The Individuals with Disabilities Education Act (IDEA), Part B: Key Statutory and Regulatory Provisions

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Summary

The Individuals with Disabilities Education Act (IDEA) is both a grants statute and a civil rights statute. As a grants statute, IDEA provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE) (i.e., specially designed instruction provided at no cost to parents that meets the needs of a child with a disability). In FY2015, $12.5 billion was appropriated for IDEA. In the 2012-2013 school year, 6.4 million children ages 3 through 21 received educational services under IDEA.

As a civil rights statute, IDEA contains procedural safeguards, which are provisions intended to protect the rights of parents and children with disabilities regarding the provision of FAPE. These procedures include parental rights to resolve disputes through a mediation process, and present and resolve complaints through a due process complaint procedure, and through state complaint procedures. IDEA's procedural safeguards also address disciplinary issues. In general, a child with a disability is not immune from discipline, but the procedures are not the same as for non-disabled children.

To be covered under IDEA, a child with a disability must meet the categorical definition of disability in the act, and the child must require special education and related services as a result of the disability in order to benefit from public education. Once a child meets IDEA's eligibility criteria, FAPE is implemented through the Individualized Education Program (IEP), which is the plan for providing special education and related services by the local educational agency (LEA). The IEP is developed by an IEP team composed of school personnel and parents. IDEA requires that children with disabilities be educated in the least restrictive environment. That is, to the maximum extent appropriate they are to be educated with children who are not disabled. In the fall of 2011, over 60% of all children with disabilities served by IDEA spent 80% or more of their time in a regular classroom.

To implement IDEA, states and other entities (i.e., the District of Columbia, Puerto Rico, the Bureau of Indian Education, the outlying areas, and the freely associated states) receive grants based on a statutory formula. Most of the federal funds received by states are passed on to LEAs based on a statutory formula. IDEA also contains state and local maintenance of effort (MOE) requirements and supplement, not supplant (SNS) requirements aimed at increasing overall educational spending, rather than substituting federal funds for education spending at the state and local levels.

Originally enacted in 1975, IDEA has been the subject of numerous reauthorizations to extend services and rights to children with disabilities. The most recent reauthorization of IDEA was P.L. 108-446, enacted in 2004. Funding for Part B, Assistance for Education of all Children with Disabilities, the largest and most often discussed part of the act, is permanently authorized. Funding for Part C, Infants and Toddlers with Disabilities, and Part D, National Activities, was authorized through FY2011. Funding for the programs continues to be authorized through annual appropriations.

Contents

Figures

Tables

Appendixes

Contacts

Introduction

Background

The Individuals with Disabilities Education Act (IDEA) is the main federal statute governing special education for children from birth through age 21.[1] IDEA protects the rights of children with disabilities to a free appropriate public education (FAPE). It also supplements state and local funding to pay for some of the additional or excess costs of educating children with disabilities. IDEA is administered by the Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services (OSERS) in the Department of Education (ED). In the fall of 2012, a total of 6.4 million public school students ages 3 through 21 were served by IDEA Part B, representing approximately 13% of all public school students in this age range.[2]

IDEA was originally enacted in 1975 as the Education for All Handicapped Children Act, P.L. 94-142.[3] At that time, Congress found that more than half of all children with disabilities were not receiving appropriate educational services and that 1 million children with disabilities were excluded entirely from the public school system. Further, Congress found that many of the children participating in regular school programs were prevented from having a successful educational experience because their disabilities were undiagnosed.[4] In addition to the awareness of the difficulties faced by children with disabilities, there were three other factors that precipitated the enactment of P.L. 94-142: (1) judicial decisions that found constitutional requirements for the education of children with disabilities, (2) the inability of states and localities to fund education for children with disabilities, and (3) potential long-term benefits of educating children with disabilities.[5]

IDEA consists of four parts. Part A contains the general provisions, including the purposes of the act and definitions. Part B contains provisions relating to the education of school aged children (the grants-to-states program) and state grants program for preschool children with disabilities (Section 619). Part C authorizes state grants for programs serving infants and toddlers with disabilities, while Part D contains the requirements for various national activities designed to improve the education of children with disabilities. **Table 1** shows the structure and funding of IDEA. **Appendix A** provides a more detailed summary of each of the four parts.

Since 1975, IDEA has been the subject of numerous reauthorizations to extend services and rights to children with disabilities. The most recent reauthorization was P.L. 108-446 in 2004.[6] Funding

[1] 20 U.S.C. §1400 et seq.

[2] National Center for Education Statistics, *Digest of Education Statistics*, Children 3 to 21 years old served under Individuals with Disabilities Education Act (IDEA), Part B, by type of disability: Selected years, 1976-77 through 2012-13, Table 204.30., http://nces.ed.gov/programs/digest/d14/tables/dt14_204.30.asp.

[3] The name was changed to the Individuals with Disabilities Education Act by P.L. 101-476. The public law also substituted the phrase "children with disabilities" for the phrase "handicapped children" throughout the act.

[4] 20 U.S.C. §1401(b), P.L. 94-142 §601(b).

[5] For more information on each of the factors that contributed to the enactment of P.L. 94-142, see CRS Report 95-669, *The Individuals with Disabilities Education Act: Congressional Intent*, by Nancy Lee Jones.

[6] For a discussion of the 2004 amendments made by P.L. 108-446, see CRS Report RL32716, *Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446*, by Ann Lordeman and Nancy Lee Jones. For an overview of the IDEA regulations from the Department of Education, see CRS Report RL33649, *The Individuals with Disabilities Education Act (IDEA): Final Regulations for P.L. 108-446*, and CRS Report R40055, *The* (continued...)

for Part B, Assistance for Education of all Children with Disabilities, is permanently authorized. Funding for Part C, Infants and Toddlers with Disabilities, and Part D, National Activities, was authorized through FY2011.[7]

Table 1. Structure and Funding of IDEA

(Funding in thousands of dollars)

IDEA Part	Description	FY2015 Funding	Percentage of Total IDEA Funding
Part A—General Provisions	Includes findings, purposes, and definitions	—	—
Part B—Assistance for Education of all Children with Disabilities	Contains provisions relating to the education of school aged children (the grants-to-states program) and state grants program for preschool children with disabilities (Section 619)	$11,851,086[a]	94.6%
Part C—Infants and Toddlers with Disabilities	Authorizes state grants for programs serving infants and toddlers with disabilities	$438,556	3.5%
Part D—National Activities to Improve Education of Children with Disabilities	Contains the requirements for various national activities	$232,716	1.9%
IDEA Total		$12,522,358	100%

Source: Table prepared by CRS. Funding amounts are from Department of Education budget tables for FY2015.

a. Of this amount, $353.2 million, or 2.8% of the total IDEA FY2015 appropriation, was appropriated for the state grants program for preschool children with disabilities (Section 619).

Three of the main purposes of IDEA are

> (A) 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; (B) to ensure that the rights of children with disabilities and parents of such children are protected; and (C) to assist states, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;[8]

The focus of this report will be on how these purposes are to be achieved under Part B of IDEA, hereinafter referred to as IDEA. The first purpose is addressed primarily in the section of this report titled "Services for Children with Disabilities." The second is addressed in the section on

(...continued)

Individuals with Disabilities Education Act: Final Part B Regulations.

[7] IDEA authorizes appropriations for Part C and Part D programs and activities through FY2010. These authorities were automatically extended for an additional fiscal year by the General Education Provisions Act (GEPA; 20 U.S.C.§1226a). Funding for the programs continues to be authorized through annual appropriations.

[8] 20 U.S.C. §1400(d)(1), P.L. 108-446 §601(d)(1).

"Procedural Safeguards ," and the third is addressed in the section on "Funding, Expenditure Requirements, and Compliance."

Services for Children with Disabilities

Children with disabilities receive specially designed instruction and other services to meet their unique needs. This section addresses (1) criteria children must meet to receive services under IDEA, (2) how the children are identified and evaluated, and (3) the procedures for developing an individualized plan to provide special education and related services.

Children with Disabilities

To be covered under IDEA, a child with a disability must meet two criteria. First, the child must be in one of several categories of disabilities, and second, the child must require special education and related services as a result of the disability in order to benefit from public education.[10] If a child meets the two criteria, he or she would be eligible to receive specially designed instruction or special education in which the content or the delivery of the instruction is adapted to the needs of the child. If a child has a disability, but does not require special education to benefit from public education, he or she would not be covered under IDEA. The child might be covered, however, under two other acts that address the rights of individuals with disabilities: Section 504 of the Rehabilitation Act[11] or the Americans with Disabilities Act (ADA).[12] These two acts provide broad nondiscrimination protection not limited to education and have identical functional definitions of disability (i.e., disabilities related to such functions as seeing, hearing, walking, thinking) rather than the categorical definition of IDEA. "Several of the most common disabilities of students included under Section 504 and the ADA, but not always covered under IDEA, are attention deficit hyperactivity disorder (ADHD), diabetes, and asthma."[13]

Categories of Disabilities

- Autism
- Deaf-blindness
- Deafness
- Emotional disturbance
- Hearing impairment
- Intellectual disability[9]
- Multiple disabilities
- Orthopedic impairment
- Other health impairment
- Specific learning disability
- Speech or language impairment
- Traumatic brain injury
- Visual impairment

[9] P.L. 111-256, commonly referred to as Rosa's Law, required references to "mental retardation" in IDEA and other federal laws to change to "intellectual disability."

[10] 20 U.S.C §14001(3)(A), P.L. 108-446 §602(3)(A), and 34 C.F.R. §300.8. The statute at §602(3)(B) also permits the state and LEA to include as a child with a disability a child age three through nine, or any subset of that range, who is experiencing developmental delays—as defined by the state and as measured by appropriate diagnostic instruments and procedures—in physical, cognitive, communication, social, emotional, or adaptive development. The child must also require special education and related services because of the developmental delay.

