translate the IEP prior to providing the parents a copy of the document. [34 C.F.R. §300.322\(f\)](#).

The IEP is the cornerstone of the special education process. It is a written statement for a child with a disability which describes the child's educational program. [34 C.F.R. §300.22](#). Each IEP must be developed with careful consideration of the individual child's abilities, strengths, needs, and interests. A school must offer an IEP reasonably calculated to enable a child to make appropriate progress in light of the child's circumstances. In short, the IEP should support children in meeting IEP goals and progressing in the general curriculum in order to meet state standards.

The IEP describes services for each child based on the identification of individual educational needs. The IEP also provides teachers and other staff with a specific, well-defined plan for each eligible child. In other words, it serves as a roadmap towards the attainment of educational outcomes, whether it is a diploma, certificate, or other credential. All persons involved in the education of a child with a disability should have high expectations, providing a challenging learning experience in light of a child's unique circumstance.

MANDATORY TEAM CONSIDERATIONS

The IEP is designed around the unique educational needs of a child. The federal and Territory law requires the team to consider certain mandatory factors for every child with an IEP. The result is a child focused, needs driven IEP. In order to maintain the focus on an individual child and provide parents the opportunity to participate in the process, the IEP team must consider:

- The strengths of the child;
- The concerns of the parents regarding the education of their child;
- The results of the initial or most recent evaluation of the child;
- As appropriate, the results of the child's performance on any general statewide or LEA assessment; and
- The academic, developmental, and functional needs of the child.

Additionally, the IEP team must consider special factors about the child. These special factors are important, and if any factor applies to a particular child, the IEP should further address the child's educational needs related to the special factors. Consider:

- In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
- In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;
- In the case of 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;

- Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing or dual-sensory impaired, consider the child's language and communication needs, opportunities for direct communications 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 in the child's language and communication mode.
- Consider whether the child needs assistive technology devices and services.

[34 C.F.R. §300.324\(a\)\(2\).](#)

The Special Considerations section should guide the content of a child's IEP. If the IEP team indicates that any special factor(s) applies, the team must address each factor and the resulting educational needs in the child's IEP.

A note about a child whose behavior impedes learning: The need to develop appropriate behavior in school can be an educational need in a similar manner as any academic area. If the IEP team identifies educational needs regarding behavior, the IEP must address that educational need. It may be necessary to conduct a Functional Behavioral Assessment (FBA) and develop a Behavioral Intervention Plan (BIP) in order to adequately address a child's behavior in an IEP.

CONTENTS OF THE IEP

IEPs must include specific information about a child's level of achievement and functioning. The following components are mandatory. It is the job of the IEP team to address each component of the IEP based on a child's unique educational needs. Although schools are free to include additional information, an IEP must include the following:

- PLAAFP: A statement of the child's present levels of academic achievement and functional performance, including:
 - How the disability affects the child's involvement and progress in the general education 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.
- Goals: A statement of measurable annual goals, including academic and functional goals designed to:
 - Meet the child's needs that result from the disability to enable the child to be involved in and make progress in the general education curriculum; and
 - Meet each of the child's other educational needs that result from the disability.
- Benchmarks or Objectives: For children who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.
- A description of:
 - How the child's progress toward meeting the annual goals will be measured; and

- When periodic reports on the child's progress toward meeting the annual goals will be provided.
- A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, 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 to enable the child to—
 - Advance appropriately toward attaining the annual goals;
 - Be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
 - Be educated and participate with other children with disabilities and nondisabled children in the activities described above.
- An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular classroom and in the activities described above.
- A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and LEA assessments.
- If the IEP team determines that a child must take an alternate assessment, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected for the child is appropriate.
- The projected date for the beginning of the services and modifications described in the IEP, and the anticipated frequency, location, and duration of those services and modifications.
- A statement of extended school year (ESY) services as necessary to provide FAPE (reasonable progress in light of the child's unique circumstance) and without any limitation on the disability category or the type, amount, or duration of the service. [34 C.F.R. §300.106](#). ESY services are different from the special education and related services the child may need during normal school hours/days. During the typical school year, IEP services are provided in order for a child to make progress toward IEP goals in light of the child's unique circumstances. The purpose of ESY service is to maintain skills during school breaks for children who may experience skill regression or difficulty with skill recoupment beyond what typically occurs for all children. ESY is only provided when needed for a child to receive FAPE and make reasonable progress in light of the child's unique circumstances during the normal school day/year.

Also, general education summer school is not the same as ESY, which is delivered according to a child's IEP. ESY may or may not be provided in conjunction with the general education summer school. ESY may be needed by a child even though summer school is not offered for general education children. In fact, for certain children, services over winter or spring breaks may be needed. The reason for these services is to ensure the provision of FAPE so that the child can make progress toward the goals specified on the child's IEP and to prevent regression, which would impede such progress.

However, if a child with a disability is attending a summer school program for general education purposes, (not extended school year) the school shall consider what reasonable accommodations/modifications may be necessary for the child to have an equal opportunity to participate in the general education environment and curriculum.

The need for ESY must be determined individually based on a student's educational needs. Therefore, a school shall not have a policy that no ESY services will be provided, that they are only available to a certain group or age of children, or that services are only provided for a set amount of time or a specified number of days.

- Beginning not later than the first IEP to be in effect when the child turns 16 and updated annually thereafter, the IEP must also include:
 - Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and
 - The transition services (including courses of study) needed to assist the child in reaching those goals.
- Beginning not later than one year before the child reaches the age of 18, the IEP must include a statement that the child has been informed of his or her rights under the IDEA, if any, that will transfer to the child on reaching age 18.

[34 C.F.R. §300.320.](#)

WHEN IEPs MUST BE IN EFFECT

In order to understand when an IEP must be implemented, the school must determine the child's enrollment AND eligibility status. In most cases, the IEP must be in effect on the first day of school at the beginning of each school year.

- **Initial IEP after eligibility:** A team meeting to develop the IEP must be conducted within 15 days of eligibility for special education, AND the IEP must be implemented as soon as possible following its development. [34 C.F.R. §300.323\(c\); Virgin Islands Department of Education Special Education Rules, Section 9\(e\).](#) The same timeframe for developing an IEP applies to a child who is evaluated and determined eligible during the summer break.
- **Existing IEP in effect:** An IEP must be in effect at the beginning of each school year. This includes children who transfer into the LEA during the summer break. [34 C.F.R. §300.323\(a\).](#)
- **Transfer IEP from another Virgin Islands school district:** When a child transfers from another Virgin Islands school district *within the same school year* with an IEP in place, the receiving school must provide FAPE to the child, including services comparable to those described in the IEP from the previous school, until the receiving school either:
 - Adopts the previous IEP, or
 - Develops, adopts, and implements a new IEP.

[34 C.F.R. §300.323\(e\).](#)

- **Transfer IEP from a different state or territory:** When a child transfers from another state or territory *within the same school year* with an IEP in place, the receiving school must provide FAPE to the child, including services comparable to those in the IEP from the previous school, until the receiving school either:
 - Conducts a comprehensive initial evaluation to determine the child's eligibility for special education in the Virgin Islands if deemed necessary by the receiving school, and
 - Develops, adopts, and implements a new IEP, if appropriate.

[34 C.F.R. §300.323\(f\)](#).

Although sometimes difficult, having an IEP in effect consistent with these requirements is the law. As a result, schools need to have service providers prepared to implement IEPs at the beginning of the school year and a means for determining when children move into the school during summer months before the start of the school year. [71 Federal Register 46682](#).

IEPs ACCESSIBLE TO ALL PROVIDERS

The IEP must be accessible to any service provider responsible for its implementation. Schools have the obligation to ensure that all providers are informed of their responsibilities related to IEP implementation. [34 C.F.R. §300.323\(d\)](#). This means that, at a minimum, with each new school year, at quarter or semester breaks, with each IEP amendment, and with each new provider, the school must ensure that providers are informed of their responsibilities with respect to IEP implementation.

SERVICES PROVIDED IN CONFORMITY WITH THE IEP

Once developed and implemented, services must be provided in conformity with the IEP. [34 C.F.R. §§300.17 and 300.323\(c\)\(2\)](#). The school must be prepared to provide all documentation to support IEP implementation to the SEA. [34 C.F.R. §300.211](#).

Service logs for related services providers shall be maintained by the provider in real time. Service provider logs must be forwarded monthly to the LEA Special Education Director or designee to validate that all services have been provided consistent with the IEP.

The failure to provide services consistent with the IEP is typically seen as a violation of IDEA and may constitute a denial of FAPE. Well-meaning teachers and parents sometimes want to make day-to-day changes in IEP services. Unless specifically permitted in the IEP, for instance a behavioral plan with graduated rewards or consequences, the IEP must be implemented as written at the annual IEP team meeting or through subsequent amendments adopted consistent with the requirement of federal and state law.

MEDICATION ADMINISTRATION

Schools may not require medication as a condition of attending school, receiving an evaluation, or receiving services. Parents, in consultation with physicians, make the decisions regarding their child and any medication they administer or do not administer. Nothing prohibits a school, however, from sharing classroom observations regarding the academic, behavioral, or functional performance of a child with the parent in order to better inform the parent of the child's behavior and academic performance when taking or not taking medication.

FREE APPROPRIATE PUBLIC EDUCATION | [34 C.F.R. §§300.17](#) & [300.101](#)

The cornerstone of the IDEA is the entitlement of each eligible child with a disability to FAPE that emphasizes special education and related services designed to meet the child's unique needs and that prepare the child for further education, employment, and independent living. IEP teams must have a thorough and deep understanding of FAPE. It is the standard by which courts judge the adequacy of an IEP.

DEFINITION

The IDEA defines FAPE as special education and related services that:

- Are provided at public expense, under public supervision and direction, and without charge;
- Meet the standards of the SEA;
- Include an appropriate preschool, elementary school, or secondary school education in the state; and
- Are provided in conformity with an IEP.

[34 C.F.R. §300.17](#)

FAPE must be made available to all children residing in the state between the ages of 3 and 21, inclusive, including children who have been suspended or expelled from school. FAPE must be available to any eligible child with a disability who needs special education and related services, even though the child has not failed or been retained in a grade and is advancing from grade to grade. [34 C.F.R. §300.101](#). There is no support in the IDEA for the concept that a child needs to fail a course or grade, or be retained, in order to be eligible.

THE FAPE STANDARD

Under the IDEA, in order to make FAPE available to each eligible child with a disability, the child's IEP must be designed to enable the child to be involved in and make progress in the general education curriculum. [Dear Colleague Letter \(OSERS 2015\)](#).

Our contemporary understanding of what FAPE means comes from court decisions in special education disputes. The United States Supreme Court decided two landmark FAPE cases, and both cases provide us with insight and terminology that is still used today.

In *Rowley*, the Court held that student would receive FAPE if her IEP was "reasonably calculated to enable the child to achieve educational benefits." The Court established a two-part inquiry that is still useful today (when viewed from perspective of the *Endrew F.* case):

- Has the school complied with the procedures set forth in the IDEA?
- Is the IEP developed through the IDEA's procedures reasonably calculated to enable the child to receive educational benefits?

Under *Rowley*, if the answers to these questions were "yes," then the courts would expect no

more. [Board of Education of Hendrick-Hudson Central School v. Rowley. 458 U.S. 176 \(1982\).](#)

The United States Supreme Court expanded the *Rowley* standard in the *Endrew F.* case. A school must offer an IEP that is reasonably calculated to enable a child to make progress *appropriate in light of the child's unique circumstances*. With the addition of the last few words from the *Endrew F.* decision, each child's IEP must be appropriately ambitious in light of his or her unique circumstances, and every child should have the chance to meet challenging objectives. [Endrew, F. v. Douglas County School RE-1, 137 S. Ct. 988 \(2017\).](#)

THE CONCEPT OF FAPE

The following model represents the progressive stages used in this IEP Guide to demonstrate the development and provision of FAPE and the life cycle of an IEP.



