

1 INTRODUCTION

The reauthorized Individuals with Disabilities Education Act of 2004 is confusing to most parents, educators, and even to many attorneys. Ignorance of the law can be as damaging as the child's disability.

What are the requirements for highly qualified special education teachers? When do these requirements go into effect? How can special education teachers meet the highly qualified teacher requirements?

What does the Individuals with Disabilities Education Act say about child find? Special education services to children who attend private schools and charter schools? What does the law say about least restrictive environment, mainstreaming and inclusion?

What does the law say about evaluations, reevaluations and parental consent? What does the law say the use of discrepancy formulas and response to intervention to identify children with specific learning disabilities?

What does the law say about Individualized Education Programs (IEPs) and IEP teams? Transition plans? What does the law say about reviewing and revising IEPs? Who may be excused from IEP meetings and under what circumstances? What are "multi-year IEPs"?

What are early intervening services? Who is eligible for early intervening services? What does the law say about who must be tested on state and district assessments? Who is entitled to accommodations? Alternate assessments? Who makes these decisions?

What does the law say about independent educational evaluations? Parent access to educational records? Mediation? Parent notice? Prior written notice? Due process complaint notice? What are the new requirements and timelines for due process hearings? Resolution sessions? Qualifications for hearing officers? Attorneys' fees?

What does the law say about discipline? Manifestation Review Hearings? Who decides whether a child will be placed into an interim alternative educational setting, why, and for how long? What does the law say about Functional Behavioral Assessments and Behavior Intervention Plans?

Wrightslaw: IDEA 2004 will help you find answers to your questions in the reauthorized statute.

Wrightslaw: IDEA 2004 includes the full text of Part A (General Provisions) and Part B (Assistance for Education of All Children with Disabilities) of the Individuals with Disabilities Education Act, with commentary, cross-references, strategies, and tips. Part C (Infants and Toddlers with Disabilities), Part D (National Activities to Improve Education of Children with Disabilities) and Part E (National Center for Special Education Research) were omitted from **Wrightslaw: IDEA 2004**, but will be included in **Wrightslaw: Special Education Law, 2nd Edition**.¹

¹ **Wrightslaw: Special Education Law, 2nd Edition**, is scheduled for publication in the winter of 2006.

Introduction

WHO SHOULD READ THIS BOOK?

If you are the parent of a child with a disability, you represent your child's interests. To effectively advocate for your child, you need to learn about your child's rights, your rights and responsibilities under the Individuals with Disabilities Education Act and how the law will affect your child's education.

If you work as a teacher, related services provider, or administrator, the Individuals with Disabilities Education Act of 2004 will have a profound impact on you and your job. You may receive conflicting information and advice about this law. You need to know what the law actually says.

If you teach special education, school psychology, school administration, or education law courses, your students need to know how to find answers to their questions about what the law requires of them. If you are an employee of a state department of education, you may be responsible for investigating complaints, collecting data, or other activities to improve educational results. You need to know about the new requirements in IDEA 2004 that will affect your work.

If you are an attorney or advocate who represents children with disabilities, you need to have the Individuals with Disabilities Education Act of 2004 on your desk, in your briefcase and in your computer.

HOW THE BOOK IS ORGANIZED

The first chapter introduces you to the law, regulations, and caselaw. You learn about legal citations and how to do legal research. The next chapter is an Overview of IDEA 2004 that describes how the law is organized, highlights, and new requirements in IDEA 2004. The Table of Sections is in Chapter 4. Chapter 5 includes the complete text of Part A and Part B of the Individuals with Disabilities Education Act of 2004 with commentary, strategies, and cross-references.

Wrightslaw: IDEA 2004 includes appendices on several topics: Section 504 and IDEA; tuition reimbursement for private programs; discrepancy models and response to intervention to identify children with specific learning disabilities; a roadmap to the IEP; due process procedures and timelines; reading and research based instruction, including the federal definitions of reading, scientifically based reading research, diagnostic reading assessments, and the essential components of reading programs. A Glossary of Acronyms, Abbreviations and Terms and a bibliographic list of resources is at the end.

This book is set in Minion font. The authors used **bold type** to emphasize key words and phrases in the statute. Commentary and cross-references are in footnotes.

UPDATES

We expect to publish **Wrightslaw: Special Education Law, 2nd Edition** in 2006, after the U. S. Department of Education issues the federal special education regulations and the U. S. Supreme Court issues a decision in *Schaffer v. Weast* during the 2005-2006 term. When **Wrightslaw: Special Education Law, 2nd Edition** is published, **Wrightslaw: IDEA 2004** will go out of print.