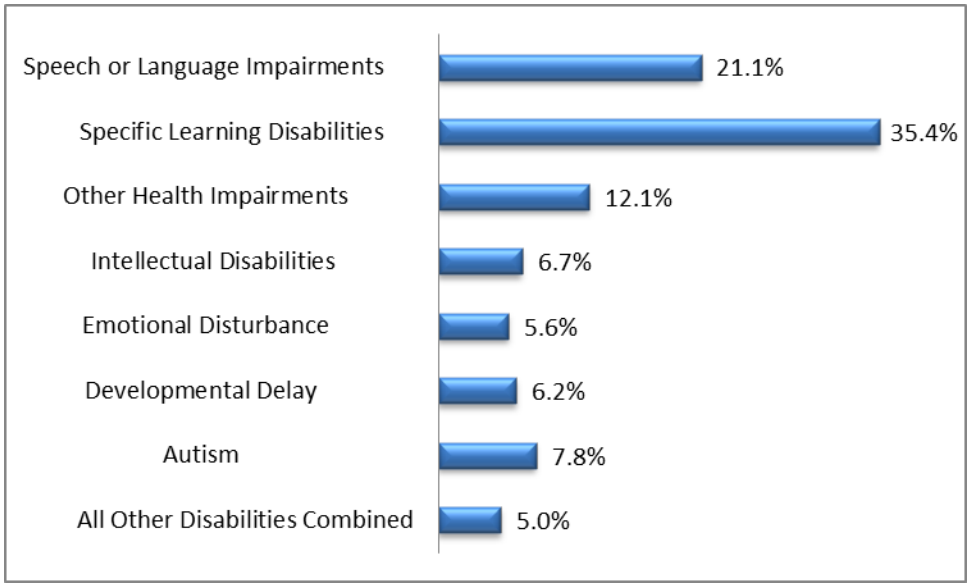
[11] 29 U.S.C. §794. For more information on Section 504, see CRS Report RL34041, *Section 504 of the Rehabilitation Act of 1973: Prohibiting Discrimination Against Individuals with Disabilities in Programs or Activities Receiving Federal Assistance*, coordinated by Cynthia Brown.

[12] 42 U.S.C. §12101 et seq. For a more detailed discussion of the ADA, see CRS Report 98-921, *The Americans with Disabilities Act (ADA): Statutory Language and Recent Issues*, by Cynthia Brown.

[13] See citation to Rachel A. Holler and Perry A. Zirkel, "Section 504 and Public Schools: A National Survey (continued...)

Figure 1 shows the distribution of students with disabilities ages 3 through 21 receiving special education and related services in the fall of 2012. Over 35% of students with disabilities have specific learning disabilities (SLD).[14] Learning disabilities include such conditions as dyslexia, perceptual disabilities, and developmental aphasia.[15]

Figure 1. Disability Distribution for Students Ages 3 through 21 Receiving Special Education and Related Services under IDEA, Part B: Fall 2012



Source: National Center for Education Statistics, *Digest of Education Statistics*, Children 3 to 21 years old served under Individuals with Disabilities Education Act (IDEA), Part B, by type of disability: Selected years, 1976-77 through 2012-13, Table 204.30., http://nces.ed.gov/programs/digest/d14/tables/dt14_204.30.asp.

Notes: Percentages may not add to 100% because of rounding. Total number of students is 6.4 million.

"All other disabilities combined" include multiple disabilities, hearing impairments, orthopedic impairments, visual impairments, deaf-blindness, and traumatic brain injury.

"Developmental Delay" is a disability category that may be used at the discretion of the states for children ages 3 through 9 years old who are experiencing developmental delays in "one or more of the following areas: physical development; cognitive development; communication development; social or emotional development; or adaptive development." P.L. 108-446 §602(3)(B).

(...continued)

Concerning 'Section 504-Only' Students," 92 NASSP Bulletin 19, 28 (March 2008) in CRS Report R40123, *Education of Individuals with Disabilities: The Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act, and the Americans with Disabilities Act (ADA)*, by Nancy Lee Jones. For more information on differences among IDEA, Section 504, and the ADA, see this report.

[14] A specific learning disability is defined as "a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations." 20 U.S.C. §1401(30)(A), P.L. 108-446 §601(30)(A).

[15] 20 U.S.C. §1401(30)(B), P.L. 108-446 §601(30)(B). Specific learning disabilities do not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of mental retardation; of emotional disturbance; or of environmental, cultural, or economic disadvantage. 20 U.S.C §1401(30)(C), P.L. 108-446 §601(30)(C).

Free Appropriate Public Education (FAPE)

All children with disabilities receiving special education or related services under IDEA between the ages of 3 and 21, inclusive, residing in a state are entitled to FAPE.[16] The term "free appropriate public education" means:

> special education and related services that—(A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the state educational agency; (C) include an appropriate preschool, elementary school, or secondary school education in the state involved; and (D) are provided in conformity with the individualized education program required under section 614(d) [Individualized Education Programs (IEP)].[17]

FAPE must be made available to all children with disabilities who qualify for special education and related services, including children who have been suspended or expelled from school.[18]

Identification and Evaluation

Identifying and Evaluating a Child with a Disability

The first step in providing FAPE to children with disabilities is identifying them. Each state must have in effect policies and procedures to ensure that all children with disabilities residing in the state who are in need of special education and related services are identified, located, and evaluated. These policies and procedures are referred to in statute as "child find."[19] The children include those with disabilities who are

- homeless or wards of the state,
- attending private schools,
- suspected of having a disability, and
- highly mobile children, including migrant children.

A child who has been identified as having (or possibly having) a disability must be evaluated by the LEA before receiving special education and related services to determine whether a child is a child with a disability and to determine the educational needs of the child.[20] Either the parent or

[16] The regulations at 34 C.F.R. §300.102 (2010) specify three exceptions to this requirement: (1) children ages 3, 4, 5, 18, 19, 20, or 21 in a state that does not provide a public education to children of those ages, (2) children ages 18 through 21 incarcerated in an adult correctional facility who were not identified as children with disabilities in their last educational placement; and (3) children with disabilities who have graduated from high school with a regular high school diploma.

[17] 20 U.S.C. §1401(9), P.L. 108-446 §601(9). For information on the legal aspects of FAPE, see CRS Report RL33444, *The Individuals with Disabilities Education Act (IDEA): Supreme Court Decisions*, by Nancy Lee Jones and Carol J. Toland; CRS Report R40521, *The Individuals with Disabilities Education Act (IDEA): Selected Judicial Developments Following the 2004 Reauthorization*, by Nancy Lee Jones; and CRS Report R40690, *The Individuals with Disabilities Education Act (IDEA): Statutory Provisions and Recent Legal Issues*, coordinated by Cynthia Brown.

[18] 34 C.F.R. §300.101(a) (2010).

[19] 20 U.S.C §1412(a)(3), P.L. 108-446 §612(a)(3).

[20] 20 U.S.C. §1414(a), P.L. 108-446 §414(a). This subsection contains the requirements for evaluations, parental consent, and reevaluations.

the LEA may request an initial evaluation.[21] In general, the LEA must obtain informed consent from the parent before conducting an initial evaluation.[22] Parental consent for an evaluation cannot be construed as consent for special education and related services.[23] The initial evaluation must take place within 60 days of receiving parental consent or within an alternative time frame established by the state.[24]

In conducting the initial evaluation, the LEA must

- use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent;
- use multiple measures or assessments as the criteria for determining whether a child is a child with a disability or 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.[25]

In addition, assessments and other evaluation materials used to assess a child must be selected and administered so as not to be discriminatory on a racial or cultural basis. They must also be provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally.[26]

Upon completion of the evaluation, the determination of whether the child is a child with a disability is made and the educational needs of the child are decided by a team of individuals that includes qualified professionals and the child's parent or guardian.[27] A copy of the evaluation report and the documentation of determination of eligibility is given to the parent.[28] In making a determination of eligibility, a child shall not be determined to be a child with a disability if the determinant factor is lack of appropriate instruction in reading, lack of instruction in math, or limited English proficiency.[29]

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[21] The LEA may refuse the parent's request for an initial evaluation if it does not suspect that the child has a disability. However, the public agency must provide written notice to the parents, consistent with 34 C.F.R. §300.503(b)(2010) and §615(c)(1) of the act, which explains, among other things, why the public agency refuses to conduct an initial evaluation and the information that was used as the basis to make that decision. The parent may challenge such a refusal by requesting a due process hearing. (71 Fed. Reg. 46636 (August 14, 2006)).

[22] The term "consent" is defined at 34 C.F.R. §300.9, and means, in part, that "the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication"; For more information on parental consent, see also 34 C.F.R. §300.300 (2010).

[23] In addition, at the time of the referral or parent request for evaluation, the LEA must provide the parent with the "Procedural Safeguards Notice," which is a comprehensive written explanation of IDEA's legal rights and protections for children with disabilities and their parents. See 20 U.S.C. §1415(d), P.L. 108-446 §615(d). For further information on procedural safeguards, see "Procedural Safeguards " in this report.

[24] 20 U.S.C §1414(a)(1), P.L. 108-446 §614 (a)(1).

[25] 20 U.S.C. §1414(b)(2), P.L. 108-446 §614 (b)(2).

[26] For all the provisions related to additional requirements, see 20 U.S.C. §1414(b)(3), P.L. 108-446 §614 (b)(3).

[27] 20 U.S.C. §1414(b)(4)(A), P.L. 108-446 §614 (b)(4)(A).

[28] 20 U.S.C §1414(b)(4)(B), P.L. 108-446 §614 (b)(4)(B).

[29] 20 U.S.C. §1414(b)(5), P.L. 108-446 §614 (b)(5).

