

Module 2

Overview of Key Changes in IDEA 2004



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A Product of...

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We have a tremendous amount of information available on our Web site, in our library, and in the combined expertise of our staff. Please feel free to contact NICHCY for the latest information and connections in research and disabilities. We'd also love for you to visit our Web site and help yourself to all that's there.

Background and Discussion

This module is part of a training package on the 2004 Amendments to the Individuals with Disabilities Education Act (IDEA), developed by NICHCY for the Office of Special Education Programs at the U.S. Department of Education. The training curriculum is entitled *Building the Legacy*; this module is entitled *Overview of Key Changes in IDEA 2004*.

Introduction

Change is inevitable, isn't it? For many of us involved in the education of children with disabilities, or their care and rearing, this isn't the first reauthorization of IDEA we've survived. Yes, *survived*. Because just when you think you finally understand what's required and how to get it done, someone goes and changes it. And you're back to the beginning again, learning anew, teaching others, changing habits and doing things a different way.

And we're not just talking about IDEA, are we? Most things change much more quickly than does IDEA. But most things don't have the importance in daily lives and well-being that IDEA does either. Which is why significant changes in the law and its regulations send equally significant changes rippling out all across the country, into every State and how it fulfills its responsibilities toward children with disabilities, and ever outward, down to the local level, to classrooms, to individuals.

How This Discussion Section is Organized

As with the other modules in this curriculum, this discussion section is organized by overhead. A thumbnail picture of each overhead is presented, along with brief instructions as to how the slide operates. This is followed by a discussion intended to provide trainers with background information about what's on the slide. Any or all of this information might be appropriate to share with an audience, but that decision is left up to trainers.



You'll note the "New in IDEA!" icon that periodically appears in these pages as an easy tool for identifying new aspects of the regulations.

This module identifies key changes that have taken place in IDEA with its reauthorization in December 2004 and the publication of its final Part B regulations in August 2006.¹ Many changes actually occurred, but the ones discussed here are among the most significant. These changes affect State and local policies and processes and, hopefully, are improving outcomes for children with disabilities. That is the *intent* of the revisions. The reauthorized IDEA is entitled the "Individuals with Disabilities Education *Improvement Act of 2004*" (emphasis added). As such, it brings a fresh opportunity and the promise of positive change,

even as it maintains what have been the most effective aspects of the existing law.

Building the Legacy

It's helpful to know something about IDEA's roots, for mighty roots they are. That is why this training curriculum about IDEA 2004 is called *Building the Legacy* and why we're going to take a stroll down memory lane right now.

The first federal laws designed to assist individuals with



¹ Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540 (August 14, 2006) (codified at 34 C.F.R. pt.300). Available online at: www.nichcy.org/wp-content/uploads/docs/IDEA2004regulations.pdf

Unless otherwise noted, the citations to the final Part B regulations are to those that took effect on October 13, 2006.

disabilities date back to the early days of the nation. In 1798, the Fifth Congress passed the first federal law concerned with the care of persons with disabilities when it authorized a Marine Hospital Service to provide medical services to seamen who were sick or disabled. By 1912, this service became known as the Public Health Service.

This early start set a basic direction in disability law for more than a century. Before World War II there were relatively few federal laws that authorized special benefits for individuals with disabilities, and those that *did* exist addressed the needs of war veterans whose disabilities were connected with their military service.

And what about our children with disabilities? The truth is that, for most of our nation's history, schools were allowed to exclude—and often *did* exclude—certain children, especially those with disabilities.

Since the 1960s, however, there has been a virtual avalanche of federal legislation that relates directly or indirectly to individuals with disabilities, particularly children and youth. Looking back over the last 40-some years, it is clear that federal protection and guarantees of the educational rights of individuals with disabilities have been an evol-



Thanks to OSEP Contributors to This Module

NICHCY would like to express its appreciation for the hard work and expertise of the following staff at the Office of Special Education Programs (OSEP), U.S. Department of Education:

Renee Bradley, for the description of changes in IDEA's discipline procedures;

Marion Morton Crayton, for the background discussion of highly qualified teachers;

Sheila Friedman, for the background discussion of parentally-placed children with disabilities in private schools;

Deborah Morrow, for everything from coordinating OSEP's involvement to the most nitpicky editing you've ever seen; and

Patricia Hozella, who identified the key changes to be discussed in this module and who penned initial drafts of the discussions on early intervening services, response to intervention, and identification of children with specific learning disabilities.