Updates on IDEA: <http://www.wrightslaw.com/idea/>

Updates on Schaffer v. Weast: <http://www.wrightslaw.com/news/05/schaffer.weast.htm>

2 LAW, REGULATIONS AND CASELAW

In this chapter, you will learn about law, regulations and caselaw. You will learn about legal research, legislative intent, and how law evolves through judicial interpretations.

Congress enacted the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) on November 17, 2004. The President signed the Act into law on December 3, 2004. The law went into effect on July 1, 2005.

When Congress reauthorized the Individuals with Disabilities Education Act in 2004, they made many significant changes to the law. **Purposes** is the mission statement of IDEA and the most important statute:

... to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services **designed to meet their unique needs** and prepare them for **further education**, employment and independent living . . . [and] to ensure that the rights of children with disabilities and parents of such children are protected... (Section 1400(d))

The authorization of any new law brings about a spate of interpretations and questions. Self-styled experts may spread wrong interpretations, misinformation and disinformation. Do not rely on the opinions of others or advice you may find in articles or at training programs.

To find answers to your questions about the Individuals with Disabilities Education Act, you need to do your own legal research. The intention of this book is to bridge the gap between the law and one's understanding of the legal language within it, in an accurate, objective manner and through direct reference to the law itself.

In this book, you will read the law. In the beginning, this is more difficult than reading articles about the law or having the law explained to you. As you continue to read, the law will begin to fit together in your mind. When you learn how the law is organized, you can find sections or regulations that are relevant to your questions.

STATUTES

Statutes are laws passed by federal, state and local legislatures. The original federal special education law was "The Education of All Handicapped Children Act of 1975." When Congress amended the law in 1990, they gave it a new name, "The Individuals with Disabilities Education Act." When Congress reauthorized the law in 2004, they renamed it again as "The Individuals with Disabilities Education Improvement Act of 2004." (IDEA 2004 is Public Law 108-446 and is cited as Pub. L. 108-446.)

Congress first publishes laws as an "Act" in the *Statutes at Large*, then organizes laws by subject in the *United States Code* (U.S.C.) The Individuals with Disabilities Education Act is printed in the *Statutes at Large* and in the *United States Code*. The numbering system used to categorize an Act in the *Statutes at Large* is different from the system used in the *United States Code*.

The *United States Code* has fifty subject classifications called Titles. For example, Title 20 is about education, Title 26 is the Internal Revenue Code, and Title 42 is about public health and welfare. In each title, laws are indexed and assigned section numbers. The Individuals with Disabilities Education Act is cited as 20 U.S.C. § 1400, *et. seq.* Statutes published in the *Statutes at Large* have sections (section 1, 2, 3, 4, etc.) and may have subsections ((a), (b), (c), (d), etc.).

Chapter 2

The “Act” begins with Section 600. When the Act is published in the *United States Code* (U.S.C.), the numbers change. IDEA 2004 is in Title 20 of the *United States Code*, beginning with Section 1400. For example, “Definitions” are in Section 1401 of the *United States Code* (cited as 20 U.S.C. § 1401) and are in Section 602 of “the Act.”

Legal Citations

References to law are called legal citations. Legal citations are standardized formats that explain where you will find a particular statute, regulation, or case. When you see a legal citation such as 20 U. S. C. § 1400 *et. seq.*, the term “*et. seq.*” means beginning at Section 1400 and continuing thereafter.

In the *United States Code*, “Findings and Purposes” are in Section 1400 of Title 20. The legal citation for Findings and Purposes is 20 U.S.C. § 1400. You may refer to Findings and Purposes as “20 U. S. C. § 1400” or “Section 1400.”

In ***Wrightslaw: IDEA 2004***, legal citations will not include the Title. For example, the full legal citation for the law about IEPs is 20 U.S.C. § 1414(d). In most cases, the authors will use a simpler format for citations, such as Section 1414 and Section 1414(d).

Purposes

“Purposes” at Section 1400(d) is the most important section in the law is because it describes the overall purpose of the law. If you have questions about a specific section in the Individuals with Disabilities Education Act, re-read Purposes to see how the particular section fits into the overall purpose of the law.