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 warrant a reevaluation. For example, a reevaluation might be warranted if the child's performance in school significantly improves, suggesting that he or she no longer requires special education and related services, or if the child is not making progress toward the goals in his or her IEP, indicating that changes are needed in the education or related services the LEA is providing. A reevaluation may not be done more than once a year unless the parent and LEA agree, and must be done at least once every three years unless the parent and the LEA agree that a reevaluation is not necessary.[30] In general, parental consent is required for reevaluations as well as for the initial evaluation.[31] In addition, the LEA cannot change the eligibility of a child until a reevaluation is done, unless the child graduates from high school with a regular diploma or reaches the age at which state law no longer provides for FAPE.[32]

Identifying and Evaluating a Child with a Specific Learning Disability (SLD)

As noted above, more than a third of children ages 3 through 21 receiving special education and related services under IDEA have SLDs. It is therefore worth noting the procedures required for identifying a child with an SLD. In addition to the procedures addressed above for identifying a child with a disability, the statute and regulations allow additional procedures.[33] In general, a state must adopt criteria for determining whether a child has an SLD, and an LEA must use the state criteria.[34] The state criteria cannot require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability;[35] must permit the use of a process based on the child's response to scientific, research-based intervention;[36] and may permit the use of other alternative research-based procedures for determining whether a child has an SLD.[37]

In general, the group members who determine whether a child has an SLD must include the child's parents, the child's regular education teacher, and at least one person qualified to conduct individual diagnostic examinations of children (e.g., a school psychologist, speech-language

[30] 20 U.S.C. §1414(a)(2), P.L. 108-446 §614 (a)(2).

[31] 34 C.F.R. §300.300(c) (2010).

[32] 20 U.S.C. §1414(c)(5), P.L. 108-446 §614 (c)(5).

[33] 20 U.S.C. §1414(b)(6), P.L. 108-446 §614 (b)(6), and 34 C.F.R. §300.307 through §300.311 (2010).

[34] 34 C.F.R. §300.307 (2010).

[35] 20 U.S.C. §1414(b)(6)(A), P.L. 108-446 §614 (b)(6)(A), and 34 C.F.R. §300.307(a)(1) (2010). The Senate report in considering the 2004 amendments to IDEA explains the rationale for this provision:

> The committee believes that the IQ-achievement discrepancy formula, which considers whether a child has a severe discrepancy between achievement and intellectual ability, should not be a requirement for determining eligibility under the IDEA. There is no evidence that the IQ-achievement discrepancy formula can be applied in a consistent and educationally meaningful (i.e., reliable and valid) manner. In addition, this approach has been found to be particularly problematic for students living in poverty or culturally and linguistically different backgrounds, who may be erroneously viewed as having intrinsic intellectual limitations when their difficulties on such tests really reflect lack of experience or educational opportunity. S.Rept. 108-185, 108th Cong., 2d Sess. 26 (2003).

[36] 20 U.S.C. §1414(b)(6)(B), P.L. 108-446 §614 (b)(6)(B).

[37] 34 C.F.R. §300.307(a)(3)(2010). In ED's analysis of comments and changes to the final regulations at 71 Fed. Reg. 46648 (August 14, 2006), ED elaborates on this criterion by stating: "For example, a state could choose to identify children based on absolute low achievement and consideration of exclusionary factors as one criterion for eligibility. Other alternatives might combine features of different models for identification."

pathologist, or remedial reading teacher).[38] The group may determine that a child has an SLD if three criteria are met:[39]

- The child does not achieve adequately for the child's age or meet state-approved grade-level standards in one or more of eight areas[40] when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards.
- The child either does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the eight areas when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development that is determined by the group to be relevant to the identification of an SLD.
- If the child is found to have an SLD, it is not primarily the result of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

To ensure that underachievement in a child suspected of having an SLD is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation, (1) data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and (2) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.[41]

If prior to a referral for an evaluation, a child has not made adequate progress after an appropriate period of time when provided instruction, an LEA must promptly request parental consent to evaluate the child.[42] The regulations also specify that the child must be observed in the child's learning environment to document the child's academic performance and behavior in the areas of difficulty.[43] Finally, the regulations detail the specific documentation for determining eligibility for a child suspected of having an SLD.[44]

[38] 34 C.F.R. §300.308 (2010).

[39] 34 C.F.R. §300.309(a) (2010).

[40] These eight areas are oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, and mathematics problem solving.

[41] 34 C.F.R. §300.309(b) (2010).

[42] 34 C.F.R. §300.309 (c). In ED's analysis of comments and changes to the final regulations at 71 Fed. Reg. 46658 (August 14, 2006), ED addresses the issue of "an appropriate period of time" by stating "Instructional models vary in terms of the length of time required for the intervention to have the intended effect on a child's progress. It would not be appropriate for the Department to establish timelines … because doing so would make it difficult for LEAs to implement models specific to their local school districts. These decisions are best left to state and local professionals who have knowledge of the instructional methods used in their school."

[43] 34 C.F.R. §300.310 (2010).

[44] 34 C.F.R. §300.311 (2010).

The Individualized Education Program (IEP)

FAPE is implemented through the IEP, which is the plan for providing special education and related services by the LEA to the child with a disability. It is developed by an IEP team composed of school personnel and parents. In general, the IEP team must consider the strengths of the child; the concerns of the parents; the results of the initial evaluation (or most recent evaluation); and the academic, developmental, and functional needs of the child.[45] The IEP team meets at least once a year to review the IEP to determine if goals are being met and to make necessary changes.[46] The team must meet to develop the initial IEP for a child within 30 days of determining that the child needs special education and related services. In addition, as soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the IEP.[47]

Content of IEP[48]

Specifically, IDEA requires that the IEP include the following:

- the child's present levels of academic achievement and functional performance;
- measurable annual goals, including academic and functional goals, designed to
    - meet the child's needs that result from the child's 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 child's disability;
- how the child's progress toward meeting the above annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided;
- 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 the program modifications or supports for school personnel that will be provided for the child to
    - advance appropriately toward attaining the annual goals;
    - be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities; and
    - be educated and participate with other children with disabilities and nondisabled children;
- the extent, if any, to which the child will not participate with nondisabled children in the regular class;

[45] 20 U.S.C §1414(d)(3)(A), P.L. 108-446 §614 (d)(3)(A).

[46] 20 U.S.C. §1414(d)(4), P.L. 108-446 §614 (d)(4).

[47] 34 C.F.R. §300.323(c) (2010).

[48] 20 U.S.C. §1414(d)(1)(A), P.L. 108-446 §614 (d)(1)(A).

- any individual appropriate accommodations[49] that are necessary to measure the academic achievement and functional performance of the child on state and district-wide assessments; if the IEP team determines that the child will take an alternate assessment on a particular state or district-wide assessment of student achievement, the IEP should detail why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child;[50]
- the projected date for the beginning of the assessments and their frequency, location, and duration.

In addition, beginning not later than when the first IEP is in effect when the child is 16, and updated annually thereafter, the IEP must include appropriate measurable postsecondary goals related to training, education, employment, and, where appropriate, independent living skills and the transition services[51] needed to assist the child in reaching those goals.

The IEP Team[52]

Each child identified as a child with a disability must have an IEP developed by an IEP team. In general, the composition of the team includes

- the parents of a child with a disability;
- one or more regular education teachers, if the child is or may be participating in the regular education environment;
- one or more special education teachers;
- a representative of the LEA who is qualified to provide or supervise the provision of special education; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of resources of the LEA;
- an individual who can interpret the instructional implications of evaluation results;

[49] An accommodation is a change in instructional material or assessment practices that enable students with disabilities to reduce barriers to learning.

[50] Although many students with disabilities are able to participate in the general state assessment, other students may need an alternate assessment that is tailored to their needs and allows them to more accurately demonstrate what they know and can do. For information on alternate assessments for students with disabilities, see CRS Report R40701, *Alternate Assessments for Students with Disabilities*, by Kyrie E. Dragoo.

[51] As defined at 20 U.S.C. §1401(34), P.L. 108-446 §602(34), transition services mean

> a coordinated set of activities for a child with a disability that—(A) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (B) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

[52] 20 U.S.C. §1414(d)(1)(B), P.L. 108-446 §614 (d)(1)(B).

- at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate; and
- whenever appropriate, the child with a disability.[53]

Special Education and Related Services

The provision of special education and related services is a key component of FAPE. Special education means "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education."[54] Specially designed instruction, which is delineated in the IEP, means that the content, methodology, or delivery of instruction is adapted to address the unique needs of the child that result from the child's disability. The instruction must ensure the child's access to the general curriculum, so that the child can meet the educational standards that apply to all children. While specially designed instruction is provided at no cost to parents, parents can be required to pay any incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.[55]

In general, related services are transportation and those developmental, corrective, and other supportive services required to help a child with a disability to benefit from special education. Both the statute and federal regulations define related services and provide a list of related services.[56] The regulations also further define the services that may be provided to a child with a disability. The list is not exhaustive; other related services could be provided to a child with a disability. Related services include the following:

- speech-language pathology and audiology services;
- interpreting services for children who are deaf, hard of hearing, or deaf-blind;
- psychological services;
- physical therapy and occupational therapy;
- recreation, including therapeutic recreation;
- social work services in schools;
- school health services and school nurse services;
- counseling services, including rehabilitation counseling;
- orientation and mobility services provided to blind or visually impaired children;
- parent counseling and training;

[53] If the purpose of an IEP meeting is to consider the postsecondary goals for the child and transition services, the LEA must invite the child to attend the meeting; 34 C.F.R. §300.321(b)(1) (2010).

[54] 20 U.S.C. §1401(29), P.L. 108-446 §602(29), and 34 C.F.R. §300.39 (2010).

[55] 34 C.F.R. §300.39(b)(1) (2010).

[56] 20 U.S.C. §1401(26), P.L. 108-446 §602(26), and 34 C.F.R. §300.34 (2010).

- medical services for diagnostic and evaluation purposes only;[57] and
- early identification and assessment of disabilities through the implementation of a formal plan for identifying a disability.