Each stage in the progression will be explored in greater detail. In order to use this model, envision each stage connected, or linked, to the other stages. If the child fails to receive the anticipated educational benefit, use this model to problem solve in reverse order until you've located the missing information.

Comprehensive Evaluation

Comprehensive Evaluation is the starting point for identifying the unique needs of the child. The team process refocuses on the comprehensive evaluation periodically through the life cycle of the IEP. Comprehensive evaluation results allow the IEP team to clearly identify a child's present levels of academic achievement and functional performance. Teams must return to comprehensive reevaluation periodically through a child's special education history, and any time educational needs change or they are not clearly known. See Chapters 3 for Initial Evaluation, and Chapter 5 for Reevaluation specifics.

Present Levels & Needs

Through comprehensive evaluation, the team develops a clear understanding of child's **Present Levels of Academic Achievement and Functional Performance (PLAAFP)**. The Present Levels represent a refinement of all that is known about the child academically, functionally, behaviorally, emotionally, socially, and linguistically. The child's performance must be clearly described using both quantitative and qualitative data.

PLAAFP are robust, objectively measurable descriptions of the child's performance across educational environments. "Academic achievement" generally refers to a child's performance in academic areas (e.g., reading or language arts, math, science, and history). [71 Federal Register 46662](#). "Functional performance" refers to skills or activities that are not considered academic or related to academic achievement. The term is often used in the context of routine activities of everyday living. [71 Federal Register 46661](#).

Using data and narrative information, the team must describe:

- How the child's disability affects his or her involvement and participation in the general education curriculum; and

- How the child's disability affects his or her progress in the general education curriculum.

The IEP should express the PLAAFP in specific, objectively measurable terms. The PLAAFP must accurately reflect a child's performance and the educational needs for the current IEP. It should describe the child's baseline across all academic and functional areas, providing a clear understanding of the existing skill gaps between the child's functioning and grade level expectations.

The IEP Team's determination of how the disability affects the child's involvement and progress in the general education curriculum is a primary consideration in the development of the annual IEP goals. The IEP team is looking for skill gaps. Asking the following questions will help the team develop descriptive PLAAFP:

- How does the disability affect the child's involvement and participation in the general education curriculum?
- How does the disability affect the child's progress in the general education curriculum or alternate standards when appropriate?
- What strategies, accommodations, and assistive technology have already been successful for the child's learning?
- What objective, descriptive information describes the child's current functioning across all areas?
- What is the child's current academic or functional skill level as measured by objective data?
- What skill gaps exist between the child's skill level and expectations for same grade peers?

Having a robust description of the child in the PLAAFP is one of the most powerful ways to improve IEPs and outcomes for children with disabilities. The identification of skill gaps aligns directly with the next stage in the FAPE progression, Measurable Goals.

Measurable Goals

Measurable Goals start with a meaningful comparison of a child's present levels with grade level expectations results in identification of skill gaps. The IEP includes measurable goals to help a child gain skill, closing skill gaps. Developing measurable annual goals that represent rigorous, but reasonable targets for each child is a critical component of providing FAPE. The IEP must include a statement of measurable annual goals, including academic and functional goals designed to:

- Meet the child's needs that result from the disability to enable the child to be involved in and make progress in the general education curriculum.
- Meet each of the child's other educational needs that result from the disability.
- For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives.

The annual goals should be specific enough to allow a school to determine whether the child is making progress, and also make clear which specific skills will be required in order to achieve those goals. [64 Federal Register 12471 \(1999\)](#). The IEP team must write goals in a way that

permits objective measurement of progress toward achieving the annual goals. Using the Baseline → Target → Method of Measurement model ensures that goals and progress are measurable and understandable.

Asking the following questions will assist the team in drafting rigorous, but reasonable measurable goals:

- What is the highest priority need in areas of skill deficit? (Targeting the highest priority need is critical to making education meaningful.)
- What is the child's current baseline skill level (the starting point) as described in the PLAAFP in the identified highest priority areas of need?
- What skills does the team expect the child to gain?
- By what date will those skills be attained?
- Under what conditions do you expect the child to demonstrate those skills? (e.g., with supports, prompts, or accommodations)
- What is the anticipated level of skill acquisition, or the goal target (% accuracy), independence (% independence), or task completion (number of trials)?
- How will the skills be measured? (Objective measurement requires data, not just a narrative. Using both data and a narrative provides the most accurate measure of progress.)

An IEP that lacks meaningful, measurable annual goals may not provide FAPE to a child with a disability. Measurable goals based on a child's unique skill level are the key to designing special education services and supports to help a child make appropriate progress. [*Endrew, F. v. Douglas County School RE-1, 137 S. Ct. 988 \(2017\).*](#)

Services & Supports

Services and Supports are next. Once measurable goals are identified, the team designs services and supports necessary to assist a child in meeting those goals and making progress in the general curriculum.

Services and supports can be revised to meet a child's changing needs. Sufficient documentation must be kept by the school to verify implementation of supports and services consistent with the IEP. The IEP must include:

- A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, 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 to enable the child—
 - To advance appropriately toward attaining the annual goals;
 - To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
 - To be educated and participate with other children with disabilities and nondisabled children.

[*34 C.F.R. §300.320\(a\)\(4\).*](#)

It is necessary for the IEP team to have a clear understanding of relevant terminology when determining services and supports in a child's IEP.

Special Education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including—

- Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- Instruction in physical education.

Specially Designed Instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—

- To address the unique needs of the child that result from the child's disability; and
- To ensure access to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

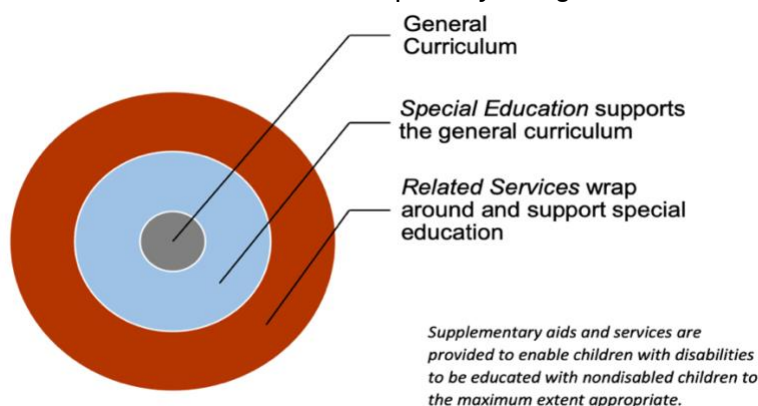
[34 C.F.R. §300.39.](#)

Related services mean transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. [34 C.F.R. §300.34.](#) The IDEA and federal regulations provide many examples of possible related services. Keep in mind that the related services identified in the IDEA are not exhaustive. The IEP team has the responsibility to determine the related services necessary in order for the child to benefit from the specially designed instruction in the IEP.

The only related service that can be considered specially designed instruction is speech-language service when it is the sole service provided.

Supplementary aids and services mean aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate. [34 C.F.R. §300.42.](#)

The following graphic depicts the relationship between the general curriculum, special education (specially designed instruction), and related services. The center of the circle represents the general curriculum. By definition, specially designed instruction must be provided to an eligible child to address the child's unique needs and ensure access to the general curriculum. Related services help the child to benefit from the specially designed instruction.



The IEP team decides the type, amount, frequency, and duration of special education services and supports in a child's IEP. [34 C.F.R. §300.320\(a\)\(7\)](#).

Each IEP shall indicate the projected beginning date and the anticipated frequency, location, and duration for the special education and related services (including transition activities that are a special education or related service), supplementary aids and services, and modifications. It is possible that beginning and ending service dates may vary throughout the year and should be indicated as such on the IEP.

It is helpful to report the frequency of services and modifications in the IEP as minutes/days/weeks. Documented in this way, the IEP would indicate how many minutes per day, how many days per week, and how many weeks per school year the services would be provided. This information would be determined at the IEP team meeting when decisions are being made about what services will be provided.

The school must maintain sufficient documentation to support that services and supports have been delivered consistent with the IEP. [34 C.F.R. §300.211](#).

The following questions will help the IEP team determine the amount of services to include in the IEP in order to meet the child's educational needs.

- What type of specially designed instruction does the child need in order to meet the IEP goals and make progress in the general education curriculum?
- What amount of specially designed instruction will the child need in order to meet IEP goals and make progress in the general education curriculum?
- What type and amount of related services are needed in order to help the child benefit from the specially designed instruction?
- What type and amount of supplementary aids, services and other supports are necessary in order to assist a child to remain in regular education classes, other education related settings, and in extracurricular and nonacademic settings with nondisabled children to the maximum appropriate?

These questions must be answered, and a team determination made as to the type, amount, frequency, duration, and location of special education services before exploring options for the child's placement in the Least Restrictive Environment.

Accommodations should not reduce learning expectations. Each IEP must contain a statement of any appropriate accommodations that are necessary to measure the child's academic achievement and functional performance on statewide and LEA assessments. [34 C.F.R. §300.320\(a\)\(6\)](#). The accommodations provided must be based on each student's unique needs and planned by the IEP team.

If the IEP team determines that the student must take an alternate assessment instead of a particular regular statewide or LEA assessment of child achievement, the IEP must include a statement of why:

- The child cannot participate in the regular assessment; and

- The particular alternate assessment selected is appropriate for the child.

The IEP team should proceed with caution and determine the impact of the accommodation on the child's graduation and postsecondary education plans.

Accommodations are distinguished from modifications. Accommodations do not change what a child is expected to learn, modify state standards, or lower expectations. Modifications, on the other hand, are considered as changes in what a child is expected to learn, and may include changes to content, requirements, and expected level of mastery. The need for modifications in a child's IEP should be carefully assessed and considered by the IEP team.

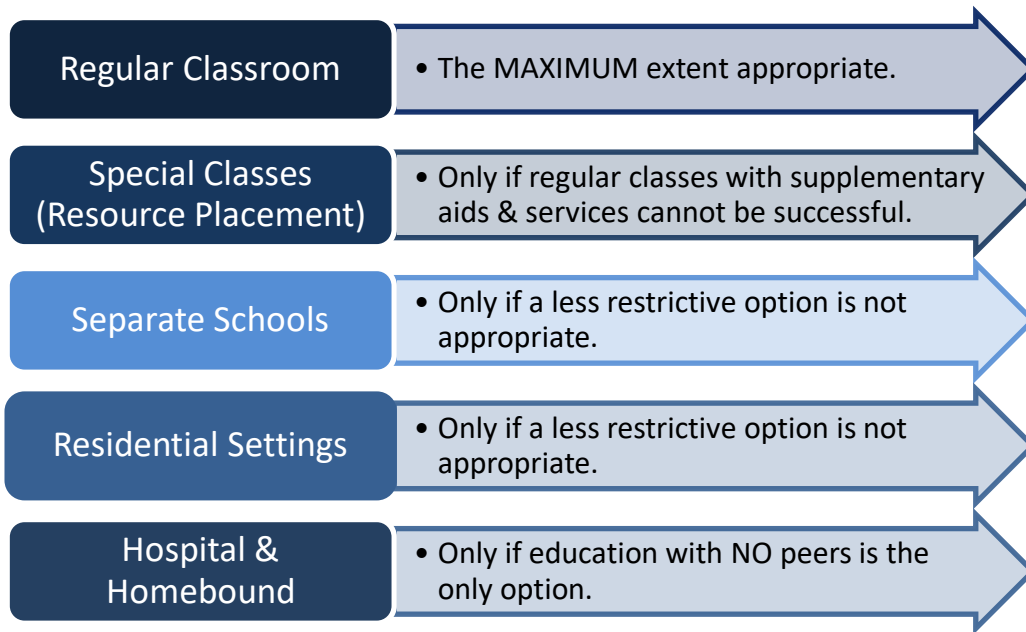
Least Restrictive Environment

Least Restrictive Environment and the three "maximums." A child with a disability must be educated with nondisabled children to the maximum extent appropriate to meet identified educational needs. The team determines the least restrictive environment for a child's placement at least annually. The IDEA requires that children with disabilities be educated with nondisabled children to the maximum extent appropriate. In determining the educational placement of a child with a disability, including a preschool child with a disability, each school must ensure that placement decisions are made by a group of persons including the parent, and are made in conformity with the LRE regulatory provisions: [34 C.F.R. §300.116](#).

- Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the **maximum extent appropriate**. [34 C.F.R. §300.42](#).
- **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. [34 C.F.R. §300.114\(a\)](#).
- In providing or arranging for the provision of nonacademic and extracurricular services and activities, each school must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities **to the maximum extent appropriate** to the needs of that child. [34 C.F.R. §300.117](#).

Each LEA must make available to a child, as needed, a full continuum of potential placements in which a child's IEP could be implemented. [34 C.F.R. §300.115](#). The continuum begins in the regular education classroom and continues to progressively more restrictive placements. Less contact with nondisabled peers equates to a more restrictive placement.

The LRE continuum is depicted below:



First, understand the difference between placement and location. Placement is the bundle of services and supports delivered in the LRE. Location is the classroom, building, or school where the placement is located. LRE is not a place or location. It is a bundle of services delivered in an environment that maximizes the amount of time a child spends with nondisabled peers. LRE is a placement wherein a child receives special education services and supports designed to meet his or her unique educational needs, delivered in the least restrictive environment in which the child can be successful. Planning the LRE for a child occurs after the IEP team determines the Supports and Services needed to help a child meet the Measurable Annual Goals in the IEP.

The IEP team determines LRE through consideration of different placement options, selecting the one that will meet the child's educational needs and maximize the amount of time with nondisabled peers. The IDEA does not require that a child be placed in a regular classroom if, even with the use of supplementary aids and services, the child's needs cannot be met there. The IDEA mandates that the team **consider** different placement options and determine the least restrictive option appropriate to meet the child's educational needs. Remember, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment can occur only if the nature or severity of the disability is such that education of the child in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [34 C.F.R. §300.114\(a\)](#).

The IEP must include a justification of the extent to which a child will not participate with nondisabled children in the general education classroom. In reaching this justification, the IEP team must consider how a child's disability affects involvement and progress in the general education curriculum and the reasons the child cannot be educated in the regular classroom with the support of supplementary aids and services.

The overarching LRE goal for all children with disabilities is to maximize the amount of time spent with nondisabled peers to the extent appropriate. All LRE decisions should be made with this mandate in mind.

A Least Restrictive Environment Probe is included at the end of this chapter to assist teams in ensuring placements in the LRE.

Educational Benefit

Measure **Educational Benefit**. An IEP based on a child's unique educational needs must be reasonably calculated to provide educational benefit. This stage is all about progress, or the team's responsiveness to lack of anticipated progress. Progress is a critical element in determining whether FAPE was provided.

Educational benefit is measured in terms of progress toward IEP goals and progress in the general education curriculum. There is no requirement in the IDEA that the amount of progress a child achieves under an IEP be maximized. The IDEA does not guarantee any particular level of education and "cannot and does not" promise any particular educational outcome. [*Endrew F. v. Douglas County Sch. Dist. RE-1*, 137 S. Ct. 988 \(U.S. 2017\) \(citing *Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 \(U.S. 1982\)\)](#).

The following questions will help the IEP team determine whether progress is appropriate:

What is a reasonable amount of progress?

The IEP team set the target for growth and progress when developing the Measurable Annual Goals. If the child is on track to meet those goals, even modest amount of progress may be reasonable under the IDEA. The IEP team makes this decision in the development of the IEP.

However, if a child fails to make progress within a reasonable period of time, the IEP team must address the lack of progress. [*34 C.F.R. §300.324\(b\)*](#). If a child is not making progress at the level the IEP team expected, the team must revisit the IEP with the *Endrew F.* standard in mind and revise it as necessary to ensure the child is receiving appropriate special education and related services and that the goals are individualized and ambitious. [*Questions and Answers on U.S. Supreme Court Case Decision Endrew F. v. Douglas County Sch. Dist., RE-1 \(EDU 2017\)*](#).

What steps should the IEP team take if the child experiences a lack of progress?

The IEP team should review the child's IEP and re-strategize each of the stages outlined above in the FAPE Progression. The IEP team may need current evaluative data, an update of the present levels and needs, new measurable goals, additional services and supports, or a change in placement to reflect a different LRE. The continuation of inadequate services when a child fails to make progress is likely to be viewed as a denial of FAPE.

What happens when a child makes more than anticipated progress?

The IEP team should review the child's IEP and re-strategize each of the stages outlined in the FAPE Progression. The team must collect current data on the child's improved present levels and educational needs. This is an opportunity to realign the IEP to the new present levels to help the child move toward closing the skill gap between the child's level of

functioning and expectations for success in the general curriculum.

The IEP must include a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports of progress toward meeting the annual goals will be provided. [34 C.F.R. §300.321\(a\)\(3\)](#). When goals are written in the Baseline → Target → Method of Measurement format, measuring and reporting progress is readily accomplished. The school will report progress toward attaining the measurable annual goal using descriptions and data. The result is a clear picture of a child's progress on discrete skills, which helps all team members understand the current educational benefits and plan future IEPs.

The school must:

- Communicate regularly with parents regarding the child's progress. Progress reports must be provided to the parent on at least a quarterly basis.
- Be responsive to a lack of progress.
- Be responsive to unanticipated progress.

Use and reuse the steps in the FAPE Progression to ensure that the IEP team has a clear understanding of the child's current skill levels, reasonable but rigorous targets for growth, and the method of measuring progress in order to provide accurate reports of progress.

LACK OF PROGRESS

Each stage of the FAPE progression links to the next stage, and ultimately to educational benefit appropriate in light of a child's unique circumstance. If a child does not receive educational benefit as anticipated in the IEP, the team must determine the reason and amend the IEP to address the lack of progress. Review each stage of the FAPE Progression in reverse order. The team's inquiry should start on the far right of the FAPE Progression with Educational Benefit and work toward the left, probing to locate the broken link. The team must discover the reason for a lack of educational benefit, asking whether the LRE was appropriate, whether services and supports were delivered consistent with the IEP, whether the measurable goals were sufficiently rigorous but reasonable, whether the child's present levels of academic achievement and functional performance were accurately identified in terms of the child's educational needs, and finally, whether the child was comprehensively evaluated to capture all areas of educational need.

Once the broken link is located, the team must recalibrate the IEP, reconnect all critical elements in the FAPE progression to address the lack of educational benefit. Failure to timely address a lack of progress or educational benefit may be grounds for a finding of noncompliance.

EXCEPTIONS TO THE RIGHT TO FAPE

Generally speaking, all IDEA eligible children with disabilities have the right to receive FAPE. However, some narrow exceptions exist. Schools and LEAs should take a cautious approach when determining that one of the exceptions applies to a child with a disability. The exceptions include:

- Home schooled children – In the Virgin Islands, home schooled children have no individual entitlement to receive FAPE. However, home school children are included in an LEA's child find efforts.
- Graduation with a regular diploma – Children with disabilities who have graduated with a regular diploma are no longer entitled to receive FAPE. This exception applies only if the child graduated with a standard high school diploma awarded to the regular student body that is fully aligned with Virgin Islands standards. [34 C.F.R. §300.102\(a\)\(3\)](#).
- Incarceration in an adult facility – Children aged 18 through 21 who, in the last educational placement prior to their incarceration in an adult correctional facility –
 - Had not been identified as being a child with a disability under IDEA, and
 - Did not have an IEP under Part B of the IDEA.

[34 C.F.R. §300.102\(a\)\(2\)](#).

- Children with disabilities who receive early intervention services under Part C of the IDEA. [34 C.F.R. §300.102\(a\)\(4\)](#).

Exception to the Exception

The narrow exceptions noted above do not apply to children with disabilities who –

- Did not graduate with a regular diploma fully aligned to the content standards applicable to all children;
- Had been identified as a child with a disability and had received services in accordance with an IEP, but who left school prior to his/her incarceration; or
- Did not have an IEP in that last educational setting, but who had actually been identified as a child with a disability prior to incarceration.

LEAST RESTRICTIVE ENVIRONMENT PROBE

LEAST RESTRICTIVE ENVIRONMENT PROBE 34 C.F.R. §§300.114 – 300.117

Student ID #: _____ Grade: _____

The file contains evidence of the following:

- | | | |
|--|---|---|
| 1. A continuum of alternative placements available | Y | N |
| 2. Placement with nondisabled peers to the maximum extent appropriate | Y | N |
| 3. Extracurricular activities/services with nondisabled peers to the maximum extent appropriate | Y | N |
| 4. Use of supplementary aids & services to enable education with nondisabled peers to the maximum extent appropriate | Y | N |
| 5. The placement decision: | | |
| a. Is made by a group of persons, including parent | Y | N |
| b. Is made in conformity of the LRE provisions | Y | N |
| c. Is determined at least annually | Y | N |
| d. Is based on the child's IEP | Y | N |
| e. Is as close as possible to the child's home | Y | N |
| 6. Consideration given to potential harmful effect on the child | Y | N |
| 7. Child is not removed due solely because of needed modifications to the general curriculum | Y | N |

Additional Inquiry for Preschool Placements

- | | | | |
|---|---|---|-----|
| 8. Preschool placement options considered: | | | |
| a. Public preschool (Head Start or community based child care) | Y | N | N/A |
| b. Private preschool for nondisabled children | Y | N | N/A |
| c. Preschool located at public elementary schools | Y | N | N/A |
| d. Home-based services | Y | N | N/A |
| 9. First option is the public preschool the child would attend if nondisabled | Y | N | |
| 10. Preschool placement necessary for FAPE is at no cost to the parent | Y | N | |

11. Other deficiencies or comments noted: _____

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The secondary transition planning process assists children to develop measurable postsecondary goals and identify a post-school vision for their lives. This IEP should also include building the skills and supports children will need to achieve their postsecondary goals when they transition from school to adult life. The foundation of transition planning is age-appropriate transition assessments through which the child's strengths, preferences, interests, and needs are identified. The information gathered from transition assessments facilitate the writing of postsecondary goals that are aligned with children's strengths, preferences, and interests. Transition assessments also determine the child's needs which facilitate the provision of supports and educational experiences that will enable children to reach their postsecondary goals. Like other parts of the IEP, transition is reviewed at least annually to ensure it is aligned to assist the child's transition from school to post-school life.

DEFINITION

Secondary transition refers to the process a child with a disability goes through as they move from high school to whatever comes next, including postsecondary education, employment, and independent living. In the Virgin Islands, the transition process formally begins at age 16. Secondary transition may begin earlier if determined appropriate by the IEP team, including the parent. The secondary transition process may continue until a child with a disability reaches age 22 or satisfies the requirements of a standard diploma.

TRANSITION SERVICES

Secondary Transition Services are a coordinated set of activities for a child with a disability that are designed within a results oriented process that is focused on improving the academic and functional achievement of the child to facilitate the child's movement from secondary school to postsecondary activities (e.g. postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation). [34 C.F.R. §300.43](#).