Other Federal Statutes

Other important federal acts and statutes that affect educational issues are:

- The No Child Left Behind Act of 2001 begins at 20 U. S. C. § 6301, *et. seq.*
- Section 504 of the Rehabilitation Act of 1973, begins at 29 U. S. C. § 794, *et. seq.*
- The Family Educational and Rights and Privacy Act, begins at 20 U. S. C. § 1232, *et. seq.*

States must ensure that their statutes and regulations are consistent with the *United States Code* (U. S. C.) and the *Code of Federal Regulations* (C. F. R.). While state statutes and regulations may provide more rights than federal laws, they cannot provide fewer rights than guaranteed by federal law. If a state law or regulation is in direct conflict with a federal law, the federal law controls, pursuant to the “Supremacy Clause” of the U. S. Constitution.

REGULATIONS

Regulations clarify and explain the United States Code. A regulation must be consistent with the United States Code and has the same force of law.

The U. S. Department of Education develops and publishes the federal special education regulations. Before the Department publishes these regulations, the agency must publish the proposed regulations in the Federal Register (F. R.) and solicit comments from citizens about the proposed regulations. The final special education regulations will be published in Volume 34, Part 300 of the Code of Federal Regulations. For example, the legal citation for the IDEA regulations is 34 C. F. R. § 300.

On June 11, 2005, the Department of Education issued the proposed regulations for public comment. The final regulations are expected to be issued in January or February, 2006, and will be included in ***Wrightslaw: Special Education Law, 2nd Edition***.

3 AN OVERVIEW OF IDEA 2004

The Individuals with Disabilities Education Act of 2004 includes significant changes from the previous authorization, IDEA 97. This chapter will provide you with an overview of the law, how the law is organized, and new requirements in the law.

The Individuals with Disabilities Education Act of 2004 is divided into five parts:

Part A - General Provisions (Sections 1400 - 1409)

Part B - Assistance for Education of All Children with Disabilities (Sections 1411 - 1419)

Part C - Infants and Toddlers with Disabilities (Sections 1431 - 1444)

Part D - National Activities to Improve Education of Children with Disabilities (Sections 1450-1482)

Part E - National Center for Special Education Research

Parents, advocates, attorneys, and educators will refer most often to the following sections:

Section 1400 - Findings and Purposes

Section 1401 - Definitions

Section 1412 - State Responsibility (the Catch-all Statute)

Section 1414 - Evaluations, Eligibility, Individual Education Programs, Educational Placements

Section 1415 - Procedural Safeguards

PART A – GENERAL PROVISIONS

Part A of the Individuals with Disabilities Education Act of 2004 includes Sections 1400 through Section 1409 of Title 20 of the United States Code (U.S.C.). The most important section in the law is Section 1400(d) that describes the Purposes of the law. Section 1401 includes the legal definitions in alphabetical order. Section 1403 advises that states are not immune from suit if they violate IDEA. Section 1406 describes the requirements and timelines for the federal special education regulations. Section 1408 is a new section about paperwork reduction. (Note: There is no Section 1410.)

SECTION 1400: FINDINGS & PURPOSES

Findings in Section 1400(c) describe the events and findings that led Congress to pass the Education for All Handicapped Children Act of 1975 (Public Law 94-142) which is now the Individuals with Disabilities Education Improvement Act of 2004.

In Findings, Congress described obstacles to implementation of the law:

... implementation of this title has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities. (Section 1400(c)(4))

Chapter 3

Congress reported that “over 30 years of research and experience” demonstrates that special education would be more effective by:

... having high expectations for such children and ensuring their access to the general education curriculum in regular classrooms, to the maximum extent possible... to meet the challenging expectations that have been established for all children; and be prepared to lead productive and independent lives to the maximum extent possible. (Section 1400(c)(5))

The language in Findings about meeting the “developmental goals” and “challenging expectations that have been established for nondisabled children” so children will “be prepared to lead productive and independent adult lives” is new.

Purposes is the most important statute in the law:

to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their **unique needs and prepare them for further education, employment and independent living**” and “to ensure that the rights of children with disabilities and parents of such children are protected... (Section 1400(d))

The phrase “further education” is new, as is the increased emphasis on “effective transition services to promote successful post-school employment or education.”

When you have questions about a term or section in the law, re-read Section 1400, especially Purposes in Section 1400(d). This will help you understand how the term or the section fits into the overall purpose of the law. When the U.S. Supreme Court issues a ruling, they discuss the purpose of the law.

SECTION 1401: DEFINITIONS

Six new definitions were added to IDEA 2004: core academic subjects, highly qualified teacher, homeless children, limited English proficient, universal design, and ward of the state. Read the definitions carefully, especially the definitions of child with a disability, free appropriate public education, highly qualified teacher, least restrictive environment, IEP, related services, special education, and specific learning disability.