Coordinated Early Intervening Services (CEIS)

With some restrictions, LEAs may use up to 15% of their allocations[58] "to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who have not been identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment."[59] CEIS may not, however, delay an appropriate evaluation of a child suspected of having a disability.[60]

In its analysis of comments and changes to the final regulations, ED discusses the potential benefits of CEIS as follows:

> The authority to use some Part B funds for early intervening services has the potential to benefit special education, as well as the education of other children, by reducing academic and behavioral problems in the regular educational environment and reducing the number of referrals to special education that could have been avoided by relatively simple regular education interventions.[61]

LEAs may use CEIS funds for both professional development for teachers and other school staff and for educational and behavioral evaluations, services, and supports to students.[62] Funds may also be used to carry out CEIS that are aligned with activities funded by, and carried out under, the Elementary and Secondary Education Act of 1965 (ESEA) if the funds supplement, and do not supplant, ESEA funds.[63]

A state must require an LEA to use up to 15% of its funds for CEIS if the state has determined through statutorily required data collection that "significant disproportionality"[64] based on race

[57] For a discussion of the legal issues regarding medical services as a related service, see CRS Report R40690, *The Individuals with Disabilities Education Act (IDEA): Statutory Provisions and Recent Legal Issues*, coordinated by Cynthia Brown.

[58] An LEA cannot use the full 15% for CEIS when they are also reducing funds under IDEA maintenance of effort (MOE) provisions. See the discussion in this report on "Maintenance of Effort (MOE)" for further explanation.

[59] 20 U.S.C. §1413(f), P.L. 107-110 §613(f). Coordinated Early Intervening Services (CEIS), also referred to in statute as Early Intervening Serving (EIS), should not be confused with Early *Intervention* Services (EIS) authorized under Part C of IDEA. Part C, EIS, defined in Section 632(4), is for infants and toddlers with disabilities, while Part B CEIS is for students who are not currently identified as having disabilities but need additional support to succeed in a general education environment. (A student could receive CEIS if he or she had previously received special education, but is not currently identified as needing it. 71 Fed. Reg. 46626 (August 14, 2006) and 34 C.F.R. §300.226 (2010).)

[60] 34 C.F.R. §300.226 (c) (2010).

[61] 71 Fed. Reg. 46626-46627 (August 14, 2006).

[62] For more information on CEIS, see U.S. Department of Education, "Memorandum: Coordinated Early Intervening Services (CEIS) Under Part B of the Individuals with Disabilities Education Act (IDEA)," July 28, 2008, http://www2.ed.gov/policy/speced/guid/idea/ceis-guidance.pdf.

[63] 20 U.S.C §1413(f)(5), P.L. 107-110 §613(f)(5).

[64] The term "significant disproportionality" is defined by each state; 71.Fed. Reg. 46738 (August 14, 2006).

and ethnicity is occurring with respect to the identification of children with disabilities; their placement in particular education settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.[65] The funds are to be used to provide CEIS "to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified."[66]

Response to Intervention (RTI)

One way that coordinated early intervening services are provided is through an approach called Response to Intervention (RTI). RTI "is a multi-level framework to maximize student achievement by providing support to students at risk for poor learning outcomes."[67] While there are many models of RTI, ED notes that

> the core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction.
>
> For example, an RTI model with a three-tier continuum of school-wide support might include the following tiers and levels of support: (1) Tier one (Primary Intervention), for all students using high quality scientific research-based instruction in their general education setting. It would not be appropriate to use EIS funds for these activities since these students do not need additional academic and behavioral support to succeed in a general education environment. (2) Tier two (Secondary Intervention), for specialized small group instruction of students determined to be at risk for academic and behavioral problems. It would be appropriate to use EIS funds to support these activities. (3) Tier three (Tertiary Intervention) for specialized individualized instructional/behavioral support for students with intensive needs. EIS funds could not be used if these students were currently receiving special education or related services.[68]

Highly Qualified Teachers

Each SEA must ensure that each special education teacher who teaches elementary or secondary school is "highly qualified."[69] The term "highly qualified" as defined in IDEA is linked to the definition in ESEA. In brief, ESEA requires that public school teachers of "core academic subjects"[70] obtain full state teaching certification or pass the state teacher licensing examination,

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[65] 20 U.S.C. §1418(d), P.L. 108-446 §618(d).

[66] 34 C.F.R. §300.646 (b)(2) (2010).

[67] U.S. Department of Education, *Implementing RTI Using Title I, Title III, and CEIS Funds, Key Issues for Decision-maker*, p. 11, http://www2.ed.gov/programs/titleiparta/rtifiles/rti.pdf.

[68] U.S. Department of Education, *Questions and Answers on Response to Intervention (RTI) and Early Intervening Services (EIS)*, January 2007, Question F-5. RTI is one type of scientific, research-based intervention used to identify students with SLD. See "Identifying and Evaluating a Child with a Specific Learning Disability (SLD)."

[69] 20 U.S.C. §1412(a)(14)(C), P.L. 108-446 §612(a)(14)(C).

[70] The term "core academic subjects" as defined in ESEA at 20 U.S.C. §7801(11), P.L. 107-110 §9101(11) means "English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography." The IDEA definition of core academic subjects defined at 20 U.S.C. §1401(4), P.L. 108-446 §602(4) has the same meaning as the ESEA definition.

or fulfill requirements in a state's charter school law for teachers in charter schools; have not had any certification requirements waived on an emergency, temporary, or provisional basis; and have a bachelor's degree.[71] IDEA modifies the ESEA definition as it applies to special education teachers.[72] IDEA requires that *all special education teachers*, whether they teach core academic subjects or not, obtain full state *special education* teaching certification or pass the state teacher licensing examination, or fulfill requirements in a state's charter school law for teachers in charter schools; have not had any certification requirements waived on an emergency, temporary, or provisional basis; and have a bachelor's degree. In addition, IDEA has specific provisions related to teachers who teach only the most severely disabled children and those who teach more than one core subject.[73]

The Educational Environment

IDEA requires that children with disabilities be educated in the least restrictive environment possible.[74] In other words, to the maximum extent that is appropriate they are to be educated with children who are not disabled. Further, special classes, separate schooling, or other removal of children with disabilities from the regular educational environment can occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services[75] cannot be achieved satisfactorily. Supplementary aids and services could include such things as additional time to take tests or complete assignments, slower-paced instruction, personal aides, peer tutors, and use of a computer.

The LEA must also ensure that there is a continuum of alternate placements that includes instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. This continuum must also make provision for supplementary services to be provided in conjunction with regular class placement.[76]

The specific placement decision for each child with a disability must be made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and placement options. The child's placement must be (1) determined at least annually, (2) based on the IEP, and (3) as close to home as possible.[77]

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[71] 20 U.S.C. §7801(23), P.L. 107-110 §9101(23). For more information on ESEA requirements, see CRS Report R42127, *Teacher Quality Issues in the Elementary and Secondary Education Act*, by Jeffrey J. Kuenzi.

[72] For more information on highly qualified teachers under IDEA, see CRS Report RL33649, *The Individuals with Disabilities Education Act (IDEA): Final Regulations for P.L. 108-446*, by Nancy Lee Jones and Ann Lordeman.

[73] 20 U.S.C. §1401(10), P.L. 108-446 §602(10), and 34 C.F.R. §300.18.

[74] 20 U.S.C. §1412(a)(5), P.L. 108-446 §612(a)(5). For legal issues pertaining to least restrictive environment, see CRS Report R40690, *The Individuals with Disabilities Education Act (IDEA): Statutory Provisions and Recent Legal Issues*, coordinated by Cynthia Brown.

[75] 20 U.S.C. §1401(33), P.L. 108-446 §602(33). Supplementary aids and services are defined as "aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5) [Least Restrictive Environment]."

[76] 34 C.F.R. §300.115.

[77] 34 C.F.R. §300.116.

As with identification and evaluation, the child's parents must be notified in writing within a reasonable time before the placement.[78] If the parents disagree with the placement decision, they may use the procedural safeguards, such as the mediation and due process complaints discussed in the "Procedural Safeguards " section of this report.

As shown in **Table 2**, which contains the most recent data available, 61% of children with disabilities ages 6 through 21 spend 80% or more of their time in the regular classroom; 20% spend between 40% and 79%; 14% spend less than 40%; and 5% are educated in other environments. Other environments are a separate school, a residential facility, a private school placement by the parent, a correctional facility, and a home or hospital. Only 3% of all children with disabilities ages 6 through 21 receive their education in a separate school and an additional 1% are parentally placed in a private school. As also shown in **Table 2**, 66% of children with SLDs and 87% with speech and language impairments spend 80% or more of their classroom time in the regular classroom, while only 17% of children with intellectual disabilities spend 80% or more of their time in the regular classroom.

Table 2. Percentage of Time Students Ages 6 through 21 Spend in a Regular Classroom and in Other Environments, under IDEA Part B: Fall 2011

Disability	Percentage Who Spend 80% or More of Time in a Regular Classroom	Percentage Who Spend 40%-79% of Time in a Regular Classroom	Percentage Who Spend Less than 40% of Time in a Regular Classroom	Percentage Who are Educated in Other Environments
Speech or language impairments	87%	6%	5%	3%
Specific learning disability	66%	25%	7%	2%
Other health impairments	63%	23%	10%	4%
Intellectual disabilities	17%	27%	49%	8%
Emotional disturbance	43%	18%	21%	18%
Autism	39%	18%	34%	9%
All disabilities	61%	20%	14%	5%

Source: Data Accountability Center, Part B Educational Environment (2011), MS-EXCEL Table 2-2, http://tadnet.public.tadnet.org/pages/712.

Notes: Percentages by disability may not add to 100% because of rounding. Total number of students is 5.8 million.

[78] 34 C.F.R. §300.503.

Children with Disabilities in Private Schools[79]

A child with a disability may be placed in a private elementary or secondary school by an LEA as part of an IEP if the IEP team determines that a private school placement is needed to fulfill the FAPE requirements for the child. In this situation, the private school placement is made at no cost to the parents, and the child has all of the rights of a child with a disability who is served in a public school.[80]

A child with a disability may also be unilaterally placed in a private elementary or secondary school by his or her parents.[81] In this situation, the "parentally placed" child is not entitled to FAPE, and the cost of the private school placement is not paid by the LEA unless a court or hearing officer makes certain findings.[82] The LEA must, however, spend a share of its IDEA funds to provide services to children enrolled with disabilities by their parents in private schools located in the LEA based on the proportion of parentally placed children to the total number of children with disabilities in the LEA.[83] Except where there is a court order, the LEA makes the final decision about the services to be provided to parentally placed private school children.[84] In making this decision, the LEA must engage in a consultation process with the private school officials and representatives of parents.[85] The LEA is also responsible for devising a service plan for every parentally placed child with a disability receiving special education or related services from the LEA.[86]

Procedural Safeguards

Procedural safeguards[87] are provisions protecting the rights of parents and children with disabilities regarding FAPE. The various types of procedures include parental rights to

- inspect and review educational records;[88]

[79] For more information on this topic, including legal issues, see CRS Report R41678, *The Individuals with Disabilities Education Act (IDEA): Private Schools*.