Transition services are broadly defined to include a range of services. Decisions regarding transition services must be made on the basis of the child's individual needs, taking into account the child's strengths, preferences, and interests and includes:

- Instruction;
- Related services;
- Community experiences;
- The development of employment and other post-school adult living objectives; and
- If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

[34 C.F.R. §300.43](#).

THE PROCESS

Incorporating secondary transition into a child's IEP should include the following process:

- Conduct age-appropriate transition assessments that will provide practical information to assist in all domains of transition planning and development. The outcomes of the transition assessments should assist the IEP team to identify the child's needs, strengths, preferences, and interests. A variety of assessments should be selected to assist with the development of transition goals.
- Consider present levels of academic achievement and functional performance. Information from the age-appropriate transition assessment should be reflected in the IEP section that describes the child's present levels of academic achievement and functional performance. IEP team members need a clear picture of the child's strengths, preferences, interests and needs. This information may come from the child's portfolio or file, as well as directly from the child, the family, close friends, teachers and agency staff. The information should include formal and informal transition assessment data and is used to develop the child's measurable postsecondary goals.
- Appropriate postsecondary goals must be developed in the areas of education, training, employment/career and where appropriate, independent living skills. Education, training, and employment/career must be addressed for all children. It may be possible to combine education and training goals for some children. In determining whether postsecondary goals in the areas of training and education overlap, the IEP team must consider the unique needs of each individual child, in light of his or her plans after leaving high school. However, because employment is a distinctive activity from the areas related to training and education, each child's IEP must include a separate postsecondary goal in the area of employment.
 - The only area in which postsecondary goals may not be required in the IEP is the area of independent living skills. The IEP team determines whether to include independent living skills based on whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE. [OSEP Policy Guidance: A Transition Guide to Postsecondary Education for Students and Youth with Disabilities \(August 2020\)](#).
 - When discussing a child's postsecondary goals and transition services, the school must, to the extent appropriate, invite a representative from any agency that is likely to be responsible for providing or paying for transition services. [34 C.F.R. §300.321\(b\)\(3\)](#). Prior to inviting the agency representative's presence at the meeting, the school is required to obtain the parent's written consent or the written consent of the adult student who has received the transfer of rights.
- The IEP should include transition services which are coordinated services that will assist the child in achieving the measurable postsecondary goals. Asking the following questions will assist the team in identifying transition services:

- Instruction: What formal and informal opportunities for learning exist? What does the child need to know and be taught?
- Related Services: What services are needed for the child to continue accessing and benefiting from the specialized instruction?
- Community Experiences: What opportunities will the child have access to that offer “hands on” or practical learning experiences?
- Development of Adult Living Objectives: What must be put in place for the child to develop and/or improve her/his independent living skills?
- Development of Employment Objectives: What activities are necessary to prepare the child for employment?
- Acquisition of Daily Living Skills (if appropriate): What opportunities or options are available to assist or teach the child to care for or manage personal needs?
- Measurable annual goals are based on the child’s present levels of academic achievement and functional performance. These annual goals describe what a child can reasonably be expected to achieve in one year and support the achievement of the measurable postsecondary goals.
- Planning the child’s course of study will further support of the child’s postsecondary goals. The IEP team must consider what is required for the child to make progress toward meeting graduation requirements. This includes identifying what types of classes the child should plan to take to exit public school.
- Child progress is monitored on a regular basis. The measurable postsecondary goal(s) of the child should be stated in such a way that one could measure the extent to which the child has been able to achieve what he or she set out to do, and the extent to which the transition plan prepared the child for life after public school. The IEP, including transition, must be reviewed annually and updated as necessary if the child’s interests change.

ELIGIBILITY TERMINATION

For a child whose eligibility terminates either through graduation with a regular high school diploma or from exceeding the age of eligibility for FAPE,

- No reevaluation is required; and
- The school must provide the child or adult child with a summary of academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting postsecondary goals. [34 C.F.R. §300.305\(e\)](#).

The school can amend a child's IEP after the annual IEP team meeting for a school year in two different procedures.

AMENDMENT WITHOUT A MEETING

The parent and the school may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. [34 C.F.R. §300.324\(a\)\(4\)](#).

Amending the IEP without a team meeting can be an efficient way to implement changes quickly. The amendments must be in writing and are subject to the requirements of Prior Written Notice in [34 C.F.R. §300.503](#) before implementing the amended IEP.

Note that an IEP amendment requires written documentation of the change and agreement between the school and the parent. Agreement is not the same standard as consent. It refers to an understanding between the school and the parent and does not need to meet the requirements for informed parental consent. [71 Federal Register 46685](#).

AMENDMENT AT AN IEP TEAM MEETING

Changes to the IEP may be made by the entire IEP team at an IEP meeting by amending the IEP rather than redrafting the entire IEP. [34 C.F.R. §300.324\(a\)\(6\)](#).

ADDITIONAL AMENDMENT REQUIREMENTS

Upon request, a parent must be provided with a revised copy of the entire IEP with the amendments incorporated. [34 C.F.R. §300.324\(a\)\(6\)](#).

All providers must be informed of their new responsibilities under the amended IEP. [34 C.F.R. §300.324\(a\)\(4\)\(ii\)](#).

WRITTEN AMENDMENT AND PWN

Although the amendment process does not require the drafting of an entire revised IEP **unless** the parents ask for a revised copy of the IEP with amendments incorporated, it is always necessary to issue Prior Written Notice before implementing the changes noted in the IEP amendment.

The IEP has a limited life of one year. Permitting IEPs to expire, or exceed the annual review date is a procedural error that may rise to a denial of FAPE. Schools must commence the annual review process early enough to permit thorough review of a child's IEP and the redrafting of a new annual IEP before the existing IEP expires. The school must ensure that IEP teams annually review each child's IEP as specified below.

ANNUAL REVIEW PROCESS

The IEP Team shall—

- Review the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and
- Revises the IEP, as appropriate, to address—
 - Any lack of expected progress toward the annual goals described in [§ 300.320\(a\)\(2\)](#), and in the general education curriculum, if appropriate;
 - The results of any reevaluation conducted under [§ 300.303](#);
 - Information about the child provided to, or by, the parents, as described under [§ 300.305\(a\)\(2\)](#);
 - The child's anticipated needs; or
 - Other matters.
- In conducting a review of the child's IEP, the IEP team must consider the special factors described in [34 C.F.R. §300.324\(a\)\(2\)](#).
- A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

CHAPTER 5

REEVALUATION & CONTINUED ELIGIBILITY

INTRODUCTION

The information gathered as a result of the reevaluation provides valuable information about the child's progress and needs. In addition to using the information to determine whether the child continues to be eligible for special education and related services, this information should be used to review, revise or amend the IEP, if determined necessary. **Note:** Although the informed consent requirements are slightly different for a reevaluation, the procedures for conducting the reevaluation are the same. The school or LEA must utilize the same evaluation procedures as for any comprehensive evaluation pursuant to [34 C.F.R. § §300.304](#) through 300.311, including starting the reevaluation with a review of existing data. See Chapter 2 for additional information on Evaluations, and the Comprehensive Evaluation Wheel depicted below.

Evaluation Wheel



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The reevaluation is required every 3 years, or more often, if needed, to determine:

- If the child continues to be a child with a disability;
- The educational needs of the child;
- The present levels of academic achievement and functional performance (related developmental needs) of the child;
- Whether the child continues to need special education and related services; and
- Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

GENERAL CONSIDERATIONS FOR REEVALUATION

Once a child has been fully evaluated, a decision has been made that a child is eligible for services under the IDEA, and the required services have been determined, any subsequent evaluation of the child would constitute a reevaluation. [71 Federal Register 46640](#). The school must ensure that a reevaluation of each child with a disability is conducted in accordance with [§§ 300.304](#) through 300.311—

- If the school determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- If the child's parent or teacher requests a reevaluation.

LIMITATION

A reevaluation—

- May occur not more than once a year, unless the parent and the public agency agree otherwise; and
- Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

WHEN A REEVALUATION MAY BE NEEDED

- If a parent has requested a reevaluation and the school agrees that a reevaluation is warranted, the school must conduct the reevaluation. If a parent requests a reevaluation and the school disagrees that a reevaluation is needed, the school must provide PWN to the parent that explains why the school refuses to do the reevaluation and the parent's right to pursue the reevaluation through mediation or due process.
- If the school determines that the educational or related services needs warrant a reevaluation.

CONSENT REQUIREMENTS FOR REEVALUATION | [34 C.F.R. §300.300\(c\)](#)

Informed parental consent is an important part of the reevaluation process. Parents are members of the IEP team that make decisions about the contents of a reevaluation.

CONSENT REQUIREMENTS

The school—

- Must obtain informed parental consent, in accordance with [§ 300.300\(a\)\(1\)](#), prior to conducting any reevaluation of a child with a disability.
 - If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures through dispute resolution.
 - The public agency does not violate its obligation under [§ 300.111](#) and [§§ 300.301](#) through 300.311 if it declines to pursue the evaluation or reevaluation.

The informed parental consent described above need not be obtained if the public agency can demonstrate that—

- It made reasonable efforts to obtain such consent; and
- The child's parent has failed to respond.

ADDITIONAL CONSENT REQUIREMENTS

- Parental consent is not required before—
 - Reviewing existing data as part of an evaluation or a reevaluation; or
 - Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
- If the school believes, based off a review of existing data, that the child does not continue to have a disability or does not continue to need special education and related services, the school may determine that it will discontinue the provision of special education and related services to the child after providing the parent PWN of its proposal to discontinue the provision of FAPE to the child.

REEVALUATION REQUIRED

The school must evaluate a child with a disability in accordance with [§§ 300.304](#) through 300.311 before determining that the child is no longer a child with a disability.

EXCEPTION

The reevaluation of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under Virgin Islands law. [34 C.F.R. §300.305\(e\)](#).