Highly Qualified

The requirements for highly qualified special educators are new and bring IDEA into conformity with the No Child Left Behind Act. A “highly qualified teacher” has full State certification (no waivers), holds a license to teach, and meets the State’s requirements. The requirements are somewhat different for new and veteran teachers, for elementary, middle school, and high school teachers, for teachers of multiple subjects, and for teachers who teach to alternate standards. (Section 1401(10)(B))

Special educators who teach core academic subjects must meet the highly qualified teacher requirements in NCLB and must demonstrate competence in the core academic subjects they teach. Special educators who do not provide instruction in core academic subjects do not have to meet the highly qualified teacher requirements.

States can develop a method by which teachers can demonstrate competence in the subjects they teach. This method must be based on a “high objective uniform state standard of evaluation” (HOUSSE) and must provide an objective way to determine if teachers have subject matter knowledge in the core academic subjects they teach. (Section 1401(10)(D))

Transition Services

The definition of transition services was changed to a “results-oriented process” that improves “the academic and functional achievement of the child with a disability” and facilitates the child’s transition from school to employment and further education. Transition services must be based on the individual child’s needs, including the child’s strengths. (Section 1401(34)) The IEP requirements for transition also changed.

4 SECTION HEADINGS

| | |
|---|-----------|
| Part A — General Provisions | 29 |
| 20 U.S.C. § 1400. Short Title; Table of Contents; Findings; Purposes | 29 |
| (a) Short Title. | |
| (b) Table of Contents. | |
| (c) Findings. | |
| (d) Purposes. | |
| 20 U.S.C. § 1401. Definitions | 34 |
| 20 U.S.C. § 1402. Office of Special Education Programs..... | 43 |
| (a) Establishment. | |
| (b) Director. | |
| (c) Voluntary and Uncompensated Services. | |
| 20 U.S.C. § 1403. Abrogation of State Sovereign Immunity | 43 |
| (a) In General. | |
| (b) Remedies. | |
| (c) Effective Date. | |
| 20 U.S.C. § 1404. Acquisition of Equipment; Construction or Alteration of Facilities. 43 | |
| (a) In General. | |
| (b) Compliance With Certain Regulations. | |
| 20 U.S.C. § 1405. Employment of Individuals with Disabilities | 44 |
| 20 U.S.C. § 1406. Requirements for Prescribing Regulations | 44 |
| (a) In General. | |
| (b) Protections Provided to Children. | |
| (c) Public Comment Period. | |
| (d) Policy Letters and Statements. | |
| (e) Explanation and Assurances. | |
| (f) Correspondence From Department of Education Describing Interpretations of This Title. | |
| 20 U.S.C. § 1407. State Administration | 45 |
| (a) Rulemaking. | |
| (b) Support and Facilitation. | |
| 20 U.S.C. § 1408. Paperwork Reduction | 45 |
| (a) Pilot Program. | |
| (b) Report. | |
| 20 U.S.C. § 1409. Freely Associated States | 47 |

Chapter 4

PART B –ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES48

20 U.S.C. § 1411. Authorization; Allotment; Use of Funds; Authorization of Appropriations48

- (a) Grants to States.
- (b) Outlying Areas and Freely Associated States, Secretary of the Interior.
- (c) Technical Assistance.
- (d) Allocations to States.
- (e) State Level Activities.
- (f) Subgrants to Local Educational Agencies.
- (g) Definitions.
- (h) Use of Amounts by Secretary of the Interior.
- (i) Authorizations of Appropriations.

20 U.S.C. § 1412. State Eligibility60

- (a) In General.
- (b) State Educational Agency as Provider of Free Appropriate Public Education or Direct Services.
- (c) Exception for Prior State Plans.
- (d) Approval by the Secretary.
- (e) Assistance Under Other Federal Programs.
- (f) By-Pass for Children in Private Schools.

20 U.S.C. § 1413. Local Educational Agency Eligibility76

- (a) In General.
- (b) Exception for Prior Local Plans.
- (c) Notification of Local Educational Agency or State Agency in Case of Ineligibility.
- (d) Local Educational Agency Compliance.
- (e) Joint Establishment of Eligibility.
- (f) Early Intervening Services.
- (g) Direct Services by the State Educational Agency.
- (h) State Agency Eligibility.
- (i) Disciplinary Information.
- (j) State Agency Flexibility.