[80] 20 U.S.C. §1412(a)(10)(B), P.L. 108-446 §612(a)(10)(B).

[81] 20 U.S.C. §1412(a)(10)(B), P.L. 108-446 §612(a)(10)(B).

[82] 20 U.S.C. §1412(a)(10)(C), P.L. 108-446 §612(a)(10)(C). Specifically, an LEA could be required by a court or a hearing officer to reimburse the parents of a child with a disability who (1) previously received special education and related services from an LEA, and (2) enrolled the child in a private elementary school or secondary school without the consent of or referral by the LEA for the cost of the private school enrollment if the court or hearing officer found that the LEA had not made FAPE available to the child in a timely manner prior to the private school enrollment.

[83] 20 U.S.C. §1412(a)(10)(iii)(I), P.L. 108-446 §612(a)(10)(iii)(I). For example, if an LEA has 250 children with disabilities, 15 of whom were parentally placed in a private school, 6% of federal IDEA Part B funds (i.e., 15/250 * 100) would be spent on the group of children with disabilities in private schools in the LEA. For a more comprehensive hypothetical example, see Appendix B to 34 C.F.R. Part 300. It should be emphasized that no individual parentally placed private school child with a disability is entitled to services.

[84] 20 U.S.C. §1412(a)(10)(A)(iii), P.L. 108-446 §612(a)(10)(A)(iii).

[85] 34 C.F.R. §300.137(b) (2010).

[86] 34 C.F.R. §300.138)(b) (2010).

[87] For information on the legal issues pertaining to procedural safeguards, including burden of proof, parental rights, attorneys' and expert witness fees, see CRS Report R40690, *The Individuals with Disabilities Education Act (IDEA): Statutory Provisions and Recent Legal Issues*, coordinated by Cynthia Brown.

[88] 20 U.S.C. §1415(b)(1), P.L. 108-446 §615(b)(1), and 34 C.F.R. §300.501(a) (2010).

- participate in meetings related to the identification, evaluation, and educational placement of their child;[89]
- obtain an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the LEA;[90]
- receive prior written notice in the native language of the parents when an LEA proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;[91]
- receive a procedural safeguards notice, which is a comprehensive written explanation of IDEA's legal rights and protections for children with disabilities and their parents;[92]
- resolve disputes through a mediation process;[93]
- present and resolve complaints through the due process complaint procedures, which include a right to file suit in federal district court;[94] and
- present and resolve complaints through state complaint procedures.[95]

Three of the procedural safeguards listed above pertain to dispute resolution between parents and the LEA. These are mediation, due process complaint procedures, and state complaint procedures, which are discussed below. IDEA's disciplinary provisions, discussed in this section as well, also include procedural safeguards to protect the rights of children with disabilities to FAPE.

Mediation[96]

Mediation is a process of resolving disputes initiated by either the parent or LEA involving any matter under IDEA. It is a way of resolving complaints without the formal due process hearing, discussed below. Either a parent or an LEA can initiate the mediation process, which must be voluntary for each party. The mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The cost of the mediation process is borne by the state.

If the school and parent resolve a dispute through the mediation process, they must execute a legally binding agreement that is signed by the parent and a representative of the LEA. This

[89] 20 U.S.C. §1414(e), P.L. 108-446 §614(e), and 34 C.F.R. §300.501(b) and (c) (2010).

[90] 20 U.S.C. §1415(b)(1), P.L. 108-446 §614(b)(1), and 34 C.F.R. §300.502 (2010). If the LEA asserts that its evaluation is appropriate, it can file a due process complaint to request a hearing. If the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent education evaluation, but not at public expense.

[91] 20 U.S.C. §1415 (b)(3) and (4), P.L. 108-446 §615(b)(3) and (4), and 34 C.F.R. §300.503(a) and (c) (2010). For the statutory and regulatory provision regarding the content of the notice, see 20 U.S.C. §1415 (c)(1), P.L. 108-446 §615(c)(1), and 34 C.F.R. §300.503(b) (2010).

[92] 20 U.S.C. §1415(d), P.L. 108-446 §615(d), and 34 C.F.R. §300.504 (2010).

[93] 20 U.S.C. §1415(e), P.L. 108-446 §615(e), and 34 C.F.R. §300.506 (2010).

[94] 20 U.S.C. §1415(f) through (j), P.L. 108-446 §615(f) through (j), and 34 C.F.R. §300.507 through §300.518 (2010).

[95] 34 C.F.R. §300.151 through §300.153 (2010). State complaint procedures are not contained in the statute.

[96] 20 U.S.C. §1415(e), P.L. 108-446 §615(e), and 34 C.F.R. §300.506 (2010).

agreement is enforceable in state or U.S. district court. Discussions that occur during the mediation process must be confidential and may not be used in any subsequent due process hearing or civil proceeding of any federal or state court.

Due Process Complaint Procedures

The due process complaint procedure begins with filing a due process complaint, which is in effect a request for a due process hearing, on matters relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child. Generally, unless the SEA or LEA and the parent otherwise agree, the child must remain in his or her current educational placement pending the outcome of the due process complaint procedures or of a court proceeding. This requirement is referred to as "stay put."[97]

Either a parent or an LEA may file a due process complaint.[98] The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the state has an explicit time limitation for filing a due process complaint, occurred in the time period allowed by state law.[99]

Within 15 days of receiving the due process complaint, the LEA must convene a resolution session to attempt to resolve the issues unless the parents and LEA agree to waive the session. If the issues are not resolved, the due process hearing may occur. If the complaint is not resolved through mediation, a resolution meeting, or a due process hearing, either party to the complaint can file a civil suit.[100]

The due process hearing is conducted by an impartial hearing officer.[101] The decision of the hearing officer is final, except that any party in a state where the hearing is conducted by the LEA may appeal the findings and decision to the SEA, who in turn must conduct an impartial review. If the hearing was held in a state where the SEA conducted the hearing, then either party can file a civil lawsuit. The party filing the lawsuit has 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the state review official, to file the lawsuit; or, if the state has an explicit time limitation for bringing civil action, the lawsuit must be filed in the time period allowed by state law.[102]

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[97] 20 U.S.C. §1415(j), P.L. 108-446 §615(j), and 34 C.F.R. §300.518 (2010).

[98] 20 U.S.C. §1415(b)(7) and (8), and 20 U.S.C. §1415(c)(2), P.L. 108-446 §615(b)(7) and (8), and §615(c)(2), and 34 C.F.R. §300.507 through §300.509 (2010).

[99] There are two exceptions to this timeline. The timeline does not apply if the parent was prevented from requesting a hearing due to specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or the LEA withheld information from the parent that was required to be provided to the parent. 20 U.S.C. §1415(b)(6), P.L. 108-446 §615(b)(6), and 34 C.F.R. §300.507(a)(2) (2010).

[100] For more detail, see the statutory and regulatory provisions at 20 U.S.C. §1415, P.L. 108-446 §615, and 34 C.F.R. Subpart E (2010).

[101] For information on conducting a due process hearing, see 20 U.S.C. §1415(f), P.L. 108-446 §615(f), and 34 C.F.R. §300.511 through §300.515 (2010). For information on the required qualifications of the hearing officer, see 20 U.S.C. §1415(f)(3), P.L. 108-446 §615(f)(3), and 34 C.F.R. §300.511(c) (2010).

[102] 20 U.S.C. §1415(g) and (i), P.L. 108-446 §615(g) and (i), and 34 C.F.R. §300.514 and §300.516 (2010).

State Complaint Procedures[103]

The IDEA regulations require each state to adopt written procedures for resolving complaints that allege LEA violations of the statute or regulations. In its analysis of comments and changes to the final regulations, ED distinguishes between the due process complaint process and the state complaint process as follows:

> The due process complaint procedures and the State complaint procedures are separate and distinct. The State complaint procedures remain a viable alternative to the due process procedures for parents to resolve disputes with public agencies in a less formal and more cost effective manner.[104]

Unlike requests for mediation or for complaints filed under due process procedures, where only a parent or an LEA can file a complaint, a state complaint can be filed by any organization or individual, including those from another state. State complaint procedures must ensure that complaints will be resolved within 60 calendar days from the date the complaint is filed unless an extension is permitted.[105]

Discipline[106]

IDEA's disciplinary provisions are intended to "balance school safety issues with the need to ensure that schools respond appropriately to a child's behavior that was caused by, or directly and substantially related to, the child's disability."[107] IDEA addresses both the school's authority in disciplining students with disabilities and the rights of the students to receive FAPE. In general, a child with a disability is not immune from disciplinary procedures; however, these procedures are not identical to those for children without disabilities.[108]

If a child with a disability commits an action that would be subject to discipline, school personnel have several immediate options. These include

- removing a child from his or her current placement to another setting or suspension for up to 10 school days;[109]
- placing the child in an interim alternative education setting for up to 45 school days for situations involving weapons or drugs, or if the student has inflicted serious bodily injury on another person while at school;[110] and

[103] 34 C.F.R. §300.151 through §300.153 (2010).

[104] 71 Fed. Reg. 46700 (August 14, 2006).

[105] An extension of the 60-day time limit may be permitted only if exceptional circumstances exist with respect to a particular complaint or if the complainant and the LEA agree to extend the time to engage in mediation, or to engage in other alternative means of dispute resolution, if available in the state.

[106] For more information on IDEA disciplinary provisions, see CRS Report RL32753, *Individuals with Disabilities Education Act (IDEA): Discipline Provisions in P.L. 108-446*, by Nancy Lee Jones. For information on legal issues, see discussion of Honig v. Doe in CRS Report RL33444, *The Individuals with Disabilities Education Act (IDEA): Supreme Court Decisions*, by Nancy Lee Jones and Carol J. Toland.