CHAPTER 6

DISCIPLINE PROCEDURES

INTRODUCTION

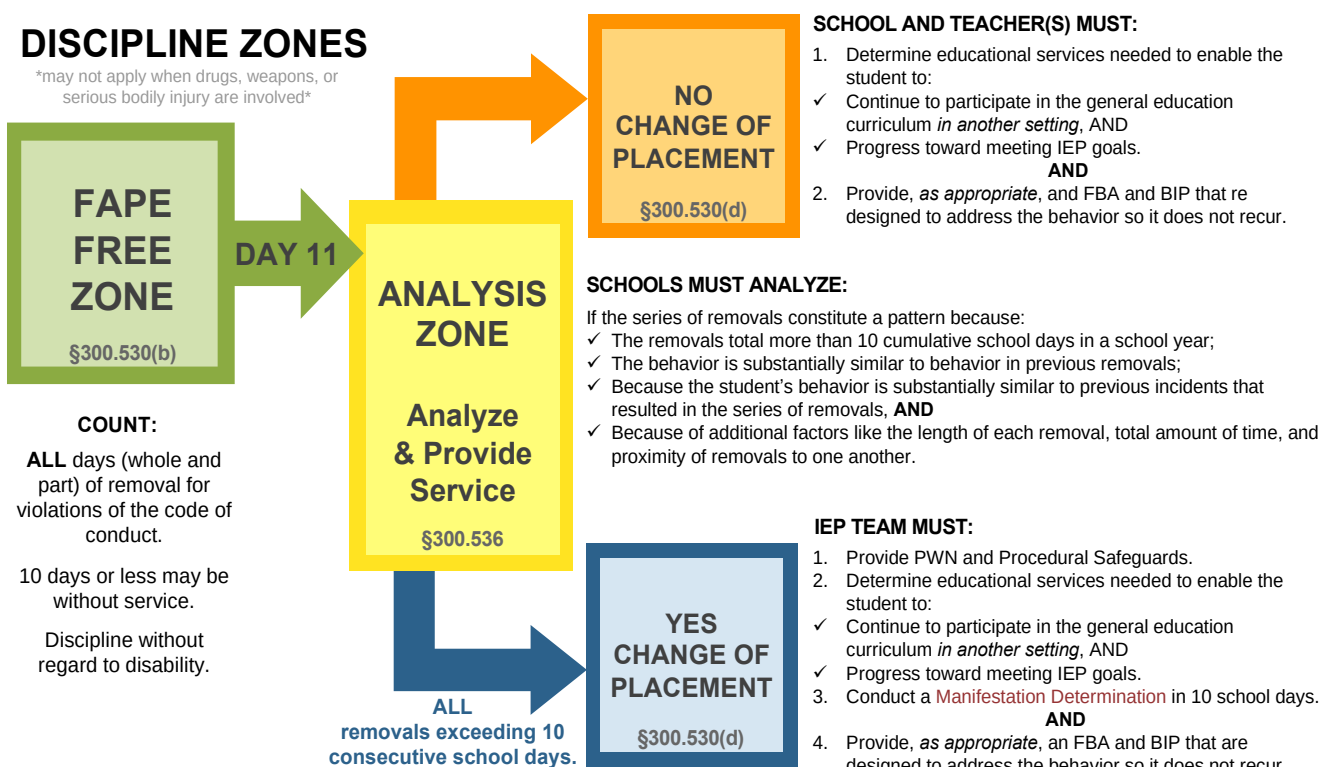
Schools are encouraged to address misconduct through appropriate school-wide discipline policies and systems of positive behavioral supports. If a child with a disability exhibits behaviors that interfere with his or her learning or the learning of others, an IEP team must consider the use of strategies, including positive behavioral supports and interventions, Functional Behavior Assessments (FBA) and Behavior Intervention Plans (BIP) to address the behavior.

Children with disabilities who are subject to disciplinary actions by a school are entitled to all the disciplinary due process rights afforded children without disabilities. In addition to these rights, the IDEA provides special education rights and additional procedural safeguards to a child with a disability for any removals from the child's placement due to a violation of a code of conduct. The IDEA's discipline procedures balance the school's need to provide a safe environment conducive to learning for all children with procedural protections guaranteed by the IDEA.

Keep in mind that the IDEA **regulates** but **does not prohibit** discipline of children with disabilities. The following Discipline Zones graphic will assist schools in understanding both the authority and any limitations on that authority when disciplining children with disabilities.

DISCIPLINE ZONES

may not apply when drugs, weapons, or serious bodily injury are involved



In order to understand the LEA's authority to discipline children with disabilities, the school must have a clear understanding of the concepts of a disciplinary removal and a change in placement for disciplinary purposes.

DISCIPLINARY REMOVALS

In the context of IDEA discipline, removals are exclusionary disciplinary measures that interfere with a child's instruction and participation in school activities. The improper use of exclusionary disciplinary measures, such as the use of study carrels, time outs, and restrictions in privileges may result in a disciplinary removal from a child's current educational placement. Other examples of exclusionary disciplinary measure that, when improperly used, result in disciplinary removals include:

- A pattern of office referrals, extended time excluded from instruction (e.g. time out), or extended restrictions in privileges;
- Repeatedly sending children out of school on "administrative leave" or a "day off" or other method of sending children home from school;
- Repeatedly sending children out of school with a condition for return, such as a risk assessment or psychological evaluation; or
- Regularly requiring children to leave the school early and miss instructional time (e.g. shortened school days).

[Dear Colleague Letter, 68 IDELR 76 \(OSERS and OSEP 2016\).](#)

COUNTING REMOVALS

ALL REMOVALS MUST BE COUNTED! Because a school day includes any partial day that all children are in attendance at school for instructional purposes, partial days of removal must also be counted. How do you count partial days? The same manner as you would for a child who is not eligible under the IDEA. School day has the same meaning for all children in school, including children with and without disabilities. [34 C.F.R. §300.11.](#)

EXCEPTION

In-School Suspension: An in-school suspension will not count towards days of removal from school **if the school provides the following three components** for the child:

1. The opportunity to continue to appropriately participate in the general education curriculum;
2. Continue to receive services identified on the child's IEP; and
3. Continue to participate with nondisabled children to the extent the child would have in the current placement.

[71 Federal Register 46715.](#)

Each situation shall be determined individually.

CHANGE OF PLACEMENT ANALYSIS | [34 C.F.R. §300.536](#)

Once a child has been removed from the current placement for more than 10 school days in a school year, each subsequent removal must be analyzed to determine whether it constitutes a change in placement. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement occurred as long as the decision is consistent with the IDEA's discipline protections for children with disabilities. [34 C.F.R. §300.530\(a\)](#).

For purposes of removals of a child with a disability from the child's current educational placement under [34 C.F.R. §§ 300.530 through 300.535](#), a change of placement occurs if—

- The removal is for more than 10 consecutive school days; or
- The child has been subjected to a series of removals that constitute a pattern—
 - Because the series of removals total more than 10 school days in a school year;
 - Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- The school determines on a case-by-case basis whether a pattern of removals constitutes a change of placement consistent with these provisions.

[34 C.F.R. § 300.536](#).

ANALYZE BEHAVIOR PATTERNS

On the DISCIPLINE ZONES graphic, the change of placement analysis takes place in the YELLOW ZONE. School personnel of the school must look at the facts surrounding each removal, the total amount of time removed, and the child's prior discipline history in the same school year to determine if a pattern exists considering the factors above. The outcome of this analysis will determine what additional protections the school must afford the child.

The outcome of the school or LEA's change of placement analysis will dictate who makes the decision on what services to provide during removals beyond 10 school days:

- If the current removal (beyond 10 school days) is for not more than 10 consecutive school days and is not a change of placement under [34 C.F.R. §300.536](#), **school personnel, in consultation with at least one of the child's teachers**, determine the extent to which services are needed so as to:
 - Enable the child to continue to participate in the general education curriculum, although in another setting, and
 - To progress toward meeting the goals set out in the child's IEP.

On the DISCIPLINE ZONES graphic, you are in the ORANGE ZONE.

- If the removal is a change of placement under [34 C.F.R. §300.536](#), **the child's IEP team determines appropriate services.**

On the DISCIPLINE ZONES graphic, you are in the BLUE ZONE.

Short term removals and long term removals are explained more fully below.

PROVIDE FAPE

Because the number of days of disciplinary removals exceeds 10 school days, FAPE must always be provided, regardless of whether the removals are determined to be a change in placement.

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the school must provide services to the extent required under paragraph (d) of this section.

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the school must provide services to continue to participate in the general curriculum, although in another setting, and progress toward meeting IEP goals. Outside of the FAPE FREE ZONE, the school must provide FAPE.

A child with a disability who has an IEP in effect can be removed from school through an out-of-school suspension or removed to another setting or to an appropriate interim alternative educational setting (IAES), just as any other child without a disability can, for up to a total of 10 school days, for violations of the student code of conduct or school rules. The 10 school days can be consecutive or cumulative and can occur over the course of one school year.

GENERAL AUTHORITY OF SCHOOL PERSONNEL

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (DISCIPLINE ZONES graphic, GREEN ZONE), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement under [34 C.F.R. §300.536](#) (DISCIPLINE ZONES graphic, ORANGE ZONE).

SCHOOL RESPONSIBILITY

It is not necessary for the IEP team to meet when this occurs. School officials determine whether a series of removals constitute a change in placement. [34 C.F.R. §300.536\(b\)](#). It is not necessary for the school to conduct a manifestation determination at this time, conduct a functional behavior assessment (unless otherwise determined necessary in order to provide FAPE), or develop a behavior intervention (unless otherwise determined necessary in order to provide FAPE), or for any special education services to be provided if the removal is for 10 or fewer school days over the school year, or the series of short term removals does not constitute a change in placement.

AFFIRMATIVE OBLIGATION

Note that the school has an affirmative and ongoing obligation to provide FAPE. Escalating behavioral difficulties may be a signal that the child's educational needs have change or the IEP may need to be amended. As a result, the school may choose to convene the IEP team to discuss the need for a functional behavior assessment or to review and make changes to the child's current IEP or behavior intervention plan in order to have an IEP in place that provides FAPE.

Long term removals may result from a single removal or a series of removals during the same school year. Because a child with a disability is segregated from typical educational opportunities during periods of removal, additional protections apply. In order to understand the school's obligation to the child during these long term removals, school officials must have a practical understanding of the laws regarding long term suspensions and operationalize practices that protect the rights of children with disabilities.

GENERAL AUTHORITY

Long term removals shall be considered a change in the child's educational placement in the following circumstances:

- The child is removed from the current educational placement for more than 10 consecutive school days in the same school year;
- The child is removed for up to 45 school days to an IAES for special circumstances (covered in paragraph F below); or
- The child is subject to a series of removals over 10 school days in the same school year that constitute a pattern (as previously described).

MANDATORY NOTIFICATIONS

If school officials determine that it is appropriate to remove a child from the educational placement for more than 10 **consecutive** school days, or to have a child's educational setting changed to an IAES for up to 45 school days due to the existence of a special circumstance, such as weapon or illegal drug possession or infliction of serious bodily injury on another person (covered in paragraph F below), the school must notify the parent immediately of this decision and provide a copy of the Notice of Procedural Safeguards.

IEP TEAM RESPONSIBILITY

When disciplinary actions result in removal for more than 10 cumulative school days in a school year **and** the school determines a **pattern of removals** constitutes a change in placement, the school must provide the child with the same safeguards as a child who has been removed for more than 10 consecutive days, including conducting a manifestation determination (fully addressed in paragraph E below), and determining appropriate educational services that allow the child to continue to participate in the general education curriculum and progress toward meeting the goals outlined in the IEP, although in another setting.

Within 10 school days from the date of the decision to impose an out-of-school suspension or another type of disciplinary removal that either **exceeds 10 consecutive school days or 10 cumulative days of suspensions in the same school year that constitute a pattern of removal** (a change in placement), or placement in an IAES, the school must hold an IEP team meeting to conduct a manifestation determination.

SCHOOL RESPONSIBILITY

When: Convene a meeting within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct.

Who: The meeting must be convened with the parent and relevant members of the child's IEP team (as determined by the parent and the school).

How: The same procedures for convening an IEP team addressed in Chapter 1 must be utilized to convene this team meeting.

Why: The purpose of this meeting is to review all relevant information in the child's file, including the IEP, any teacher observations, and any relevant information provided by parents to determine whether the conduct resulting in removal was a manifestation of the child's disability.

MANIFESTATION DETERMINATION

When conducting a manifestation determination, the parent and relevant members of the IEP team must review all relevant information in order to answer two questions:

- Was the conduct in question caused by, or did it have a direct and substantial relationship to the child's disability?

OR

- Was the conduct in question the direct result of the school's failure to implement the child's IEP?

If the team answers either question in the affirmative, the conduct must be determined to be a manifestation of the child's disability.

BEHAVIOR IS NOT A MANIFESTATION OF THE CHILD'S DISABILITY

If the team answered **both questions in the negative**, the team has determined that the conduct in question was not a manifestation of the child's disability. If the IEP team finds that the child's behavior was not a manifestation of the child's disability, the same disciplinary actions can be implemented for the child with a disability as are implemented for any child except that the IDEA eligible child is still entitled to a FAPE.