And Thanks to the Office of General Counsel (OGC)

NICHCY would also like to express its appreciation for the careful review of this module by OGC's **Vanessa Santos**, with much-appreciated assistance from OGC's legal intern, **Drew Coffin**.

ing story. As a result of the State and federal laws passed since the 1960s and the court cases that have occurred, children with disabilities now have specific rights protected by law. They also now have available to them a free appropriate public education. And that is *major* progress,

and what the IDEA today is all about.

The table below presents some highlights of IDEA's past that will show how the law has developed across time and across reauthorizations. (More information is available in Module 1, *Welcome to IDEA*.)

This Module in Time and Space

This module on *Overview of Key Changes in IDEA* falls within the umbrella topic of **Theme A, Welcome to IDEA**. There are two

continued on next page

The Legacy: IDEA Across Time

Public Law No.	Year Passed—Name	What's New?
P.L. 89-10	1965—Elementary and Secondary Education Act of 1965	IDEA's roots are in ESEA, did you know that? ESEA provided States with direct grant assistance to help educate children with disabilities.
P.L. 89-313	1965—ESEA is amended 8 months after above	Authorized first federal grant program specifically targeted for children and youth with disabilities. Authorized grants to State agencies to educate children with disabilities in State-operated or State-supported schools and institutions.
PL. 89-750	1966—ESEA of 1966	Authorized first federal grant program for the education of children with disabilities at the local school level rather than in State-operated schools and institutions.
P.L. 90-247	1968—ESEA of 1968	First established set of programs to supplement and support expansion and improvement of special education services. Became known as "discretionary programs."
P.L. 91-230	1970—ESEA of 1970	Consolidated into one act several, previously separate federal grant programs related to the education of children with disabilities. Became known as Part B, with the title Education of the Handicapped Act or EHA.
P.L. 93-280	1974—ESEA of 1974	Title VI of the ESEA was renamed as the Education of the Handicapped Act Amendments of 1974. Brought many changes, including a strong focus, through a major federal program to the states, on fully educating all children with disabilities.
P.L. 94-142	1975—Education for All Handicapped Children Act of 1975	Now a law of its own, not part of ESEA. One of the most well-known and visible "incarnations" of IDEA ever.
P.L. 98-199	1983—Education of the Handicapped Act Amendments of 1983	Expanded incentives for preschool special education programs, early intervention, and transition programs. All programs under EHA became the responsibility of the Office of Special Education Programs (OSEP), which by this time had replaced the Bureau of Education for the Handicapped (BEH).

Table concludes on next page.

The Legacy: IDEA Across Time *(continued)*

Public Law No.	Year Passed—Name	What's New?
P.L. 99-457	1986—EHA Amendments of 1986	Age of eligibility for special education and related services for all children with disabilities was lowered to 3. Established the Handicapped Infants and Toddlers Program (Part H).
P.L. 101-476	1990—Individuals with Disabilities Education Act (IDEA)	Secondary transition services were added, assistive technology devices and services were defined, and autism and traumatic brain injury were added as disability categories.
P.L. 105-17	1997—IDEA	Emphasis upon including children with disabilities in general education classroom; setting high standards and high expectations; including children in large-scale assessment programs in States and districts; discipline provisions.
P.L. 108-446	2004—Individuals with Disabilities Education Improvement Act of 2004	What this training module covers! IDEA 2004 most assuredly builds upon the legacy of IDEA's prior reauthorizations.

continued from previous page

modules under that umbrella, as follows:

- *Top 10 Basics of Special Education*, available in the curriculum by Summer 2007, will look at the steps involved in accessing special education and related services and 10 key definitions in IDEA everyone should know.
- *Overview of Key Changes in IDEA* (this module) takes a brief and summarizing look what's new and different in IDEA 2004.

All of these modules are intended for general audiences. The background materials (what you're reading right now) include substantial additional information that trainers can use to adapt training sessions to specific audience needs and the

amount of time available for training. Much of the material in this module has been abridged from discussions available in separate modules.