[107] U.S. Department of Education, *Questions and Answers on Discipline Procedures*, June 2009, http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C.

[108] 20 U.S.C. §1415(k).

[109] 20 U.S.C. §1415(k)(1)(B), P.L. 108-446 §615(k)(1)(B).

- asking a hearing officer to order a child to be placed in an interim alternative educational setting for up to 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others.[111]

If an LEA seeks to change the placement of a child with a disability for more than 10 days, the LEA must first determine

> (I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.[112]

This determination is referred to as a "manifestation determination." The reason for the determination is IDEA's recognition "that a child with a disability may display disruptive behaviors characteristic of the child's disability and the child should not be punished for behaviors that are a result of the child's disability."[113]

If the child's behavior is not a manifestation of a disability, long-term disciplinary action such as expulsion may occur, except that educational services may not cease.[114] If the behavior is a manifestation of the disability, the IEP team must conduct a functional behavior assessment and implement a behavior intervention plan for the child, if this has not been done before.[115] If there was a behavioral intervention plan, it must be reviewed and modified as necessary to address the behavior.[116]

Except for certain circumstances involving weapons, illegal drugs, or serious bodily injury, when the conduct is a manifestation of the disability, the child must return to the placement from which he or she was removed unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.[117] If the parent of a child with a disability disagrees with any decision regarding placement or the manifestation determination, or an LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, either may request a due process hearing.[118]

Nothing in IDEA is to be construed as prohibiting an LEA from reporting a crime committed by a child with a disability to the appropriate authorities. An LEA reporting a crime committed by a

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(...continued)

[110] 20 U.S.C. §1415(k)(1)(G), P.L. 108-446 §615(k)(1)(G).

[111] 20 U.S.C. §1415(k)(3), P.L. 108-446 §615(k)(3).

[112] To determine if the child's behavior meets either of these criteria, the LEA, the parent, and the relevant members of the IEP team must 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; 20 U.S.C. §1415(k)(1)(E), P.L. 108-446 §615(k)(1)(E).

[113] 71 Fed. Reg. 46720 (August 14, 2006).

[114] 20 U.S.C. §1415(k)(1)(C), P.L. 108-446 §615(k)(1)(C).

[115] 20 U.S.C. §1415(k)(1)(F)(i), P.L. 108-446 §615(k)(1)(F)(i). In addition, if the conduct of a child with a disability was the direct result of the LEA's failure to implement the IEP, "the LEA must take immediate steps to remedy those deficiencies"; 34 C.F.R. §300.530(e)(3) (2010).

[116] 20 U.S.C. §1415(k)(1)(F)(ii), P.L. 108-446 §615(k)(1)(F)(ii).

[117] 20 U.S.C. §1415(k)(1)(F)(iii), P.L. 108-446 §615(k)(1)(F)(iii).

[118] 20 U.S.C. §1415(k)(3)(A), P.L. 108-446 §615(k)(3)(A).

child with a disability will ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.[119]

Funding, Expenditure Requirements, and Compliance

IDEA provides federal funding for the education of children with disabilities and imposes certain conditions for the receipt of federal funds. This section addresses state and local (1) funding allocations; (2) expenditure requirements, including maintenance of effort provisions; and (3) compliance with IDEA provisions through federal and state monitoring and enforcement requirements.

Funding

Actual and proposed grants to states are often discussed in terms of the percent of the "excess costs" of educating children with disabilities that the federal government will pay.[120] The metric for determining this excess cost is based on the national average per-pupil expenditure (APPE). In 1975, with the enactment of the Education for All Handicapped Children Act (P.L. 94-142), it was determined that the federal government would pay up to 40% of APPE to assist with this excess cost.[121] This 40% of APPE is often referred to as "full funding." In FY2015, the Part B grants to states appropriation of $11.5 billion provided an estimated 16% of APPE.[122]

State Formula Allocations

Of the funds appropriated for IDEA, the Secretary of Education first reserves (1) not more than 1% of the appropriation for the outlying areas and freely associated states,[123] (2) funds for services for Indian children with disabilities,[124] and (3) not more than one-half of 1% of the appropriation up to a maximum of $25 million, adjusted for inflation, to provide technical assistance to improve the capacity of states to meet data collection requirements.[125] The

[119] 20 U.SC. §1415(k)(6), P.L. 108-446 §615(k)(6).

[120] The term "excess costs" is defined at 20 U.S.C. §1401 (8), P.L. 108-446 §602(8).

[121] "In 1975, when the act was originally enacted, Congress established the goal of providing up to 40% of the national average per pupil expenditure to assist states and local educational agencies with the excess costs of educating students with disabilities"; H.Rept. 108-77, p.93.

[122] CRS calculation based on unpublished data from the U.S. Department of Education.

[123] 20 U.S.C. §1411(b)(1), P.L. 108-446 §616(b)(1). The outlying areas are defined in §602(22) as the "United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands." Freely associated states are defined in §611(b)(3) as "the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau."

[124] The statute at §611(b)(2) reserves 1.226% of the Part B appropriation for the Department of the Interior's Bureau of Indian Education (BIE) schools; however, this percentage has been overridden since FY2002 through the appropriations process, which has provided annual increases for BIE schools based on the rate of inflation. For example, see the language in the Special Education account in Title III of Division H of P.L. 113-76 (Consolidated Appropriations Act, 2014).

[125] 20 U.S.C. §1411(c), P.L. 108-446 §616(c).

remainder of the funds are allocated by a formula to the 50 states, the District of Columbia, and Puerto Rico. If the amount available for allocations to states for a fiscal year is equal to or greater than the amount allocated to the states for the preceding fiscal year, the formula[126] first requires that each state receive a base grant, which is the amount received by the state for FY1999. The next step is to distribute 85% of the remaining funds among the states based on states' shares of total population ages 3 to 21[127] and 15% of the remaining funds based on states' shares of poor children in that age range. The third step ensures that states do not receive less than certain minimum amounts or more than certain maximum amounts.[128] If the amount available for allocation to states decreases from the prior year, any amount available for allocation to states above the 1999 level is allocated based on the relative increases in funding that the states received between 1999 and the prior year. If there is a decrease below the amount allocated for 1999, each state's allocation is ratably reduced from the 1999 level.[129]

State-Level Activities

A state may reserve funds from their grants for administration[130] and for a variety of other statewide activities. These include two mandatory activities: (1) monitoring, enforcement, and complaint investigation, and (2) establishing and maintaining a parental mediation process.[131] Other allowable state-level activities include improving the use of technology in the classroom, developing transition programs, and assisting LEAs in meeting personnel shortages.[132] In addition, for the purpose of assisting LEAs in addressing the needs of high-need children (i.e., children who require expensive services, including certain medical expenses), states may establish a risk pool or "high cost" fund. If a state chooses to establish a risk pool, it may use 10% of the funds it reserved for state-level activities.[133] States using a risk pool must develop and annually review a state plan in which the state determines which children with disabilities are high need, sets out the procedures by which LEAs participate in the risk pool, and determines how funds are distributed.[134] Funds distributed from the risk pool must only pay for "direct special education and related services" for high need children with disabilities[135] and may not be

[126] 20 U.S.C. §1411(d), P.L. 108-446 §616(d).

[127] These age ranges for this population vary from state to state depending on the age range for which each state makes FAPE available.

[128] 20 U.S.C. §1411(d)(3)(B) and 20 U.S.C. §1411(a)(2)(B), P.L. 108-446 §616(d)(3)(B) and P.L. 108-446 §616(a)(2)(B).

[129] 20 U.S.C. §1411(d)(4), P.L. 108-446 §611(d)(4).

[130] 20 U.S.C. §1411(e)(1), P.L. 108-446 §611(e)(1). The amount that a state may reserve for administration is up to the greater of the maximum amount the state could reserve from FY2004 funds, or $800,000, increased by the Secretary for inflation as reflected by the Consumer Price Index for All Urban Consumers.

[131] 20 U.S.C. §1411(e)(2)(B), P.L. 108-446 §611(e)(2)(B).

[132] 20 U.S.C. §1411(e)(2)(C), P.L. 108-446 §611(e)(2)(C).

[133] 20 U.S.C. §1411(e)(3), P.L. 108-446 §611(e)(3). The percentage of a state's allocation that a state may reserve for state-level activities depends on the amount a state uses for state administration and whether or not the state uses a risk pool. A state that uses a risk pool can set aside 10.5% for state level activities if it uses $850,000 or less for state administration, or 10% if it uses $850,000 or more for state administration A state that does *not* use a risk pool can set aside 9.5% for state level activities if it uses $850,000 or less for state administration, or 9% if it uses $850,000 or more for state administration. For FY2007 and each subsequent fiscal year, each state may reserve the maximum amount the state was eligible to reserve in FY2006, cumulatively adjusted by the rate of inflations as reflected by the Consumer Price Index for All Urban Consumers. See 20 U.S.C. §1411(e)(2)(A), P.L. 108-446 §611(e)(2)(A).

[134] 20 U.S.C. §1411(e)(3)(C), P.L. 108-446 §611(e)(3)(C).

[135] 20 U.S.C. §1411(e)(3)(D)(iii), P.L. 108-446 §611(e)(3)(D)(iii).

used for legal fees or related costs.[136] If some funds reserved for the risk pool are not distributed for services for high-need children, they are to be distributed to LEAs according to the substate formula.[137]

LEA Formula Allocations

Funds remaining after funds for state-level activities are set aside are distributed to LEAs based on a formula similar to the state formula. Like the state formula, LEAs are first allocated base grants. Also similar to the state formula, 85% of the remaining funds is allocated based on LEAs' shares of public and private school enrollment and 15% of the remaining funds is allocated based on shares of children living in poverty, as determined by the SEA. There is no minimum or maximum grant.[138]

State and LEA Expenditure Requirements

IDEA state and LEA expenditure requirements are aimed at increasing overall educational spending, rather than substituting federal funds for education spending at the state and local levels. Maintenance of effort (MOE) provisions basically require that a state or an LEA not reduce its support for special education and related services below the level of support it provided the previous fiscal year. Supplement, not supplant (SNS) requirements generally prohibit a state or LEA from using IDEA grants to provide services, purchase equipment, etc., that state, local, or other federal funds currently provide or purchase or, in the absence of the IDEA funds, that those other funds would have provided or would have purchased.