The IEP team must determine how the child will continue to receive educational services that allow him or her to continue to participate in the general education curriculum and progress toward meeting the goals in the IEP during the suspension or other removal from school and amend the current IEP or that specifies what and where special education and related services will be provided.

The IEP team should consider whether an FBA or BIP is warranted at this time to help address the reasons for the child's misconduct.

BEHAVIOR IS A MANIFESTATION OF THE CHILD'S DISABILITY

If the team answered **either question in the affirmative**, the team has determined that the conduct in question was a manifestation of the child's disability. If the IEP team finds that the child's behavior was caused by or had a direct and substantial relationship to the child's disability, or that the behavior was a direct result of the school's failure to implement the IEP, then the behavior must be found to be a manifestation of the child's disability. If the school, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must—

- Either—
 - Conduct a functional behavioral assessment, unless the school had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
 - If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; **and**
- Return the child to the placement from which the child was removed, unless –
 - The parent and the school agree to a change of placement as part of the modification of the behavioral intervention plan; and
 - The behavior in question involved drugs, weapons, or serious bodily injury as described in [34 C.F.R. §300.530\(g\)](#).

If the team determines that the conduct in question was the direct result of the school's failure to implement the IEP, the school must take immediate steps to remedy those deficiencies.

In some circumstances, the school is afforded additional authority to remove a child with a disability from the current placement in order to maintain school safety.

AUTHORITY

The school may remove a child to an interim alternative educational setting (IAES) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the LEA;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the LEA; or
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the LEA.

DEFINITIONS

The school is not free to alter the federal definitions for weapon, controlled substance, illegal drugs, or serious bodily injury. These terms are defined as follows:

Weapon: Weapon means any weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length. [34 C.F.R. §300.530\(g\)\(1\)](#).

Controlled Substance: Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act. [21 USC 812\(c\)](#).

Illegal Drug: Illegal drug means a controlled substance; but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law. [34 C.F.R. §300.530\(i\)\(2\)](#).

Serious Bodily Injury: Serious bodily injury means a bodily injury that involves one or more of the following: a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. [71 Federal Register 46723](#). Nothing in the IDEA permits the LEA to expand the definition of serious bodily injury to include just bodily injury. [71 Federal Register 46722](#).

Bodily Injury: Bodily injury includes: a cut, abrasion, bruise, burn, or disfigurement; physical pain; illness; impairment of the function of a bodily member, organ, or mental faculty; any other injury to the body, no matter how temporary. [18 U.S.C. 1365\(h\)\(4\)](#).

Note: Although the child may be placed in an IAES without regard to whether the conduct in question was a manifestation of the child's disability, it is still necessary for the school to conduct the manifestation determination within 10 school days of the removal.

SCHOOL RESPONSIBILITY FOR SERVICES

The school must continue to provide the child with educational services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress towards meeting the goals and objectives in the child's IEP. The IEP team shall determine what educational services the school will provide and the setting for those services. In addition, when determined appropriate by the IEP team, the school must conduct an FBA and provide behavioral intervention services and modifications designed to address the behavior violation so it does not recur.

A child who has not been determined eligible for special education and who has violated any rule or code of conduct of the school may assert the protections of the IDEA if the school had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action.

BASIS OF KNOWLEDGE

With limited exceptions, the school will be deemed to have knowledge that an individual is a child with a disability if one or more of the following is true:

- The parent expressed concerns in writing to supervisory or administrative school personnel or a teacher of the child that the child. The concern must be expressed in writing unless the parent is unable to write or has a disability that prevents a written statement.
- The parent requested that the child be evaluated for special education.
- The child's teacher or other school personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the LEA's director of special education or to other school supervisory personnel.

EXCEPTION

The school will be deemed not to have knowledge that the child is a child with a disability if one or more of the following is true:

- An evaluation was conducted and a determination was made that the child did not have a disability.
- The parent refused to give written consent for an evaluation.
- The parent refused special education services.

If the school did not have a basis of knowledge that a child was a child with a disability prior to taking disciplinary measures, the child is subject to the same disciplinary measures applied to all other children who engage in comparable behaviors.

REQUEST FOR EVALUATION

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary removals, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

The parent or the school has the right to an appeal in the following disciplinary circumstances:

PARENT DISAGREEMENT

The parent of a child with a disability disagrees with any decision regarding the disciplinary placement or the manifestation determination may appeal the decision by requesting a due process hearing.

DANGEROUS STUDENT

A school that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others may appeal to a due process hearing officer by requesting a due process hearing to prove that the child is dangerous.

[34 C.F.R. §300.532](#).

THE APPEAL PROCESS

The appeal hearing is requested by filing a due process complaint. Whenever a hearing is requested in a disciplinary appeal, the hearing shall take place on an expedited basis. An expedited hearing occurs within 20 school days of the request, and the hearing officer must issue a decision within 10 school days of the hearing. See Chapter 7 for additional information on the hearing process.

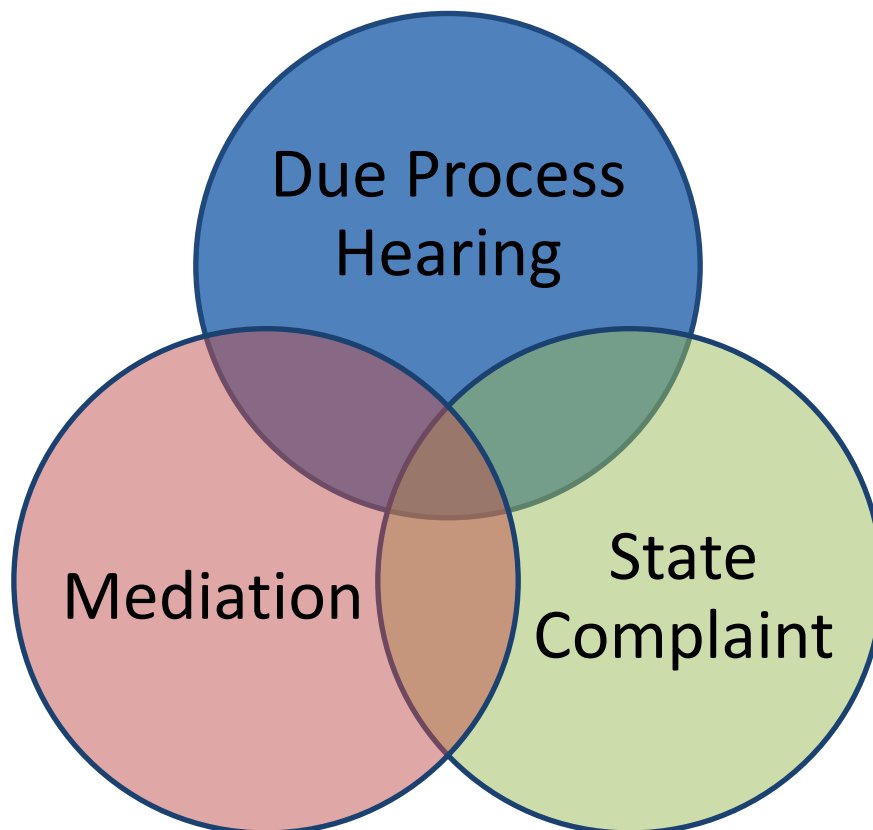
CHAPTER 7

DISPUTE RESOLUTION

INTRODUCTION

As part of its general supervisory responsibility, the VIDE must ensure implementation of IDEA's dispute resolution procedures in a manner that meets the requirements of the IDEA. OSEP encourages LEAs and schools to work cooperatively with parents to attempt to address their differences through informal means whenever possible. To that end, IDEA provides several dispute resolutions options for parents and schools to use to resolve special education disputes.

The dispute resolution systems offered to parents and schools are inter-connected options. Some dispute resolution options may be used together. The options and the connections are represented below:



Mediation is a structured, voluntary process in which an impartial third party (a mediator) assists parents and school personnel resolve disputes. Mediation builds positive working relationships, encourages mutual understanding, and helps the parties focus on their common interest—the child. Both parties must agree to the use of mediation.

THE MEDIATION PROCESS

The following mediation procedures must be available pursuant to [34 C.F.R. §300.506](#).

- VIDE shall offer parties to disputes involving any matter arising under Part B of the IDEA, including disputes arising prior to a due process hearing request, an opportunity to resolve the dispute through mediation.
- VIDE shall bear the cost of the mediation process.
- VIDE shall ensure that participation in mediation is voluntary as evidenced by the parties' signed agreement to mediate. Mediation shall not be used to deny or delay a parent's right to a due process hearing or to deny any other rights under the IDEA.
- VIDE shall maintain a roster of qualified, impartial mediators who are trained in effective mediation techniques and knowledgeable in laws and regulations relating to the provision of special education and related services. The mediator:
 - Shall not be an employee of VIDE or the LEA involved in the education or care of the child;
 - Must not have a personal or professional interest that conflicts with the person's objectivity; and
 - Shall not be considered an employee of VIDE solely because he or she is paid by VIDE.
- VIDE shall appoint a mediator based on a random, rotational, or other impartial basis.
- Each session in the mediation process shall be scheduled in a timely manner, and each session shall be held in a location that is convenient to the parties to the dispute.
- Both parties are free to bring additional participants to the mediation in order to facilitate resolution of the dispute consistent with the following:
 - Parents are free to bring additional participants who may help or support the parents' efforts to resolve the dispute.
 - An individual who has the authority to legally bind the LEA in its efforts to settle the dispute shall participate in the mediation.
 - In addition, the school is free to bring additional participants who may assist in resolving the dispute.
 - Either party may choose to be represented by counsel during the mediation.

CONFIDENTIALITY

Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding in any Federal or Virgin Islands court. In an effort to protect confidentiality, the mediator shall:

- Inform all participants of the that discussions occurring during mediation are confidential prior to the commencement of the mediation session;
- Destroy all notes taken by the mediator during the mediation at the conclusion of the mediation; and
- Encourage that all notes taken by any of the parties during mediation be destroyed at the conclusion of the mediation session.

SETTLEMENT

If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement setting forth the terms of the resolution. The agreement shall:

- State that all discussion that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- Be signed by both the parent and a representative of the LEA who has the authority to bind the LEA.

The settlement agreement shall be admissible in any federal or state court of competent jurisdiction to enforce its terms.

THE STATE COMPLAINT

Individuals or organizations alleging that a LEA or public agency has violated a requirement of Part B of the IDEA, the federal regulations, Virgin Islands statutes, or special education rules may file a written complaint with SOSE.

CONTENTS OF THE COMPLAINT

The complaint shall include the following:

- A statement that a school, the LEA, or the SEA has violated a requirement of Part B of the IDEA, the federal regulations, or applicable Virgin Islands statutes and rules;
- The facts on which the statement is based;
- The signature and contact information of the complainant; and
- If alleging violations with respect to a specific child,
 - The name and address of the residence of the child;
 - The name of the school the child is attending;
 - In the case of a homeless child, available contact information for the child and the name of the school the child is attending;
 - A description of the nature of the problem of the child, including facts relating to the problem; and
 - A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

TIME LIMITS

The complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received by SOSE.

FILING THE COMPLAINT

The party filing the complaint must forward a copy of the complaint to the LEA serving the child at the same time the party files the original complaint with SOSE.

COMPLAINT INVESTIGATION PROCESS

- Within 10 days of receipt of the complaint, SOSE shall:
 - Send written notification to the complainant and the LEA providing notice that a complaint has been received by SOSE and identifying the issues for investigation;
 - Provide the parent with a Procedural Safeguards Notice (if the complainant is a parent); and
 - Request documentation from the LEA necessary to commence the investigation.

- Complainant parents and the LEA shall be given the opportunity to engage in mediation pursuant to [34 C.F.R. §300.506](#) in an effort to voluntarily resolve the dispute.
- All written submissions regarding the complaint or the investigation must be provided to SOSE within the requested time frame.
- Within 60 days after SOSE received the complaint, SOSE shall:
 - Carry out an independent on-site investigation, if SOSE determines that an on-site investigation is necessary;
 - Give the complainant the opportunity to submit additional information, either orally or in writing about the allegations in the complaint;
 - Provide the LEA with an opportunity to respond to the complaint and an opportunity to resolve the complaint;
 - Review all relevant information and make an independent determination as to whether the LEA violated relevant laws or rules; and
 - Issue a written decision to the complainant that addresses each allegation in the complaint identified by SOSE as an issue for investigation. The written decision shall contain:
 - Findings of fact;
 - Conclusions;
 - Reasons for the final decision; and
 - Corrective action, if warranted.

REMEDIES FOR VIOLATIONS

Consistent with [34 C.F.R. §300.151\(b\)](#), in resolving a complaint in which SOSE has found violations of law and pursuant to its general supervisory authority, SOSE shall address:

- The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, such as compensatory services or monetary reimbursement; and
- Appropriate future provision of services for all children with disabilities.

CORRECTIVE ACTION PLANS

In the event that SOSE has found a failure to provide FAPE, SOSE shall issue a corrective action plan, which shall include procedures for effective implementation of SOSE's final decision and the specific corrective steps needed to achieve compliance with SOSE's decision pursuant to [34 C.F.R. §300.152\(b\)\(2\)](#).

1. Pursuant to [34 C.F.R. §300.600](#), SOSE must ensure correction of the noncompliance as soon as possible, but in no case later than one year after the identification of the noncompliance. As part of this process, the LEA shall:
 1. Submit all required documentation within the timeframes contained in the corrective action plan; and

2. Provide the complainant with a copy of all submissions at the same time the documentation is provided to SOSE.
3. Consistent with its general supervisory authority in [34 C.F.R. §300.149](#) and its duty to enforce the requirements of the IDEA and Part B of the Federal Regulations, SOSE has the authority to impose a range of sanctions on LEAs that fail to correct noncompliance as specified in any corrective action plan.
4. In an effort to correct noncompliance, SOSE may request that state authorities take appropriate administrative action with the state board of education, including but not limited to, changing of accreditation status of the LEA for failure to come into compliance with any applicable laws.

FINALITY OF DECISION

The decision of SOSE is final. However, if a party has the right to request a due process hearing (that is, the parent or the LEA) and that party disagrees with SOSE's state complaint decision, the party may initiate a due process hearing provided that the subject of the state complaint involved an issue about which a due process hearing can be filed (issues relating to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability). The request for due process hearing shall comply with [34 C.F.R. §§300.507](#) and [300.508](#).

EXTENDED TIMELINES FOR INVESTIGATION

Consistent with [34 C.F.R. §300.152\(b\)\(1\)](#), SOSE shall permit an extension of time in which to conduct the investigation and issue a final decision only when:

- The parent and the LEA request an extension for the sole purpose of engaging in mediation; or
- Exceptional circumstances exist with respect to a particular complaint, as described below:
 - Exceptional circumstances must be documented with respect to the particular complaint under investigation. Examples of exceptional circumstances may include, but are not limited to:
 - Unexpected unavailability of persons necessary to the investigation.
 - Other unforeseen circumstances beyond the control of the parties that significantly impede the ability of the complaint investigator to investigate the complaint.
 - Exceptional circumstances do not typically include regularly scheduled vacations from school, as school breaks are normally occurring and are not unique with respect to any particular complaint.
- If an extension is granted, SOSE shall issue a letter informing the parties of an extension of the 60-day time limit for exceptional circumstances, including the basis for the extension and the new decision deadline.

SIMULTANEOUS STATE COMPLAINTS & DUE PROCESS REQUESTS

If a written complaint is also the subject of a due process hearing under [34 C.F.R. §300.507](#) and [§§300.530 through 300.532](#), or if it contains multiple issues of which one or more are part of that hearing, SOSE shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.

If the hearing officer's decision addresses the issue(s) that have been set aside, the hearing officer's decision is binding, and SOSE is without authority to investigate that issue(s).

If the hearing officer's decision does not address the issue(s) set aside, SOSE shall recommence the investigation and the 60-day timeline with respect to that issue(s).

If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties:

- The due process hearing decision is binding on that issue; and
- SOSE shall inform the complainant to that effect.

A complaint alleging a LEA's failure to implement a due process hearing decision shall be resolved by SOSE.

A request for a due process hearing may be made by a parent or attorney representing the parent or the LEA. The request must be mailed, faxed, or hand delivered to SOSE. When the request is filed the requesting party must send copies to SOSE.

THE DUE PROCESS HEARING OFFICER

SOSE shall maintain and annually update a roster of impartial hearing officers along with a statement of each hearing officer's qualifications, consistent with [34 C.F.R. §300.511\(c\)](#). At a minimum, the hearing officer:

- Must not be:
 - An employee of VIDE or the LEA that is involved in the education or care of the child; or
 - A person having a personal or professional interest that conflicts with objectivity in the hearing;
- Must be licensed attorneys in good professional standing in the licensing state.
- Must possess knowledge of, and the ability to understand, the provisions of the IDEA, federal and Virgin Islands regulations pertaining to the IDEA and legal interpretations of the IDEA by federal and state courts;
- Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

SOSE shall assign an impartial hearing officer to handle all matters regarding a due process hearing request. A hearing officer may not be an employee of the LEA or the OSDE, an individual having any personal or professional interest that would conflict with his or her objectivity in the hearing, or a member of the board of education of the LEA.

DUE PROCESS HEARING REQUEST FROM A PARENT

A due process hearing may be requested on behalf of a student by a parent (or adult student) or by an attorney representing the student.

- A due process hearing must be initiated within 2 years of the date the parent and/or adult student knew or should have known of the basis for the dispute. The 2 year time limit will not apply if the parent was prevented from requesting a hearing due to misrepresentations that the issues had been resolved or the withholding of information by the LEA required to be provided under the IDEA.
- A due process hearing can be initiated regarding issues pertaining to identification, evaluation, educational placement, or the provision of a FAPE if:
 - The LEA proposes to initiate or change any of these matters; or

- The LEA refuses the parent's request to initiate or change any of these matters.

DUE PROCESS HEARING REQUEST BY AN LEA

An LEA or attorney on behalf of the LEA may initiate a due process hearing within 2 years of the dispute in an attempt to accomplish one or more of the following:

- Override a parent's refusal of consent for an initial evaluation, reevaluation, or the release of information;
- To seek an order from a hearing officer determining the appropriateness of a proposed IEP, including placement;
- To prove that an evaluation conducted by or on behalf of the LEA was appropriate;
- To request that a hearing officer determine whether a publicly funded IEE obtained by the parent meets the LEA's criteria; and
- Ask a hearing officer to place a student in an Interim Alternative Education Setting (IAES) when there is substantial evidence that maintaining the current educational placement is likely to result in injury to the student or others.

CONTENTS OF A DUE PROCESS COMPLAINT

A request for a due process hearing must be made in writing and must include the following information:

- The current date;
- The student's name, address (or available contact information in the case of a homeless student), and LEA;
- The signature of the individual making the request for a due process hearing;
- A description of the nature of the problem, including supporting facts; and
- A proposed resolution of the problem or the relief sought to the extent known and available to the party at the time of filing the due process complaint.

FILING A DUE PROCESS COMPLAINT

A request for a due process hearing must be filed with SOSE by either the parent or the LEA.

If a parent files a due process request with the LEA instead of with SOSE, the LEA must forward the due process request to SOSE of its actions. The parent should be encouraged to file the due process hearing request directly with SOSE. However, since the LEA already has the due process request, it must take the affirmative step to send it to SOSE to avoid denying or delaying a parent's right to file a due process complaint.

Once a due process hearing request has been filed, SOSE will forward a copy of the complaint with the receiving date stamped on it to the LEA in which the student resides.

SUFFICIENCY CHALLENGES

The non-filing party may challenge the sufficiency of the due process hearing request within 15 days of the receipt of the hearing request by filing a sufficiency objection with the hearing officer.

The hearing officer has the sole authority to determine if a due process hearing request is sufficient and must render a decision regarding the sufficiency challenge within 5 calendar days of receipt of the challenge. The hearing officer shall immediately notify the parties of the decision in writing.

In the absence of a sufficiency challenge filed with the hearing officer, the due process complaint shall be deemed sufficient as a matter of law.

RESPONSE TO A DUE PROCESS COMPLAINT

- The non-filing party must file a response to the due process hearing request within 10 days responding to the issues raised in the due process complaint.
- If the LEA has not sent a written notice to the parent regarding the subject matter contained in the due process request, the LEA shall, within 10 days of receiving the request, send the parent a response that includes all the components of a PWN consistent with [34 C.F.R. §300.503](#).
- Either party may amend the due process hearing request upon obtaining written consent from the other party or as granted by the hearing officer, at least 5 days prior to the hearing. If the request is amended, timelines for the resolution session begin again as of the date of the amended request.

MEDIATION OFFERED

SOSE offers mediation as an alternative dispute resolution option for the involved parties. A trained mediator will be provided if both parties agree to engage in mediation in an effort to resolve the dispute.

RESOLUTION SESSION

A resolution meeting is an intermediate step that gives the parents of a child with a disability the opportunity to discuss the basis of the due process complaint, and affords the LEA an opportunity to resolve the dispute. [34 C.F.R. §300.510](#). The resolution meeting involves the LEA, the parents of the child with a disability, and relevant members of the IEP team who have specific knowledge of the allegations in the due process complaint.

The LEA shall convene a resolution session when a parent requests a due process hearing within 15 days of the request. **Note:** A resolution meeting is required only in response to a parent's due process hearing request. A resolution session is required unless:

- Both parties agree in writing to waive the resolution session; or
- Both parties agree to use mediation in lieu of the resolution session.

RESOLUTION SESSION PARTICIPANTS

A "resolution team" includes the parent, a representative of the LEA who has decision-making authority, and relevant members of the IEP team who have specific knowledge of the facts identified in the request for a due process hearing as determined by the parties. The LEA's attorney is prohibited from attending the resolution session unless the parents or student are accompanied by an attorney.

RESOLUTION PERIOD

The LEA must continue efforts to convince a parent to attend a resolution meeting for 30 days. A due process hearing will be scheduled if no resolution is reached within 30 days of receiving the parent's request for a due process hearing. Exceptions to the 30 day resolution period are as follows:

- If the LEA is unable to obtain the participation of the parent after reasonable efforts have been made and documented, at the conclusion of the 30-calendar day period the LEA may request that the hearing officer dismiss the due process hearing request.
- A parent may request an immediate due process hearing from the hearing officer if the LEA has not scheduled or participated in a resolution session within 15 days of the request.

RESOLUTION AGREEMENT

If a resolution is reached regarding the issues raised in the parent's request for a due process hearing, the LEA representative and parent shall sign a legally binding document that is enforceable in state or federal court of competent jurisdiction. Either party may void this agreement within 3 business days of signing the agreement.

DUE PROCESS HEARING TIMELINE

Absent a request for continuance from one of the parties, the hearing officer shall hold a hearing on a due process complaint and issue a decision within 45 days of the conclusion of the resolution period. The 45 day timeline for the due process hearing starts the day after one of the following events:

- Both parties agree in writing to waive the resolution meeting;
- After either the mediation or resolution meeting starts, but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or
- If both parties agree in writing to continue mediation at the end of the 30-day resolution period but later the parent or public agency withdraws from the mediation process.

DUE PROCESS HEARING PREPARATION

A parent must be allowed to inspect and review reports, files, and records pertaining to the student upon request and not less than 5 business days prior to a due process hearing. An LEA may charge a fee for copies of records if the fee does not effectively prevent a parent from exercising his or her right to inspect and review those records. The LEA may not charge a fee to search for or retrieve records.

Not less than 5 business days prior to a due process hearing, each party shall disclose to all other parties:

- Evaluations completed by that date;
- Recommendations based on those evaluations intended to be used at the hearing;

- Copies of exhibits which a party intends to introduce at hearing; and
- The list of witnesses each party intends to call at the hearing.

The hearing officer will convene prehearing conferences and scheduling conferences as needed, issue prehearing and scheduling orders as appropriate, issue an order finalizing the issues for hearing, and provide notification as to the time and place of the due process hearing to the parent and LEA officials. The hearing must be conducted at a time and place reasonably convenient to the parent.

THE DUE PROCESS HEARING

The hearing officer will preside over and conduct the proceedings in a fair and impartial manner, permitting all parties an opportunity to present evidence, cross examine the other party's witnesses, and compel the attendance of witnesses pursuant the IDEA requirements outlined at [34 C.F.R. §300.508](#) consistent with the following:

- A parent and/or adult student and LEA personnel may be accompanied and advised by legal counsel and other persons with special knowledge or training about students with disabilities.
- A parent has the right to open the hearing to the public and to have the student who is the subject of the hearing present.
- The party requesting the hearing will have the burden of proof in the due process hearing.
- Only the parties and their respective attorneys have the right to present evidence, to compel the attendance of witnesses, and to confront and cross examine witnesses.
- New issues shall not be raised at the hearing unless agreed to by the other party.
- Any party may prohibit the introduction of any evidence at the hearing that was disclosed fewer than 5 business days before the hearing.
- During the hearing, SOSE shall provide reasonable accommodations as required by federal regulations.
- A verbatim transcript of the due process hearing shall be made. The parent and/or adult student may choose an electronic verbatim record. The parent has the right to receive a copy of the transcript at no cost upon request.

THE DECISION OF THE HEARING OFFICER

The decision of the hearing officer will be based solely on evidence introduced at the due process hearing according to the following:

- The decision made by the hearing officer will be made on substantive grounds based on a determination of whether a student received a FAPE. In matters alleging a procedural violation, pursuant to [34 C.F.R. §300.513](#), a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies:
 - Impeded the child's right to a FAPE;

- Significantly impeded a parent's and/or adult student's opportunity to participate in the decision-making process; or
- Caused a deprivation of educational benefit.
- The decision will include findings of fact, conclusions of law, and orders, as appropriate.
- The findings of fact and decision must be issued to the parties.
- The hearing officer's written decision must be issued to the parties within the applicable timelines. The hearing officer may grant an extension of the due process hearing timeline if requested by a party. If granted, the extension shall be for a specific, limited period of time.
- After deleting personally identifiable information, SOSE will make the decision available to the State Advisory Council (IDEA B Advisory Panel).
- A hearing officer's decision is final unless appealed consistent with [34 C.F.R. §§300.514](#) and [300.516](#). The party bringing a civil action to appeal a due process hearing decision shall have 90 days from the date of the hearing officer's written decision to file the civil action.

STAY PUT PLACEMENT

During the pendency of any due process hearing or an appeal, the child must remain in his or her current educational placement at the time the due process hearing request was filed unless the LEA and parent agree otherwise. This is referred to as "stay put."

- The stay put placement continues during any subsequent appeals unless a hearing officer agrees with a parent and/or adult student that a change of placement is appropriate. In that case, the placement identified in the hearing officer's decision becomes the stay put placement.
- "Stay put" does not apply when a student is transitioning from Part C (the Infant/Toddler Program) to Part B of the IDEA.

An expedited due process hearing is defined as an administrative hearing to resolve disputes concerning a disciplinary action by the school.

A request for an expedited due process hearing may be made by a parent or the LEA.

EXPEDITED DUE PROCESS HEARINGS

An LEA may request an expedited hearing if the LEA believes maintaining the current placement or returning the child to the prior placement after a disciplinary removal is substantially likely to result in injury to the child or others.

A parent may request an expedited hearing if:

- The parent disagrees with a determination that the child's behavior was not a manifestation of the disability; or
- The parent disagrees with the school's disciplinary change of placement.

THE EXPEDITED HEARING PROCESS

An expedited hearing shall be conducted in an expeditious and impartial manner. Guidelines and proceedings will be the same as those in a regular due process hearing, except for the following changes:

- A resolution session must occur within **7 calendar days** of receiving a due process hearing request unless the parties agree in writing to waive the resolution session or go to mediation.
- A due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15 calendar days** of receipt of the expedited due process hearing request.
- Any party may prohibit the introduction of any evidence at the hearing that was not disclosed at least **5 business days** before the hearing, unless the hearing officer establishes another time period for the exchange of evidence.
- The hearing must occur within **20 school days** of the request, with a decision rendered within **10 school days** of the hearing. A written decision shall be issued to both parties.
- A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings.

PLACEMENT DURING AN EXPEDITED HEARING

When a hearing has been requested by the parent or the LEA regarding disciplinary placement decisions, the child shall remain in the disciplinary setting consistent with the following.

- The child will remain in the interim alternate educational setting (IAES) until the timeline for the disciplinary action expires or the hearing officer renders a decision, whichever occurs first.
- Upon expiration of the IAES placement, the child will be placed in the setting he or she was in prior to the IAES.

- However, if LEA personnel maintain that it is dangerous for the child to return to that placement, the LEA may request an expedited hearing to continue the IAES for up to an additional 45 school days. This procedure may be repeated as necessary.

CHAPTER 8

PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN

INTRODUCTION

In this chapter, parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school (as defined within the IDEA).

NO INDIVIDUAL RIGHT TO FAPE

No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. [34 CFR §300.137\(a\)](#). Children with disabilities placed in private schools by their parent when FAPE is not disputed do not have an individual entitlement to the special education and related services they would receive if enrolled in a public school or placed in a private school by the LEA as a means of ensuring FAPE is made available.

It is important to remember that the LEA's child find responsibility is an ongoing process. Therefore, if a child is enrolled by his or her parents in a private school without having been previously identified as a child with a disability under [34 C.F.R. §300.8](#) is suspected of having a disability during the school year, the LEA where the private school is located is responsible for ensuring that the child is evaluated, subject to parental consent as defined in [34 C.F.R. §300.9](#), consistent with the requirements in [34 C.F.R. §§300.304](#) through 300.311. In addition, it is possible that a child who was previously evaluated by another LEA and was not found eligible for special education and related services may be enrolled by his or her parents in a private school located in a different LEA where the child is later evaluated and found eligible for special education and related services. [Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools](#), 80 IDELR 197 (OSERS & OSEP 2022).

RECORD KEEPING

Each LEA must maintain in its records (and provide to SOSE) the following information related to parentally-placed private school children covered under [34 C.F.R. §§300.130 through 300.144](#):

- The number of children evaluated;
- The number of children determined to be children with disabilities; and
- The number of children served.

[34 C.F.R. §300.132\(c\)](#).

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of plans for providing special education and related services for the children regarding the following:

- How parentally placed private school children suspected of having a disability can participate equitably, and
- How parents, teachers, and private school officials will be informed of the process.

No later than the end of May of each school year, the LEA must locate, identify and evaluate all children with disabilities who are enrolled by their parent in private, including religious schools, to ensure the equitable participation of parentally-placed private school children with disabilities, including an accurate count of such children and timelines comparable to those established for public school children. The LEA, in conducting child find for parentally-placed private school children with disabilities, must undertake activities similar to activities undertaken for the agency's public school children.

THE CONSULTATION PROCESS

The LEA must consult with private school representatives and parents of parentally-placed private school students with disabilities to ensure parentally-placed students with disabilities identified through the child find process can meaningfully participate in special education and related services.

Decisions about which services and the amounts of services children with disabilities enrolled by their parents in private schools will receive are made during the consultation process and are based on the needs of the students designated to receive services and the funding amount determined by IDEA's formula. These students have **no individual entitlement** to receive some or all of the special education and related services they would receive if enrolled in a public school.

The LEA must maintain documentation that the consultation has occurred, including a written affirmation signed by representatives of the participating private schools. [34 C.F.R. §300.135](#).

PROPORTIONATE SHARE

A determination must be made of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities according to [34 CFR § 300.133\(b\)](#) (formula for calculating proportionate share), including the determination of how the proportionate share of those funds will be utilized for those parentally-placed private school children who are in need of services.

No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

DECISIONS

Decisions about the services that will be provided to parentally-placed private school children with disabilities under [34 C.F.R. §§300.130 through 300.144](#) must be made in accordance with [34 C.F.R. §300.134\(d\)](#).

The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

SERVICES PLAN

The Individualized Service Plan (ISP) is a written document that outlines what services will be provided to children with disabilities who are parentally-placed in private schools. The ISP is developed, reviewed, and revised in a manner similar to the IEP. An ISP meeting is conducted and serves as the communication vehicle between a parent, the LEA and the private school in which the parent placed his/her child.

Once the LEA and the private school have come to an agreement regarding what services will be provided to children with disabilities who are parentally placed based on the federal regulations' formula for calculating the LEA's proportionate share of funds to be expended for non-public school children with disabilities, the LEA shall conduct an ISP meeting for IDEA eligible students.

The ISP should be developed through collaboration and cooperation among the parent(s), private school representatives, and LEA to identify the services that will be provided. If the private school representative cannot attend, the LEA should use other methods to include the private school in the development of the ISP.

The services plan must, to the extent appropriate—

Meet the requirements of [34 C.F.R. §300.320](#) with respect to the services provided; and be developed, reviewed, and revised consistent with [34 C.F.R. §§300.321 through 300.324](#). [34 C.F.R. §300.138](#).

In developing the service plan, the LEA must –

- Initiate and conduct meetings to develop, review, and revise an ISP for the child; and
- Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

[34 C.F.R. §300.137\(c\)](#).

In order for services to be equitable, the services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the special education teacher qualification requirements.

Parentally-placed private school children with disabilities may receive a different type or amount of service than eligible children with disabilities in public schools.

Provision of Service

The provision of services pursuant to this section and [34 C.F.R. §§300.139 through 300.143](#) must be provided:

- By employees of a public agency; or
- Through contract by the public agency with an individual, association, agency, organization, or other entity.

The special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

Location of Service

Services to parentally-placed private school children with disabilities may be provided on the premises of private schools, including religious schools, to the extent consistent with law.

If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation, as needed—

- From the child's school or the child's home to a site other than the private school; and
- From the service site to the private school, or to the child's home, depending on the timing of the services.

LEAs are not required to provide transportation from the child's home to the private school.

IDEA dispute resolution options for parentally-placed private school children with disabilities are limited as follows:

DUE PROCESS NOT AVAILABLE

Due process hearings are not available to resolve complaints that an LEA has failed to meet the requirements of [34 C.F.R. §§300.132 through 300.139](#), including the provision of services indicated on the child's services plan.

Exception

The due process hearing procedures apply to complaints that an LEA has failed to meet the child find requirements in [§ 300.131](#), including the requirements in [34 C.F.R. §§300.300 through 300.311](#). Any due process complaint regarding the child find requirements must be filed with the LEA in which the private school is located, and a copy must be forwarded to the SEA.

STATE COMPLAINTS

The state complaint process is available to resolve complaints regarding parentally-placed private school children. Any complaint that an SEA or LEA has failed to meet the requirements with respect to parentally-placed private school children must be filed in accordance with the procedures described in [34 C.F.R. §§300.151 through 300.153](#).