20 U.S.C. § 1414. Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements84

- (a) Evaluations, Parental Consent, and Reevaluations.
- (b) Evaluation Procedures.
- (c) Additional Requirements for Evaluation and Reevaluations.
- (d) Individualized Education Programs.
- (e) Educational Placements.
- (f) Alternative Means of Meeting Participation.

20 U.S.C. § 1415. Procedural Safeguards98

- (a) Establishment of Procedures.
- (b) Types of Procedures.
- (c) Notification Requirements.

- (d) Procedural Safeguards Notice.
- (e) Mediation.
- (f) Impartial Due Process Hearing.
- (g) Appeal.
- (h) Safeguards.
- (i) Administrative Procedures.
- (j) Maintenance of Current Educational Placement.
- (k) Placement in Alternative Educational Setting .
- (l) Rule of Construction.
- (m) Transfer of Parental Rights at Age of Majority.
- (n) Electronic Mail.
- (o) Separate Complaint.
- 20 U.S.C. § 1416. Monitoring, Technical Assistance, and Enforcement117**
 - (a) Federal and State Monitoring.
 - (b) State Performance Plans.
 - (c) Approval Process.
 - (d) Secretary’s Review and Determination.
 - (e) Enforcement.
 - (f) State Enforcement.
 - (g) Rule of Construction.
 - (h) Divided State Agency Responsibility.
 - (i) Data Capacity and Technical Assistance Review.
- 20 U.S.C. § 1417. Administration124**
 - (a) Responsibilities of Secretary.
 - (b) Prohibition Against Federal Mandates, Direction, or Control.
 - (c) Confidentiality.
 - (d) Personnel.
 - (e) Model Forms.
- 20 U.S.C. § 1418. Program Information125**
 - (a) In General.
 - (b) Data Reporting.
 - (c) Technical Assistance.
 - (d) Disproportionality.
- 20 U.S.C. § 1419. Preschool Grants127**
 - (a) In General.
 - (b) Eligibility.
 - (c) Allocations to States.
 - (d) Reservation for State Activities.
 - (e) State Administration.
 - (f) Other State-Level Activities.
 - (g) Subgrants to Local Educational Agencies.

5 THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2004

PART A — GENERAL PROVISIONS

➔ **OVERVIEW:** Part A of the Individuals with Disabilities Education Improvement Act, General Provisions, includes Sections 1400 through Section 1409 of Title 20 of the United States Code (U.S.C.):

- 20 U.S.C. § 1400 - Congressional Findings and Purposes
- 20 U.S.C. § 1401 - Definitions
- 20 U.S.C. § 1402 - Office of Special Education Programs
- 20 U.S.C. § 1403 - Abrogation of State Sovereign Immunity
- 20 U.S.C. § 1404 - Acquisition of Equipment; Construction or Alteration of Facilities
- 20 U.S.C. § 1405 - Employment of Individuals with Disabilities
- 20 U.S.C. § 1406 - Requirements for Prescribing Regulations
- 20 U.S.C. § 1407 - State Administration
- 20 U.S.C. § 1408 - Paperwork Reduction
- 20 U.S.C. § 1409 - Freely Associated States

The most important statute in IDEA is Section 1400(d) which describes the purposes of the law. Section 1401 includes the legal definitions in alphabetical order. Section 1403 advises that states are not immune from suit if they violate IDEA. Section 1406 describes the requirements and timelines for the federal special education regulations. Section 1408 is a new section about paperwork reduction.

20 U.S.C. § 1400. Short Title; Table of Contents; Findings; Purposes.

➔ **OVERVIEW:** Section 1400 is Findings and Purposes. Section 1400(c) describes the history and findings that led Congress to pass the Education for All Handicapped Children Act of 1975 (Public Law 94-142) which is now the Individuals with Disabilities Education Improvement Act of 2004. The most important statute is Purposes in Section 1400(d): “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their **unique needs** and prepare them for **further education, employment and independent living**” and “to ensure that the rights of children with disabilities and parents of such children are protected . . .”

When you have questions about a confusing term or section in the law, re-read Section 1400, especially Purposes in Section 1400(d). This will help you understand how the confusing portion fits into the overall purpose of the law.

(a) Short Title. This title may be cited as the ‘**Individuals with Disabilities Education Act**’.

(b) Table of Contents.^{8 9}

⁸ **The footnotes in this book are comments by the authors and are not a part of the statute.**

⁹ Section 1400(b) lists the sections and subsections of Parts A, B, C, D, and E of the Individuals with Disabilities Education Act in a table of contents format. This Table of Contents is in Chapter 4.