Maintenance of Effort (MOE)

In general, a state may not reduce the amount of its financial support for special education and related services for children with disabilities below the amount of that support for the preceding fiscal year.[139] In any fiscal year in which a state does not meet this MOE requirement, the Secretary of Education is required to reduce the state's subsequent year grant by the same amount by which the state fails to meet the requirement.[140] The Secretary may grant a waiver for one fiscal year at a time in the case of "exceptional or uncontrollable circumstances" such as a natural disaster or a "precipitous and unforeseen decline in the financial resources of the state."[141] In addition, waivers can be granted if the state can provide "clear and convincing evidence" that FAPE is available for all children with disabilities.[142] If a state does not meet its MOE requirement for any year, including any year for which the state was granted a waiver, the state financial support required in future years is not reduced. That is, the state must provide the

[136] 20 U.S.C. §1411(e)(3)(E), P.L. 108-446 §611(e)(3)(E).

[137] 20 U.S.C. §1411(e)(3)(I), P.L. 108-446 §611(e)(3)(I).

[138] 20 U.S.C. §1411(f), P.L. 108-446 §611(f).

[139] 20 U.S.C. §1412(a)(18)(A), P.L. 108-446 §612(a)(18)(A).

[140] 20 U.S.C. §1412(a)(18)(B), P.L. 108-446 §612(a)(18)(B).

[141] 20 U.S.C. §1412(a)(18)(C)(i), P.L. 108-446 §612(a)(18)(C)(i).

[142] 20 U.S.C. §1412(a)(18)(C)(ii), P.L. 108-446 §612(a)(18)(C)(ii).

amount that would have been required in the absence of failing to meet MOE in the previous year.[143]

LEAs may use IDEA funds only for the excess costs[144] of educating children with disabilities, and may not reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.[145] In general, the SEA must determine that an LEA meets this requirement (for purposes of establishing the LEA's eligibility for an award for a fiscal year). If the LEA assures the SEA that it will provide at least the same total or per capita amount from either local funds only or a combination of state and local funds for the most recent prior year for which the data are available, then the LEA would be eligible for funds.[146] IDEA specifies in statute four circumstances in which an LEA may legally reduce its local expenditures. These are in cases of

> (1) voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel; (2) a decrease in the enrollment of children with disabilities; (3) the termination of the obligation of the agency ... to provide a program of special education to a particular child with a disability that is an exceptionally costly program ... ; or (4) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.[147]

The regulations establish a fifth circumstance under which an LEA may reduce its local expenditures. If a state establishes a risk pool (i.e., high cost fund) and the state assumes the costs associated with "high cost" children in the LEA, the LEA may reduce its expenditures.[148]

In addition, with some exceptions, an LEA may reduce its local expenditures in certain fiscal years in which its federal allocation exceeds the amount received in the previous fiscal year by not more than 50% of the excess amount.[149] These funds must be used to carry out activities authorized under ESEA.[150] Exceptions include the following: (1) the state is required to prohibit an LEA from reducing its MOE if the SEA has taken responsibility for providing FAPE in the LEA because the LEA is unable to establish and maintain programs of FAPE, or the state has taken action against the LEA under IDEA's enforcement provisions;[151] (2) if in its annual determination on the performance of LEAs, a state determines that an LEA does not meet requirements (i.e., the LEA needs assistance, intervention, or substantial intervention), the state must prohibit the LEA from reducing its MOE;[152] and (3) the amount of funds expended by an

[143] 20 U.S.C. §1412(a)(18)(D), P.L. 108-446 §612(a)(18)(D).

[144] For information on how an LEA calculates its excess costs, see Appendix A to Part 300, 34 C.F.R.

[145] 20 U.S.C. §1413(a)(2)(A), P.L. 108-446 §613(a)(2)(A).

[146] 34 C.F.R. §300.203(b) (2010). In practice, the MOE requirement is based on a comparison of non-federal expenditures for special education services for pupils with disabilities in the preceding fiscal year to those for the second preceding fiscal year since that would be the most recently available data.

[147] 20 U.S.C. §1413(a)(2)(B), P.L. 108-446 §613(a)(2)(B).

[148] 34 C.F.R. §300.204(e) (2010). See, also, the discussion in the report on "State-Level Activities."

[149] 20 U.S.C. §1413(a)(2)(C)(i), P.L. 108-446 §613(a)(2)(C)(i).

[150] 20 U.S.C. §1413(a)(2)(C)(ii), P.L. 108-446 §613(a)(2)(C)(ii).

[151] 20 U.S.C. §1413(a)(2)(C)(iii), P.L. 108-446 §613(a)(2)(C)(iii).

[152] 20 U.S.C. §1416(f), P.L. 108-446 §616(f). See the section in this report on "Enforcement" for more information on the federal and state performance determinations. Also, see U.S. Department of Education, *Modifications to Questions in the April 2009 Guidance on the Individuals with Disabilities Education Act, Part B, April 13, 2009*, D-7.

LEA for CEIS[153] must count toward the maximum amount of the reduction in expenditures the LEA may make.[154] Consequently, any LEA that is required to use 15% of its allocation on CEIS because the state has determined that "significant disproportionality"[155] based on race and ethnicity is occurring would be prohibited from reducing its MOE.[156]

Supplement, Not Supplant

Both states and LEAs must use IDEA funds to supplement state, local, and other federal funds and not to supplant them.[157] As with the state MOE requirement, the Secretary of Education has authority to grant a waiver of the state-level SNS requirement if the state provides "clear and convincing evidence" that all children with disabilities in the state have FAPE available.[158] If an LEA (or state) maintains its level of local, or state and local, expenditures for special education and related services from year to year, then the LEA has met its MOE and SNS requirements. There are no SNS or MOE waiver provisions for LEAs.[159]

Compliance

Monitoring

The Secretary monitors the implementation of IDEA through the oversight of states' required general supervision of the implementation of IDEA requirements, and through the states' required state performance plans (SPP).[160] These plans evaluate a state's efforts to implement the requirements and purposes of IDEA and describe how the state will improve implementation.[161] The Secretary must enforce IDEA[162] and must also require states to monitor and enforce the implementation of IDEA by LEAs.[163] The primary focus of federal and state monitoring is on improving educational results and functional outcomes for all children with disabilities and ensuring that states meet IDEA program requirements.[164] IDEA specifies three priority areas that are to be monitored by the Secretary regarding states, and by states regarding LEAs, using quantifiable indicators to measure performance. These three monitoring priorities are:

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[153] For information on CEIS, see the section of this report on "Coordinated Early Intervening Services (CEIS)".

[154] 20 U.S.C. §1413(a)(2)(C)(iv), P.L. 108-446 §613(a)(2)(C)(iv).

[155] For information on "significant disproportionality," see the section of this report on "Coordinated Early Intervening Services (CEIS)."

[156] U.S. Department of Education, *Modifications to Questions in the April 2009 Guidance on the Individuals with Disabilities Education Act, Part B, April 13, 1009*, D-7. The amount of funds an LEA uses for CEIS for reducing the MOE in years when there is an increase in the LEA allocation is interrelated. The decision about one use will affect the amount of funds available for the other use. For information on the interaction of CEIS and MOE, see Appendix D to Part 300, 34 C.F.R.

[157] 20 U.S.C. §1412(a)172)(C), P.L. 108-446 §613(a)(17)(C).

[158] Ibid. See 34 C.F.R. §300.164 for standards for applying for this waiver.

[159] U.S. Department of Education, *Guidance: Funds for Part B of the Individuals with Disabilities Education Act made Available Under the American Recovery and Reinvestment Act of 2009*, April 2009, C-6.

[160] 20 U.S.C. §1416(a)(1)(A), P.L. 108-446 §616(a)(1)(A).

[161] 20 U.S.C. §1416(b)(1)(A), P.L. 108-446 §616(b)(1)(A).

[162] 20 U.S.C. §1416(a)(1)(B), P.L. 108-446 §616(a)(1)(B).

[163] 20 U.S.C. § 1416(a)(1)(C), P.L. 108-446 §616(a)(1)(C).

[164] 20 U.S.C. §1416(a)(2), P.L. 108-446 §616(a)(2).

- provision of a free appropriate public education in the least restrictive environment;
- state exercise of general supervisory authority, including child find, effective monitoring, the use of resolution sessions, mediation, voluntary binding arbitration, and a system of transition services; and
- disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.[165]

As part of an SPP,[166] each state must establish measurable and rigorous targets for the indicators established by the Secretary in the three priority areas.[167] Each state must use the targets established in its SPP and the three priority areas to analyze the performance of each LEA in the state.[168] In addition, each state must report annually to the Secretary on the state's performance under the SPP.[169] Annual state reporting of performance on the SPP indicators is done through the Annual Performance Report (APR).[170] The state must report annually to the public on the performance of each LEA.[171] This annual report must be made as soon as practicable, but no later than 120 days following the state's submission of its APR to the Secretary.[172] The state must also make available through public means the state's SPP, APR, and the state's annual report on the performance of each LEA in the state. At a minimum, the state must post these items on the SEA's website and distribute them to the media and through public agencies.[173]

Enforcement

Based on the information provided by the state in the SPP, information from monitoring visits, and any other public information made available, the Secretary shall determine annually if the state

- meets the requirements and purposes of IDEA Part B,
- needs assistance in implementing the requirements of IDEA Part B,
- needs intervention in implementing the requirements of IDEA Part B, or
- needs substantial intervention in implementing the requirements of IDEA Part B.

[165] 20 U.S.C. §1416(a)(3), P.L. 108-446 §616(a)(3). Each state must have in effect policies and procedures designed to prevent the inappropriate over-identification or disproportionate representation by race and ethnicity of children as children with disabilities (20 U.S.C. §1412(a)(24), P.L. 108-446 §612(a)(24)).

[166] Each state must review its SPP at least once every six years and amendments must be submitted to the Secretary; 20 U.S.C. §1416(b(1)(C), P.L. 108-446 §616(b)(1)(C).

[167] 34 C.F.R. §300.601(a)(3) (2010).

[168] 20 U.S.C. §1416(b)(2)(C)(i), P.L. 108-446 §616(b)(2)(C)(i).

[169] 20 U.S.C. §1416(b)(2)(C)(ii)(II), P.L. 108-446 §616(b)(2)(C)(ii)(II).

[170] 20 U.S.C. §1453(d), P.L. 108-446 §653(d).

[171] 20 U.S.C. §1416(b)(2)(C)(ii)(I), P.L. 108-446 §616(b)(2)(C)(ii)(I).

[172] 34 C.F.R. §300.602(b)(i)(A) (2010).

[173] 34 C.F.R. §300.602(b)(i)(B) (2010).

If the Secretary makes a determination that a state needs intervention or substantial intervention, the Secretary must provide notice and an opportunity for a hearing.[174]

If the Secretary determines that a state does not meet requirements, IDEA specifies a number of enforcement actions depending on the Secretary's specific determination. These actions range from advising the state of available sources of technical assistance, to requiring the state to prepare a corrective action plan, to withholding, in whole or in part, further IDEA funds to the state. Prior to withholding any funds, the Secretary must provide notice and an opportunity for a hearing.[175] Whenever a state receives notice that the Secretary is proposing to take an enforcement action, the state must, at a minimum, post a notice of the pendency of an action on the SEA's website and distribute the notice to the media and through public agencies.[176]

In its analysis of comments and changes in the regulations, ED notes that

> Neither the Act nor these regulations require SEAs to publicly report on enforcement actions taken against LEAs in the State. The decision to report to the public on enforcement actions imposed on an LEA is best left to each State to decide because individual LEA circumstances vary across each State and no one set of requirements is appropriate in every situation ... However, in the interest of transparency and public accountability, the Department encourages States, where appropriate, to report to the public on any enforcement actions taken against LEAs.[177]

The state must make the same four determinations about LEAs that the Secretary makes about the states.[178] In its analysis of comments and changes in the regulations, ED comments that "States should have some discretion in making annual determination on the performance of their LEAs and, therefore, [ED] decline[s] to establish, in regulation, a uniform process for making annual determinations." ED further notes that it has advised states that in making determinations, they must consider (1) LEA performance on SPP compliance indicators,[179] (2) whether data submitted by an LEA are valid and reliable for each indicator, (3) LEA-specific audit findings, and (4) an uncorrected noncompliance from any source. In addition, ED has advised states to consider performance on results indicators, such as an LEA's graduation and dropout rates or the participation rate of students with disabilities in state assessments.[180] However, the consideration of performance indicators in LEA determinations is not required.

[174] 20 U.S.C. §1416(d), P.L. 108-446 §616(d).

[175] 20 U.S.C. §1416(e), P.L. 108-446 §616(e).

[176] 34 C.F.R. §300.606 (2010). The Secretary also posts the annual determination letters typically issued in June of each year to each state, Puerto Rico, the District of Columbia, and outlying areas on its website at http://www2.ed.gov/fund/data/report/idea/partbspap/allyears.html.

[177] 71 Fed. Reg. 73203 (August 14, 2006).

[178] 20 U.S.C. §1416(a)(1)(C), P.L. 108-446 §616(a)(1)(C)(ii), and 34 C.F.R. §300.600(a)(2) (2010).

[179] Compliance indicators include, among others, the percent of districts with disproportionate representation of racial and ethnic groups in special education and related services that is the result of inappropriate identification, the percent of children with parental consent to evaluate who were evaluated and had eligibility determined within 60 days (or a state established timeframe), and a general supervision system (including monitoring, complaints, hearings, etc.) that identifies and corrects noncompliance as soon as possible but no later than one year from identification.

[180] 73 Fed. Reg. 73021 (August 14, 2006).

The regulations stipulate the specific enforcement mechanisms that a state must use if the LEA does not meet requirements.[181] These mechanisms include a range of actions and are similar to those that the Secretary must use for state enforcement.[182] The regulations also require that when a state identifies LEA noncompliance with IDEA, it must ensure that the noncompliance is corrected as soon as possible, and no later than one year after the state's identification of the noncompliance.[183]

[181] 34 C.F.R. §300.600(a)(3), and 34 C.F.R. §300.800 (2010).

[182] Neither the statute nor the regulations require that states permit LEAs to appeal a state decision. According to ED's guidance *Questions and Answers on Monitoring, Technical Assistance, and Enforcement*, C-11, "Whether a State's determination about an LEA's performance may be appealed is a State decision."

[183] 34 C.F.R. §300.600(e) (2010).

Appendix A. Structure of IDEA

Part A—General Provisions

Part A includes congressional findings pertinent to the act, the purposes of the act, and definitions. The definitions included in Part A are of critical importance in interpreting the requirements of the act. These definitions include, among others, definitions of child with a disability, specific learning disability, free appropriate public education, core academic subjects, highly qualified, individualized education program, local educational agency, related services, special education, supplementary aids and services, transition services, and excess costs. These terms have been defined throughout the body of this report.

Part B—Assistance for Education of All Children with Disabilities

Part B provides federal funding for the education of children with disabilities and requires, as a condition for the receipt of such funds, the provision of a free appropriate public education (FAPE) to children with disabilities between the ages of 3 and 21. School districts must identify, locate, and evaluate all children with disabilities, regardless of the severity of their disability, to determine which children are eligible for special education and related services. Each child receiving services has an Individualized Education Program (IEP), created by an IEP team, delineating the specific special education and related services to be provided to meet his or her needs. The statute also contains procedural safeguards, which are provisions to protect the rights of parents and children with disabilities to ensure the provision of FAPE.

Section 619 of IDEA Part B authorizes grants to states for preschool programs serving children with disabilities ages three to five. Since Part B grants to states are used to serve children with disabilities as young as three years of age (as well as school-age children), Section 619 is not so much a separate program as it is supplementary funding for services to this age group. In general, the provisions, requirements, and guarantees under the grants to states program that apply to school-age children with disabilities also apply to children in this age group. As a result, Section 619 is a relatively brief section of the law and deals mostly with the state and substate funding formulas for the grants and state-level activities.

Part C—Infants and Toddlers with Disabilities

The general purpose of Part C is to aid each state in creating and maintaining "a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families."[184] Services focus on children from birth through age two who are experiencing or have a high probability of experiencing "developmental delay" (as defined by the state) with respect to physical, mental, or other capacities, and on their families.[185] Services are detailed for each child and his or her family in an Individualized Family Service Plan (IFSP). Services are to be provided, to the maximum extent feasible, in "natural environments," including the home, with other infants and toddlers

[184] 20 U.S.C. §1431(b)(1), P.L. 108-446 §631(b)(1).

[185] Under certain circumstances, children with disabilities age three and over may continue to receive Part C early intervention services until they are eligible to enter kindergarten; 20 U.S.C. §14345(c), P.L. 108-446 §635(c).

who are not disabled. States are required to identify a state lead agency, which might be the state educational agency (SEA) but could be other state agencies, to coordinate the program.

Part D—National Activities to Improve Education of Children with Disabilities[186]

Part D authorizes competitive grants to improve the education of children with disabilities in three areas: (1) state personnel development (Subpart 1); (2) personnel preparation, technical assistance, model demonstration projects, and dissemination of information (Subpart 2); and (3) support to improve results for children (Subpart 3).

- Under Subpart 1, competitive grants are made to SEAs for state personnel development grants to assist SEAs "in reforming and improving their systems for personnel preparation and professional development in early intervention, educational, and transitions services ..."[187]
- Under Subpart 2, competitive grants are made to entities such as SEAs, local education agencies (LEAs),[188] institutions of higher education (IHEs), and nonprofit organizations for personnel development to help ensure that there are adequate numbers of personnel with skills and knowledge needed to help children with disabilities succeed,[189] for technical assistance and dissemination of material based on knowledge gained through research and practice,[190] and for studies and evaluations.[191]
- Under Subpart 3, competitive grants are made to nonprofit organizations for parent training and information centers, which provide parents of children with disabilities with needed training and information to work with professionals in meeting the early intervention and special education needs of their children.[192] Also, under Subpart 3, competitive grants are made to entities such as SEAs, LEAs, IHEs, and nonprofit organizations for research, development, and other activities that promote the use of technology in providing special education and early intervention services.[193]

[186] In addition to the statutory provisions in Part D, see the following for more information on these activities: U.S. Department of Education, F*iscal Year 2012, Budget Summary*, pp. 34-36; and U.S. Department of Education, *Guide to U.S. Department of Education Programs,2010*, pp. 254-262.

[187] 20 U.S.C. §1451(a), P.L. 108-446 §651(a).

[188] The term "local educational agency" means "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools." 20 U.S.C. §14011(19), P.L. 108-446 §601(19). The term "school district" is often used instead of local educational agency.

[189] 20 U.S.C. §1462, P.L. 108-446 §662.

[190] 20 U.S.C. §1463, P.L. 108-446 §663.

[191] 20 U.S.C. §1464, P.L. 108-446 §664

[192] 20 U.S.C. §1471, §1472, and §1473, P.L. 108-446 §671, § 672, and §673.

[193] 20 U.S.C. §1474, P.L. 108-446 §674.

Appendix B. Commonly Used Acronyms

APPE	Average Per Pupil Expenditure
APR	Annual Performance Report
CEIS	Coordinated Early Intervening Services
ED	U.S. Department of Education
ESEA	Elementary and Secondary Education Act
FAPE	Free Appropriate Public Education
IDEA	The Individuals with Disabilities Education Act
IEP	Individualized Education Program
LEA	Local Educational Agency
MOE	Maintenance of Effort
RTI	Response to Intervention
SEA	State Education Agency
SNS	Supplement, Not Supplant
SPP	State Performance Plan

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