You are currently reading the background section and discussion in the module on *Overview of Key Changes in IDEA 2004*.

Looking for IDEA 2004?

The Statute:

- www.nichcy.org/wp-content/uploads/docs/PL108-446.pdf
- <http://idea.ed.gov>

Final Part B Regulations:

- www.nichcy.org/wp-content/uploads/docs/IDEA2004regulations.pdf
- <http://idea.ed.gov>

Finding Specific Sections of the Regulations: 34 CFR

As you read the explanations about the final regulations, you will find references to specific sections, such as §300.173. (The symbol § means “Section.”) These references can be used to locate the precise sections in the federal regulations that address the issue being discussed. In most instances, we’ve also provided the verbatim text of the IDEA regulations so that you don’t have to go looking for them.

The final Part B regulations are codified in Title 34 of the *Code of Federal Regulations*. This is more commonly referred to as 34 CFR or 34 C.F.R. It’s not unusual to see references to specific sections of IDEA’s regulations include this—such as 34 CFR §300.173. We have omitted the 34 CFR in this training curriculum for ease of reading.

Citing the Regulations in This Training Curriculum

You’ll be seeing a lot of citations in this module—and all the other modules, too!—that look like this: 71 Fed. Reg. at 46738

This means that whatever is being quoted may be found in the *Federal Register* published on August 14, 2006—Volume 71, Number 156, to be precise. The number at the end of the citation (in our example, 46738) refers to the page number on which the quotation appears in that volume. Where can you find Volume 71 of the *Federal Register*? NICHCY is pleased to offer it online at:

www.nichcy.org/wp-content/uploads/docs/IDEA2004regulations.pdf



Change is inevitable—
except from a vending
machine.

~Robert C. Gallagher

Change always comes bearing gifts.

~Price Pritchett

How to Operate the Slide:

Slide loads fully. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Use Slide 1 (above) to open your training session on key changes in IDEA 2004. This isn't the title slide yet (that's Slide 3); it's intended to set the mood for taking on change by presenting a few quotes on the subject.

There's no need to say anything while the slide displays; let the audience draw its own conclusions as to why the session starts this way. CLICK to advance to the next slide, which will build upon this beginning with another series of "change" quotes.

Starting View

www.strangefacts.com

Slide loads with this view.

Note: The rest of the slide will automatically present, piece by piece.

No clicks are necessary except to advance to the next slide.

Auto-Loads


A crocodile always grows new teeth to replace the old teeth.

The annual growth of Web traffic is **314,000%**.

25% of American men are now 6 feet or taller, compared to only **4%** on 1900.

The cost of mailing a letter by the pony express was **\$5** for half an ounce.

NO Click necessary: A "change" stat will load on its own, then disappear, and the next "change" stat will appear, then disappear, until all have self-presented.

(continued on next page) 

Auto-Loads



What next?



NO click necessary:
One by one, these
pictures of the same
child (Julian) will
appear, and then the
text "What next?"

CLICK AGAIN to advance to next slide.

Slide 2: Background and Discussion

NO Clicks

Slide 2 continues the silent progression of words about change, odd little facts against which we can see time passing, measure progress, and appreciate the nature of development—or is it the development of nature?

Each element self-presents, then disappears, before the next element disappears. Here's the order in which they appear and disappear:

- www.strangefacts.com*
- A crocodile always grows new teeth to replace the old teeth.
- The cost of mailing a letter by the pony express was \$5 for half an ounce.

- 25% of American men are now 6 feet or taller, compared to only 4% on 1900.

- The annual growth of Web traffic is 314,000%.¹

The last quote, indicating the annual growth in Internet traffic (an astounding 314,000%), illustrates how one development (the Internet) can make an impact that literally changes lives, not to mention habits and daily routines.

Perhaps nothing makes change so evident as children maturing, learning, *becoming*. It

may seem to happen slowly, but the three pictures of "Julian" (yes, they're all the same young man) show his progression from babyhood to 10 years old. "What's next?" indeed.

Using the Slide as a Springboard

Nothing really needs to be said here either, although a lot could be, as you deem appropriate. The "What's next?" after the pictures of Julian allows for a smooth transition into the next slide (which is the Title Slide,

¹ All "change" quotes on this slide, courtesy of www.strangefacts.com

Overview of Key Changes in IDEA 2004). But there are also multiple ways you can use the slide to engage the audience in talking about change in general. Here are some suggestions for your consideration.

Large-Group Discussion

Draw the audience into conversation of changes they've seen in their lifetime or that loved ones such as grandparents have seen in theirs. Possible prompts or guiding questions can include:

- What do these examples of change make you think of?
- What's the greatest change you've seen in your life?
- How do you think your grandmother would answer that question?
- How much does it cost now to mail a letter? (Well, that's one thing that's cheaper than it used to be!)
- Are you taller than your ancestors? Are your kids taller than you are?
- Are you on the Internet more than you used to be? Why is that?

- How has the Internet changed the way you get things done?
- Do you have baby pictures of yourself? Would we be able to pick your baby pictures out of 10 others, because you haven't changed a lick except to grow up?

Individual or Pair Work

If you'd like your audience to do more than "talk about it," you can always design an opening activity to go along with these opening slides and have the audience work alone or in pairs to complete it. Since these slides have been general in nature and not IDEA-specific, the activity probably should be, too—such as having participants think about how they react to change in general, what kind of changes they like and appreciate, what kinds make them uncomfortable or off-balance (*why?*), and what other emotions get triggered in the face of change. Other ways to frame the activity might include:

- Name 3-5 things (e.g., events, inventions, people, ideas) that truly changed the world.
- Describe the one person you most admire for how they react to change.

- Describe a person who doesn't react well to change.
- What advice would you give to a young person about reacting to change?
- Name the dumbest (best, funniest, craziest) change you ever heard of.



Overview of

Key Changes in IDEA 2004

Slide loads completely. No clicks are necessary except to advance to the next slide.

CLICK AGAIN to advance to next slide.

Now we're getting somewhere! Here's the title slide, at last, and the connection to talking about change. The focus of this module is clearly identified, so participants know that this session will be about what's changed in IDEA. Note, however, that it's an overview of key changes—which means that not every little change is going to be discussed. This module will focus on a selection of changes that impact the most people or that are most important for people to be aware of.

This, of course, presumes that people have some degree of prior knowledge about IDEA; otherwise, the concept of "change" is irrelevant. We've included an opening activity you can use as you deem appropriate to the time you have and the

needs of your audience (see the description of this activity on the next page), but the activity can also be re-framed as a group discussion, using the questions on **Handout A-5** as prompts. Where participants are asked to "rate" themselves on the handout, you can ask for a show of hands to get an idea of how much participants already know about IDEA. This is the mental scaffolding into which they will integrate the information you present about what's new or different in IDEA's statute and Part B regulations, so it's important to activate the knowledge they already have via the handout or via large-group or pair discussion.



Opening Activity

Purpose

To have participants reflect on how much they already know on this subject and why they might need to know more.

Total Time Activity Takes

10-15 minutes.

Group Size

Individual work, then work in pairs.

Materials

Handout A-5
Flip chart (optional)

Instructions

1. Refer participants to **Handout A-5**. Indicate that this is the activity sheet they have to complete. They will have 5 minutes to work individually. Then they are to share their answers with a partner.
2. At the end of the time allotted for individual work, have the audience split into pairs, working with the person on their right (or using whatever other strategy you'd prefer). Give the pairs 5 minutes (or more) to share their answers, then call the audience back to large-group focus.
3. Take 2-3 minutes to see where people stand in terms of their existing knowledge of IDEA. Don't have a full report-out from individuals or pairs. Ask for a show of hands.
4. Take 5 minutes to talk about the last question (how IDEA is relevant to participants' lives). Have members of the audience share how they intend to use the information provided in the training.

Theme A: *W*elcome to IDEA



Top 10 Basics in Special Education

→ **Overview of Key Changes in IDEA**

Slide loads completely. No clicks are necessary except to advance to the next slide.

CLICK AGAIN to advance to next slide.

Slide 4 is a quick look at **Theme A, Welcome to IDEA**. There are two modules in the theme that starts off the *Building the Legacy* training curriculum. This module is the second. It's not a global look at special education, as is Module 1; it focuses in overview fashion on what's new and different in the statute and final Part B regulations. Unlike the *Top 10 Basics of Special Education* (Module 1), it presumes prior knowledge of IDEA that supports discussion of how its provisions and requirements have changed. Members of the audience who don't have much prior knowledge of IDEA won't be lost, however, since much of what's covered in this module is entirely new to IDEA.

When prior knowledge would be helpful (for example, when discussing existing provisions that have changed in some way), you can augment the discussion with information either drawn from this background section or from the separate modules that address specific content in greater depth.

This slide also allows you to give participants the bigger picture of the training curriculum—that it's divided into

themes, with each theme having several modules. Refer them to their handouts. On the reverse side of the cover page of the handouts is an outline of the entire curriculum. Modules are available for download (for free) at the Web site of the National Dissemination Center for Children with Disabilities (NICHCY), the producer of these training modules. Encourage the audience to help themselves to materials!

Building the Legacy Training Curriculum

Training modules in *Building the Legacy* are available on NICHCY's Web site: www.nichcy.org/laws/idea/legacy

This module looks at selected changes in...

- IDEA's definitions
- Evaluation / reevaluation
- IEP meetings and IEP content
- Parentally-placed children with disabilities in private schools
- Discipline provisions



Slide loads completely. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 5 is an advance organizer for the audience, pointing out areas within IDEA 2004 that have changed in some way. To activate that prior knowledge, you might spend a few minutes talking with the audience about what they already know about these subjects with respect to either IDEA '97 or IDEA 2004. You can either ask direct questions (such as "What's an IEP? What type of content is in an IEP? Who attends an IEP meeting? How often are IEP meetings held?") or play a short fill-in-the-blank game where you give the lead-in and the audience completes the sentence, such as:

- Two terms that IDEA defines are...
- Evaluating a child to determine if he or she has a disability is paid for by... (...requires that... gathers information on... must use instruments and procedures that...)
- Three items that must be included in a child's IEP are...
- The IEP Team includes...
- Discipline procedures were first included in IDEA ...
- One disciplinary provision is...

And then there's what's new!

- Early intervening services
- Response to intervention



Slide loads completely. No clicks are necessary except to advance to the next slide.

CLICK AGAIN to advance to next slide.

Slide 6 adds to the advance organizer of content to covered in this training module by isolating a list of the *new* elements of IDEA that will be discussed.

Take a moment to solicit input from the audience as to how much they know about these subjects and what questions they'd like to have answered. To avoid having participants share erroneous information that may stick in other participants' minds regardless of what you later share about either of these subjects, use a show-of-hands approach for starters (e.g., "Anyone heard of early intervening services? How many of you would characterize what you

know as "one drip from the faucet, a teacupful, a bucketful, the Rio Grande, the Atlantic Ocean?"). Then ask for a few participants to fill in a sentence or two, such as:

- What I want to know about early intervening services (or RTI) is...
- I need to know about EIS (or RTI) because...

Having participants think about how upcoming information is personally or professionally relevant to them increases the likelihood that they will learn and use it.

Definitions

- *Other Health Impairment* specifically mentions Tourette syndrome



Starting View

← Slide loads with this view showing Bullet 1.

Definitions

- *Other Health Impairment* specifically mentions Tourette syndrome




- Limits are set for *Related Services* for medical devices that are surgically implanted

Click 1

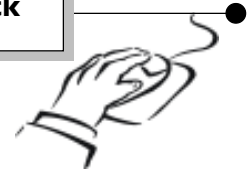
Click 1:
Bullet 2 appears.
Picture changes.

CLICK AGAIN to advance to next slide.

(discussion on next page) 

Slide 7: Background and Discussion

I Click



Here we go, diving into the first content area—changes in IDEA’s definitions in the final Part B regulations. We start with a change made to one of IDEA’s definitions of disability (other health impairment) and end the slide talking about the intersection of related services with medical devices that are surgically implanted. The discussion below first zeroes in on the change being made and then follows up with a broader discussion that provides the context of the change as well as selected basic information about IDEA.



Change Identified: Definition of “Other Health Impairment”

As the slide indicates, IDEA’s definition of Other Health Impairment (OHI) now specifically mentions Tourette syndrome as an example of “chronic or acute health problems.” The full definition appears at §300.8(c)(9) and is provided in the box at the right. Refer participants to **Handout A-6**, which provides these regulations verbatim.

Context of the Change

Why is this change significant? Elaborating on the addition of Tourette syndrome to the list of examples of other health impairments, the Department explains:

...Tourette syndrome is commonly misunderstood to be a behavioral or emotional condition, rather than a neurological condition. Therefore,

including Tourette syndrome in the definition of other health impairment may help correct the misperception of Tourette syndrome as a behavioral or conduct disorder and prevent the misdiagnosis of their needs. (71 Fed. Reg. at 46550)

To “Cap” or Not to “Cap”

First, we’re going to talk about whether the “s” in syndrome is capitalized or not, because there’s no hard and fast rule that everyone follows. Neither the slide nor IDEA’s regulations capitalize syndrome, but that’s not true everywhere. A quick scan of resources on the disability shows that some groups use “Tourette Syndrome” and some use “Tourette syndrome.” In the quotes below about the syndrome, we’ve retained whatever capitalization preference is used for accuracy, but, regardless of what that preference is, they mean the same disability.

More About Tourette Syndrome

Over 100 years ago, the French physician Georges Gilles de la Tourette wrote an article in which he described nine individuals who, since childhood, had suffered from involuntary movements and sounds and compulsive rituals or behaviors. In his honor, this constellation of symptoms was named Gilles de la Tourette’s Syndrome.¹

Tourette Syndrome... is a neurobiological disorder characterized by tics— involuntary, rapid, sudden movements and/or vocal outbursts that occur repeatedly.²

Tourette syndrome (also called Tourette’s syndrome, Tourette’s disorder, Gilles de la Tourette syndrome, GT1S or, more commonly, simply

Definition of “Other Health Impairment” in IDEA 2004: §300.8(c)(9)

(9) *Other health impairment* means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a child’s educational performance.

Tourette's or TS) is an inherited neurological disorder with onset in childhood. Tourette's was once... most often associated with the exclamation of obscene words or socially inappropriate and derogatory remarks... However, this symptom is present in only a small minority of people with Tourette's.³

The prevalence of Tourette syndrome is estimated at 2% of the general population. This may be a conservative estimate, since many people with very mild tics may be unaware of them and never seek medical attention. Tourette syndrome is four times as likely to occur in boys as in girls.⁴

The estimates you may read in the literature depend, in part, on how old the subjects were in the study (studies of adults tend to significantly underestimate rates in children), and whether the subjects were drawn from clinical settings or from the general community, to name but two factors. That said, a study by Kurlan, McDermott et al. (2001) indicates that over 19% of children in regular education classes have tics and over 23% of children in special education classes have tics.⁵

Are children with TS eligible for special education and related services? The plain answer is: It depends. Participants must not leave with the impression that, because TS is discussed in this training session or IDEA 2004, a child with TS is necessarily considered a "child with a disability" under IDEA. Other aspects are considered in determining eligibility for special education and related services, not solely the existence of the

condition (see Module 10, *Initial Evaluation and Reevaluation*). First, the determination of eligibility is made by a "team of qualified professionals and the parent of the child, consistent with §300.306(a)(1)" and this group "must base their decision on careful consideration of information from a variety of sources, consistent with §300.306(c)" (71 Fed. Reg. at 46550).

Change Identified: Extent of Related Services

The second point on the slide focuses on IDEA's definition of related services. The definition of related services appears at §300.34 and is notably lengthy. It has three parts:

- the general definition of related services, which is essentially a list;
- exceptions; and
- the individual definitions of each related service.

We've provided the first and second parts (the general definition and the exceptions) in a box on the next page and on **Handout A-6**. The entire definition (including the third part where each related service is individually defined) is provided under Theme D's handouts—on **Handout D-6**.



The "exception" at §300.34(b) regarding surgically implanted devices is new to IDEA. It generated many public comments and questions when proposed regulations were published in June 2005. While the extensive discussion of these comments and questions in the Analysis of Comments and

Changes is both interesting and informative, it is beyond the scope of this module to delve deeply into this change, save the summary provided below. However, to give trainers flexibility in addressing the needs of their audience, the Department's comments are included in their entirety in the separate *Resources for Trainers* under Theme D (see *Resource D-1* in www.nichcy.org/training/D-resources.doc or www.nichcy.org/training/D-resources.pdf).

For audiences concerned with the scope of a public agency's responsibility with respect to services provided to children with surgically implanted devices—especially cochlear implants—the Department's comments are extremely relevant and can easily be provided to participants by sharing *Resource D-1* and expanding the discussion within this training to offer more details.



What's a Cochlear Implant?

A cochlear implant is a small, complex electronic device that can help provide a sense of sound to a person who is profoundly deaf or severely hard of hearing.⁶ The technology was developed in the 1970s and has been approved for use in children since June 1990. According to the Alexander Graham Bell Association for the Deaf and Hard of Hearing (AG Bell), an individual who receives negligible benefit from hearing aids, has a severe to profound sensorineural hearing loss in both

ears, and is at least 12 months of age may be a candidate for a cochlear implant.⁷ The Hearing Loss Association of America (n.d.) states:

There is no doubt that they are here to stay. The major issues now concern the potential auditory and social implications of long-term implant use; the most suitable candidates; and, most importantly, who has the major responsibility for making the implant decision... Current surgical practice does not consider children as potential candidates until they reach two years of age.⁸

More on the “Exception”

IDEA now establishes a limit—termed an *exception*—in its definition of related services and their provision to children who have surgically implanted devices such as the cochlear implant. The cochlear implant is not the only surgically implanted device. Other examples are listed in the Trainer’s Note at the right. However, given the extensiveness of the discussion regarding cochlear implants in the Analysis of Comments and Changes and the express mention of cochlear implants in IDEA’s exception, it’s clear that the primary stimulus for this change in IDEA is the advent of cochlear implants.

What exactly is the exception, what are its limits, and what responsibilities do public agencies still have for providing related services to children with surgically implanted devices? Here’s a bullet-point summary:

- “Mapping” of a cochlear implant was expressly excluded from the definition of related services when IDEA 2004 was passed. Mapping refers to “adjusting the electrical stimulation levels provided by the cochlear implant that is

necessary for long-term post-surgical follow-up of a cochlear implant” (71 Fed. Reg. at 46569). The Senate commit-



First Two Parts of IDEA’s Definition of “Related Services”—§300.34(a) and (b)

§300.34 Related services.

(a) *General. Related services* means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) *Exception; services that apply to children with surgically implanted devices, including cochlear implants.*

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device’s functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).

tee focused on reauthorizing IDEA clearly stated it did not intend that mapping a cochlear implant, or even the costs associated with mapping, such as transportation costs and insurance copayments, be the responsibility of a school district.⁹

- The exclusion of mapping as a related service is not intended to deny a child with a disability assistive technology (e.g., FM system); proper classroom acoustical modifications; educational support services (e.g., educational interpreters); or routine checking to determine if the external component of a surgically implanted device is turned on and working. (71 Fed. Reg. at 46570)
- The exclusion of mapping as a related service does not preclude a child with a cochlear implant from receiving the related services (e.g., speech and language services) that are necessary for the child to benefit from special education services. (*Id.*)
- A child with a cochlear implant or other surgically implanted medical device is entitled to related services that are determined by the child's IEP Team to be necessary for the child to benefit from special education. (*Id.*)
- A public agency is responsible for the routine checking of the external components of a surgically implanted device in much the same manner as a public agency is responsible for the proper functioning of hearing aids. (71 Fed. Reg. at 46570-1)

Context of the Exception

Every day, approximately 1 in 1,000 newborns (or 33 babies) are born profoundly deaf in the United States.¹⁰ Not all of these children will be candidates for cochlear implants, but it's estimated that cochlear implants can help 200,000 children in the United States who do not benefit from hearing aids.¹¹ As use of the cochlear implant catches hold and the technology continues to improve, it's logical to project that the numbers of children who receive an implant will only increase. According to the Food and Drug Administration's 2005 data, nearly 100,000 people worldwide have received cochlear implants. In the United States, roughly 22,000 adults and nearly 15,000 children have received them.¹²

Receiving an implant is only the first step, however. Intensive rehabilitation therapy is then necessary for the recipient to learn how to listen with the implant, understand speech, and communicate in turn. Audiologists and speech-language pathologists are essential players in that process.¹³ Because medical insurance does not always cover this auditory and speech training, it's easy to see how the question of related services provided by schools has arisen and, with it, IDEA's exception.



Trainer's Note: Other examples of surgically implanted devices that you may want to mention for participants' reference include: insulin pump, baclofen pump, pacemaker, G-tube, and vagus nerve stimulator device.

Ensuring A Child's Access

We'd like to close this discussion with several additional comments from the Department that illustrate the continuing responsibility that public agencies have for the education of children with cochlear implants within the specific limits of the exception at §300.34(b).

- Particularly with younger children or children who have recently obtained implants, teachers and related services personnel frequently are the first to notice changes in the child's perception of sounds or that the child may be missing sounds. This may manifest as a lack of attention or understanding on the part of the child or frustration in communicating. The changes may indicate a need for remapping, and we [the Department] would expect that school personnel would communicate with the child's parents about these issues. To the extent that adjustments to the devices are required, a specially trained professional would provide the remapping, which is not considered the responsibility of the public agency. (71 Fed. Reg. at 46570-1)

- ...[T]he distinguishing factor between those services that are not covered under the Act, such as mapping, and those that are covered, such as verifying that a cochlear implant is functioning properly, in large measure, is the level of expertise required. The maintenance and monitoring of surgically implanted devices require the expertise of a licensed physician or an individual with specialized technical expertise beyond that typically available from school personnel. (71 Fed. Reg. at 46571)
- On the other hand, trained lay persons or nurses can routinely check an externally worn processor connected with a surgically implanted device to determine if the batteries are charged and the external processor is operating. ...Teachers and related services providers can be taught to first check the externally worn speech processor to make sure it is turned on, the volume and sensitivity settings are correct, and the cable is connected, in much the same manner as they are taught to make sure a hearing aid is properly functioning. (*Id.*)
- To allow a child to sit in a classroom when the child's hearing aid or cochlear implant is not functioning is to effectively exclude the child from receiving an appropriate education. (*Id.*)



¹ Tourette Syndrome Plus. (2007). *Tourette Syndrome introduction*. Retrieved May 11, 2007, at: <http://www.tourettesyndrome.net/tourette.htm>

² Tourette Syndrome Association. (n.d.). *Facts about Tourette Syndrome: Answers to most commonly asked questions*. Retrieved May 11, 2007, at: www.tsa-usa.org/imaganw/Fact_Sheet.pdf

³ Wikipedia. (2007). *Tourette syndrome*. Retrieved May 11, 2007, at http://en.wikipedia.org/wiki/Tourette_syndrome

⁴ Medline Plus. (2007). *Gilles de la Tourette syndrome*. Retrieved May 11, 2007, at www.nlm.nih.gov/medlineplus/ency/article/000733.htm

⁵ Kurlan, R., McDermott, M.P., Deeley, C., Como, P.G., Brower, C., Eapen, S., Andresen, E.M., & Miller, B. (2001). Prevalence of tics in schoolchildren and association with placement in special education. *Neurology*, 57, 1383-1388.

As cited in Parker, L.E. (2004, December). *Primer on Tourette's Syndrome*. Retrieved May 11, 2007, at www.tourettesyndrome.net/tourette_primer2.htm

⁶ National Institute on Deafness and Other Communication Disorders. (2006, May). *Cochlear implants* (NIH Publication No. 00-4798). Bethesda, MD: National Institutes of Health. Available online at: <http://www.nidcd.nih.gov/health/hearing/coch.asp>

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⁷ Alexander Graham Bell Association for the Deaf and Hard of Hearing. (n.d.). *Using a cochlear implant*. Retrieved May 13, 2007, at http://www.agbell.org/DesktopDefault.aspx?p=Using_a_Cochlear_Implant

⁸ Hearing Loss Association of America. (n.d.). *Cochlear implants*. Retrieved May 13, 2007, at <http://www.hearingloss.org/advocacy/cochlearimplantposition.asp>

⁹ Senate Report No. 108–185, p. 8. Available online at: <http://www.nasponline.org/advocacy/IDEACommittee.pdf>

¹⁰ Centers for Disease Control and Prevention. National Center for Birth Defects and Developmental Disabilities, