

Individuals with Disabilities Education Act 2004 Questions and Answers

The Individuals with Disabilities Education Act is the main Federal program authorizing state and local aid for special education and related services for children with disabilities. On December 3, 2004, President Bush signed the Individuals with Disabilities Improvement Act (P.L. 108-446), a major reauthorization and revision of IDEA. Most provisions of P.L. 108-446 **go into effect on July 1, 2005.**

The document, *Individuals with Disabilities Education Act 2004, Questions and Answers*, was developed to provide guidance for general and special education professionals working with families and students with disabilities in ND schools. Beginning July 1, 2005, all school districts must implement the new provisions of IDEA 2004. School districts should continue to follow the process described in the 1999 NDDPI Special Education Guidelines relating to special education and incorporate the new IDEA 2004 additions. The NDDPI Special Education Guidelines can be found at <http://www.dpi.state.nd.us/speced/guidelines.shtm> Revised Guidelines that incorporate changes resulting from IDEA 2004 will be distributed after the final regulations are published.

The information provided in the document, *Individuals with Disabilities Education Act 2004, Questions and Answers*, reflect several of the changes found in IDEA 2004. For additional information refer to your local special education unit administrators. Copies of *Individuals with Disabilities Education Act 2004, Questions and Answers* and additional state and federal guidance can be found on the NDDPI Special Education website <http://www.dpi.state.nd.us/speced/IDEA.shtm>

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Evaluation

1. **What is the timeline for getting a child evaluated for a disability?**
Previous guidance stated that the full evaluation process had to be completed within a reasonable time period. Now the full evaluation process must be completed within 60 calendar days once the parent has given consent for the evaluation, unless the school district has a shorter than 60 calendar day timeline policy.
2. **What are the exceptions to the 60 calendar day timeline?**
Exceptions to the timeline exist if the child moves from one district or state to another district or state after the evaluation was requested, or if the parent repeatedly fails or refuses to make the child available for the evaluation. Under those circumstances, districts are required to make sufficient progress to ensure that a timely evaluation is conducted. It is recommended that the school district document efforts to complete the evaluation.
3. **How often should a reevaluation be done?**
A reevaluation shall occur not more frequently than once a year and at least once every three years unless the parent and the local educational agency agree that a reevaluation is unnecessary. It is recommended that school district document these discussions in writing.
4. **How does the evaluation team determine if a reevaluation is necessary?**
Reevaluations are required if the child's teacher or parent makes a request or if the LEA determines that the child's educational and service needs, academic achievement, or functional performance warrants a reevaluation. A reevaluation does not need to take place if the parent and the LEA agree that reevaluation is not necessary. To determine if a reevaluation is necessary, it is recommend that school district's follow the reevaluation process found in the NDDPI *Guidelines: Evaluation Process*.
5. **If a student's services are being terminated due to graduation with a regular diploma or exceeds age of eligibility, do they need to be reevaluated?**
A child does not need to be reevaluated if the child's eligibility is being terminated due to graduation with a regular diploma or exceeds age of eligibility. If services are terminated for one of these reasons the LEA must provide a "summary of achievement and functional performance" along with how to assist in meeting postsecondary goals.
6. **What methods are school districts allowed to use to identify a child as having a specific learning disability?**
IDEA does prevent states from requiring that school districts routinely use an IQ test as a part of the determination of specific learning disabilities. This means that the IQ-achievement discrepancy model in which a specific learning disability is identified when there is a discrepancy between achievement and intellectual ability cannot be mandated. States and school districts are encouraged to look to research-based practices, especially models using response-to-intervention strategies, to determine whether a child has a specific learning disability.

Individualized Education Program

7. **If a child moves from one district to another within the state, does the IEP follow the child?**
The new school district is not required to implement the pre-existing IEP, but may choose to do so at its own discretion. If the new school district does not implement that IEP, the new school district must work with the parent through the IEP Team process to develop an IEP that is consistent with federal and state law.
8. **If a child moves from one state to another, does the IEP follow the child?**
The school district in the new state is not required to implement the pre-existing IEP, but may choose to do so at its own discretion. If the new school district does not implement that IEP, the new school district in the new state must work with the parent through the IEP Team process to develop an IEP that is consistent with federal and state law. Additionally, because definitions of disability and eligibility vary from state to state, the new school district in the new state may require the child to be evaluated to determine whether the child is eligible to be identified as a child with a disability under state law. If the child is eligible for services under IDEA in the new state, an IEP must be developed and implemented for the child.
9. **Must all children with disabilities participate in state assessments?**
IDEA requires that the IEP Team determine how the child with a disability is assessed, not whether the child is assessed. IDEA recognizes that children learn in different ways, with different methods of instruction and assessment. The IEP Team is required to determine which accommodations are necessary, how to instruct the child, and how to assess the child. The IEP Team can have a child with a disability take the regular state assessment; the regular state assessment with appropriate accommodations such as Braille, additional time, or having the instructions read to the child multiple times; an alternate assessment aligned to grade level standards; or an alternate assessment aligned to alternate achievement standards.
10. **Is the IEP required to include benchmarks and short term objectives for all students with disabilities?**
For most students with disabilities, the IEP Team will develop annual goals, including academic and functional goals, a description as to how those goals will be measured, and how and when the progress toward meeting the goals will be reported to the parents. However, for those students with disabilities taking an alternate assessment aligned to alternate achievement standards, the IEP Team will be required to include benchmarks and short-term objectives. Since these students will typically not perform at or near grade-level, measuring their progress requires a different approach that can be accommodated through the use of benchmarks and short-term objectives.
11. **When must the transition components of the IEP begin for a student with a disability?**
Transition services must begin not later than the first IEP to be in effect when the child is 16. The child's IEP must contain required transition components if the child will turn 16 before his or her next IEP annual review date.

12. **What components must be included in a transition IEP?**

The transition IEP must contain measurable postsecondary goals based upon the age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills. The Transition IEP must also contain a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided.

Although the language "Statement of Transition Service Needs and Statement of Needed Transition Services" has been simplified in IDEA 2004, the original intent for transition planning has been maintained. The transition services needed to assist the child in reaching those postsecondary goals shall continue to include: the courses of study; the coordinated set of activities that will promote movement from school to post-school activities for instruction, related services, community experiences, employment, post-school adult living, and when appropriate, acquisition of daily living skills and a functional vocational evaluation; and agency collaboration and responsibilities.

13. **Who has to be part of the IEP Team?**

The IEP Team must include the parents of the child with a disability, a regular education teacher (if the child is participating in the regular education environment), a special education teacher, and a representative of the school district. In addition, the parent and the school district can agree to add other members knowledgeable about related services or with expertise about the child. In the case of a child who was previously served under Part C, an invitation to the initial IEP meeting shall, at the request of the parents, be sent to the Part C service coordinator for the child or other representatives of the Part C system to assist with the smooth transition of services.

14. **What is the IDEA 2004 definition of a parent?**

The term parent means: A) a natural, adoptive or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent); B) a guardian (but not the State if the child is a ward of the State); C) an individual acting in the place of a natural or adoptive parent (including grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare.

15. **Do IEP Team members need to be at every meeting?**

To provide efficient and effective use of IEP Team meetings, the parent and the school district may agree to excuse any member of the IEP Team from the IEP Team meeting if their area of curriculum or related services is not being addressed. The parent and the school district may also agree to excuse any member of the IEP Team from the IEP Team meeting if their area of curriculum or related services is being addressed, but the Team member will be required to submit their input in writing to the parent and the LEA prior to the IEP Team meeting. The parent must provide written consent for the excusal of any IEP Team member.

16. **Can the IEP be amended without reconvening the whole IEP Team?**
To provide greater flexibility for parents and schools, IDEA allows the parent and the school district to agree to amend or modify the IEP without reconvening the whole IEP Team. Such an amendment or modification must be in writing to clearly document what has been modified or amended. Upon request, the parent shall be provided with a copy of the IEP with the amendments incorporated.
17. **Can IEP Teams use modern technology to develop the IEP and conduct meetings?**
IDEA allows the parents to agree to use conference calls, video conferencing, or other alternative means of participation to conduct IEP meetings and other meetings required under IDEA, including resolution session meetings.

Procedural Safeguards

18. **When must the procedural safeguard guidance be provided to the parents?**
The school district is required to provide the procedural safeguard guidance once a year. However, they must also be provided when parents request an initial evaluation or when a child is initially referred to the agency, the first time parents request a due process hearing, and whenever parents request the procedural safeguard guidance.

It is recommended that the *Parent Guide to Special Education* be given at the initial evaluation or when the child is initially referred to the agency. After that, the *Procedural Safeguards in Special Education for Children and Parents*, must be given yearly, the first time parents request a due process hearing and when the parent requests the guidance.

19. **What if a parent doesn't provide consent for the initial evaluation?**
Informed consent is required before conducting an initial evaluation. If a parent does not provide their consent for an evaluation, the school district does have the authority to use the due process procedures to seek an order from a hearing officer requiring an evaluation.
20. **What if a parent doesn't provide consent for the provision of special education and related services?**
If a parent does not provide their consent for the provision of services, no special education or related services shall be provided. The right of a parent to decide what educational services their child receives cannot be overturned using IDEA's due process procedures. If a parent indicates that they will refuse both consent for evaluations and consent for services, nothing in IDEA requires that an LEA use the due process procedures to proceed through the evaluation phase.

Discipline

21. **Does a school have to discipline a child with a disability in every instance?**
When a student has violated a code of conduct, school personnel may consider any unique circumstances on a case-by-case basis to determine whether a change of placement for discipline purposes is appropriate.

22. **If the discipline infraction of the child relates to drugs, weapons or serious bodily injury, will that child's discipline be handled differently?**
If the disciplinary infraction involves the serious safety issues of drugs, weapons, or serious bodily injury, the child may be removed to an interim educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability. While in the interim educational setting the child will continue to receive educational services to continue to participate in the general education curriculum and to make progress on his or her IEP goals. Also during this time, a determination will be made as to whether the disciplinary infraction was caused by or had a direct and substantial relationship to the child's disability or was the direct result of the local educational agency's failure to implement the IEP.
23. **What is the definition of serious bodily injury?**
The term serious bodily injury means bodily injury which involves: A) a substantial risk of death; B) extreme physical pain; C) protracted and obvious disfigurement; or D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty. 18 U.S.C. § 1365(h)(3)
24. **What process will determine whether the disciplinary infraction was the direct result of a child's disability?**
The local educational agency, the parent and relevant members of the IEP team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations and any relevant information provided by the parents to determine if the infraction in question was caused by, or had a direct and substantial relationship to, the child's disability.
25. **What does the term manifestation of a child's disability mean?**
In the new IDEA, the bipartisan consensus acknowledged that "[i]t is the intention of the Conferees that the conduct in question was caused by, or has a direct and substantial relationship to, the child's disability, and is not an attenuated association, such as low self-esteem, to the child's disability." The infraction in question would be a manifestation of a child's disability if the infraction was caused by, or had a direct and substantial relationship to, the child's disability.
26. **Who are the relevant members of the IEP Team when conducting a manifestation determination?**
Depending on the type of discipline infraction, when the infraction occurred and who was present, some members of the IEP Team may not be relevant to the discussion of the discipline event. For example, although transportation is an important issue, if the discipline infraction occurred during the school day, the transportation member may not be relevant to the discussion of the discipline event. Conversely, if the discipline infraction occurred on the school bus, the transportation member may be a relevant member of the IEP Team. Nonetheless, in each instance the relevant members should be determined in collaboration by the parents and school district.

27. **What services and placement would then be available to the child if the actions are determined to be a manifestation of the child's disability?**

In situations where the school district, the parent and the relevant members of the IEP Team determine that the discipline infraction was the direct result of the child's disability, a child with a disability would not be subject to discipline in the same manner as a non-disabled child. In these situations, the IEP Team shall determine whether a functional behavioral assessment has been conducted and a behavioral intervention plan has been implemented. If the IEP Team finds that a functional behavioral assessment has not been conducted or a behavioral intervention plan has not been implemented, then both should be completed. Where a behavioral intervention plan has been developed, the IEP Team must review the behavioral intervention plan and modify it, as necessary, to address the behavior. Additionally, unless the parent and the LEA agree to a change of placement, the child must be returned to the placement from which the child was removed.

28. **Where will the child receive services while the appeal is pending?**

During the time that an appeal is pending, the child will remain in the interim alternative educational setting until the appeal is resolved or until the expiration of the suspension, whichever occurs first. However, the placement can be changed during this time if the parent and LEA agree.