(c) Findings. Congress finds the following:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring **equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.**

(2) Before the date of enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the educational needs of millions of children with disabilities were not being fully met because--

(A) the children did not receive appropriate educational services;

(B) the children were **excluded entirely from the public school system** and from being educated with their peers;

(C) **undiagnosed disabilities** prevented the children from having a successful educational experience; or

(D) a **lack of adequate resources** within the public school system forced families to find services outside the public school system.¹⁰

(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this title has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

(4) However, the implementation of this title has been impeded by **low expectations, and an insufficient focus on applying replicable research on proven methods** of teaching and learning for children with disabilities.^{11,12}

(A) having **high expectations** for such children and ensuring their **access to the general education curriculum** in the regular classroom, to the maximum extent possible, in order to -

(i) **meet developmental goals** and, to the maximum extent possible, the **challenging expectations that have been established for all children;** and

(ii) be **prepared to lead productive and independent adult lives, to the maximum extent possible;**¹³

¹⁰ Before Congress passed the Education for All Handicapped Children Act (Public Law 94-142) in 1975, more than one million handicapped children were excluded from school. Initially, the law focused on ensuring that children had access to an education and due process of law. When Congress reauthorized the law in 1997, they emphasized accountability and improved outcomes while maintaining the goals of access and due process. IDEA 2004 increased the focus on accountability and improved outcomes by bringing IDEA into conformity with the No Child Left Behind Act, and adding requirements for early intervening services, research-based instruction, and highly qualified special education teachers.

¹¹ IDEA 2004 addresses poor educational outcomes for children with disabilities by requiring “proven methods of teaching and learning” based on “replicable research.” These terms are important. Many school districts continue to use educational methods that are not research-based. Pressure from litigation, legal rulings requiring schools to use research-based methods, and No Child Left Behind are forcing school districts to adopt research based methods of teaching.

¹² *The Road to Nowhere: The Illusion and Broken Promises of Special Education in the Baltimore City and Other Public School Systems* by Kalman R. Hettleman and published by the Abell Foundation. www.abell.org/publications/detail.asp?ID=92

¹³ The language about meeting the developmental goals and challenging expectations established for nondisabled children so children are “prepared to lead productive and independent adult lives to the maximum extent possible” is important. (Section 1400(c)(5)(E))

20 U.S.C. § 1414. Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements.

➔ **OVERVIEW:** Section 1414 includes requirements for evaluations, reevaluations, eligibility, Individualized Education Programs, and educational placements. Section 1414(a) describes new requirements for initial evaluations, parental consent, the new 60-day timeline to complete evaluations, and new limits on reevaluations. Section 1414(b) describes evaluation procedures, new requirements about determining educational needs, and the movement away from using discrepancy models to identify children with specific learning disabilities. Section 1414(c) clarifies that schools must review evaluations and information provided by parents and that schools must reevaluate before terminating eligibility, with two exceptions. IDEA 2004 made significant changes in Section 1414(d) about Individualized Education Programs (IEPs), IEP team members, meeting attendance, consolidated meetings, and reviewing and revising IEPs. Section 1414(e) clarifies that the parent is a member of any group that makes decisions about a child's educational placement. Section 1414(f) is new and describes alternate means of participating in meetings.

(a) Evaluations, Parental Consent, and Reevaluations.

(1) Initial Evaluations.⁹⁰

(A) In General. A State educational agency, other State agency, or local educational agency **shall** conduct a **full and individual initial evaluation** in accordance with this paragraph and subsection (b), **before the initial provision of special education** and related services to a child with a disability under this part.

(B) Request for Initial Evaluation. Consistent with subparagraph (D), either a **parent** of a child,⁹¹ or a **State educational agency, other State agency, or local educational agency may initiate a request** for an initial evaluation to determine if the child is a child with a disability.

(C) Procedures.

(i) In General. Such initial evaluation shall consist of procedures -

- (I) to determine whether a child is a child with a disability (as defined in section 1401 of this title) **within 60 days of receiving parental consent** for the evaluation,⁹² or, if the State establishes a timeframe within which the evaluation must be conducted, within such timeframe; and
- (II) to determine the educational needs of such child.

(ii) Exception. The relevant timeframe in clause (i) (I) **shall not apply** to a local educational agency if -

- (I) a **child enrolls in a school** served by the local educational agency **after the relevant timeframe** in clause (i) (I) **has begun** and prior to a determination by the child's previous local educational agency as to whether the child is a child with a disability (as defined in section 1401 of this title), but only **if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time** when the evaluation will be completed; **or**
- (II) the parent of a child **repeatedly fails or refuses to produce the child** for the evaluation.

⁹⁰ Section 1414(a)(1)(B) is new and states that the parents, the state department of education, other state agencies, and the school district may request an initial evaluation.

⁹¹ See *Wrightslaw: From Emotions to Advocacy* for sample letters, including a letter to request an evaluation for special education services.

⁹² IDEA 2004 includes a new requirement that initial evaluations and eligibility be completed within **60 days** of receiving parental consent. When federal law and regulations create a timeline of "days," this means calendar days (not school days), unless the law or regulation specifies an alternative. Earlier reauthorizations of IDEA did not include a timeline, so some states adopted very long timelines, leading to delays that prevented children from receiving the services they needed. Some states are considering longer timelines.

(D) Parental Consent.⁹³

(i) In General.

(I) Consent for Initial Evaluation. The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 1401 of this title **shall obtain informed consent from the parent**⁹⁴ of such child **before conducting the evaluation.** Parental consent for evaluation **shall not be construed as consent for placement** for receipt of special education and related services.

(II) Consent for Services. An agency that is responsible for making a free appropriate public education available to a child with a disability under this part **shall seek to obtain informed consent from the parent of such child before providing special education** and related services to the child.

(ii) Absence of Consent.⁹⁵

(I) For Initial Evaluation. If the **parent of such child does not provide consent for an initial evaluation** under clause (i)(I), or the parent fails to respond to a request to provide the consent, the local educational agency **may pursue the initial evaluation** of the child by utilizing the procedures described in section 1415 of this title, except to the extent inconsistent with State law relating to such parental consent.

(II) For Services. If the parent of such child **refuses to consent to services under** clause (i)(II), **the local educational agency shall not provide special education and related services to the child by utilizing the procedures described in section 1415 of this title.**

(III) Effect on Agency Obligations. If the parent of such child **refuses to consent to the receipt of special education** and related services, or the parent fails to respond to a request to provide such consent

(aa) the local educational agency **shall not** be considered to be in violation of the requirement to make available a free appropriate public education to the child for the failure to provide such child with the special education and related services for which the local educational agency requests such consent; and

(bb) the local educational agency **shall not** be required to convene an IEP meeting or develop an IEP under this section for the child for the special education and related services for which the local educational agency requests such consent.

(iii) Consent for Wards of the State.⁹⁶

(I) In General. If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to **obtain the informed consent from the parent** (as defined in section 1401 of this title) of the child for an initial evaluation to determine whether the child is a child with a disability.

⁹³ The school must obtain parental consent before conducting the initial evaluation. Parental consent for an evaluation is not consent for the child to receive special education services. The school must obtain **informed parental consent** before providing special education services.

⁹⁴ The definitions of "parent" and "foster parent" are at Section 1401(23). The definition of "ward of the state" is at Section 1401(36).

⁹⁵ "Absence of Consent" is new in IDEA 2004. If the parent does not consent to an evaluation, the district may request a due process hearing against the parent. However, if the parent does not consent to special education services, the district may **not** pursue a due process hearing against the parent. The "Effect on Agency Obligations" section is also new. If the parent refuses consent for services, the district has not violated the IDEA, and is not required to convene an IEP meeting or develop an IEP for the child.

⁹⁶ The consent requirements for children who are wards of the state are new. If the child is a ward of the state, the school must attempt to obtain parental consent for an initial evaluation. Exceptions to this requirement are listed in Section 1414(a)(1)(D)(ii)(II). If a judge terminates parental rights or takes educational decision-making rights from the parent, the judge may appoint another individual (i.e., probation officer, social worker) to make decisions for the child and who can give consent to an initial evaluation.

20 U.S.C. § 1415. Procedural Safeguards.

➔ **OVERVIEW:** Section 1415 describes the safeguards designed to protect the rights of children with disabilities and their parents, including the right to participate in all meetings, to examine all educational records, and to obtain an independent educational evaluation (IEE) of the child. Parents have the right to written notice when the school proposes to change or refuses to change the identification, evaluation or placement of the child as well as the right to participate in mediation, present a complaint, and request a due process hearing.

Section 1415(c) describes requirements for the Prior Written Notice and the new Due Process Complaint Notice. Section 1415(d) describes the Procedural Safeguards Notice that schools must provide to parents and what this notice must include. Section 1415(e) describes requirements about using mediation to resolve disputes, legally binding written mediation agreements, and confidentiality. Section 1415(f) describes the legal requirements for due process hearings and the Resolution Session that may allow the parties to resolve disputes before a due process hearing. Section 1415(f) includes new requirements for hearing officers and timelines, including the new two-year statute of limitations. Section 1415(i) describes the appeals process and the new 90 day deadline on appeals. Section 1415(j) is the “stay put” statute that allows the child to remain in the “current educational placement” during litigation.

Section 1415(k) is the discipline statute. This statute includes authority for school personnel to place children in interim alternative educational settings and new requirements for children who violate a “code of student conduct.” The statute includes manifestation determinations, placement as determined by the IEP team, appeals, authority of the hearing officer, and transfer of rights at the age of majority.

(a) Establishment of Procedures. Any State educational agency, State agency, or local educational agency that receives assistance under this part **shall establish and maintain procedures** in accordance with this section to ensure that **children with disabilities and their parents are guaranteed procedural safeguards** with respect to the provision of a free appropriate public education by such agencies.

(b) Types of Procedures.¹³² The procedures required by this section shall include the following:

(1) An opportunity for the parents of a child with a disability to **examine all records** relating to such child and **to participate in meetings** with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and **to obtain an independent educational evaluation**¹³³ of the child.

(2)

(A) Procedures to **protect the rights of the child whenever the parents of the child are not known**, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual to act as a surrogate for the parents, which surrogate shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child. In the case of -

- (i) a **child who is a ward of the State**, such surrogate may alternatively be appointed by the judge overseeing the child’s care provided that the surrogate meets the requirements of this paragraph; and
- (ii) an **unaccompanied homeless youth** as defined in section 11434a(6) of title 42, the local educational agency shall appoint a surrogate in accordance with this paragraph.

¹³² Parents have the right to examine all educational records, including test data. The right to examine records may include personal notes, if the notes have been shared with other staff. Parents should request test data (i.e., standard scores, percentile ranks, age equivalent scores, and grade equivalent scores) in writing.

¹³³ Parents have the right to obtain an Independent Educational Evaluation of their child. Many school districts attempt to restrict the parent’s choice of evaluators to a list of approved evaluators selected by the school. The Office of Special Education Programs issued a policy letter clarifying that parents have the right to choose their own independent evaluator. (OSEP, Letter to Parker, 2004 located on the Wrightslaw website.)

(B) The State shall make reasonable efforts to ensure the assignment of a surrogate not more than **30 days** after there is a determination by the agency that the child needs a surrogate.

(3) **Written prior notice**¹³⁴ to the parents of the child, in accordance with subsection (c)(1), **whenever** the local educational agency -

(A) **proposes to initiate or change**; or

(B) **refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.**

(4) Procedures designed to ensure that the notice required by paragraph (3) is in the **native language of the parents**, unless it clearly is not feasible to do so.

(5) An opportunity for **mediation**, in accordance with subsection (e).

(6) An **opportunity** for any party **to present a complaint**

(A) with respect to **any matter relating to the identification, evaluation, or educational placement of the child**, or the provision of a free appropriate public education to such child; and

(B) which sets forth an alleged violation that occurred **not more than 2 years before the date**¹³⁵ the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for presenting such a complaint under this part, in such time as the State law allows, except that the exceptions to the timeline described in subsection (f)(3)(D) shall apply to the timeline described in this subparagraph.

(7)

(A) Procedures that **require either party**, or the attorney representing a party, to **provide due process complaint notice**¹³⁶ in accordance with subsection (c)(2) (which shall remain confidential) -

(i) **to the other party**, in the complaint filed under paragraph (6), and **forward a copy** of such notice **to the State educational agency**; and

(ii) that **shall include** -

(I) the name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;

(II) in the case of a homeless child or youth (within the meaning of section 11434a(2) of title 42), available contact information for the child and the name of the school the child is attending;

(III) a **description of the nature of the problem** of the child relating to such proposed initiation or change, including facts relating to such problem; and

(IV) a **proposed resolution of the problem** to the extent known and available to the party at the time.¹³⁷

¹³⁴ The school district is to provide the parent, in writing, with the reason for refusing to evaluate a child or change the educational program.

¹³⁵ The two-year statute of limitations to present a complaint is new in IDEA 2004.

¹³⁶ The party who requests a due process hearing must provide a detailed notice to the other party that includes identifying information about the child, the nature of the problem, facts, and proposed resolution. The party that requests the due process hearing may not have the hearing until they provide this notice. See **Appendix E: Due Process Procedures and Timelines**.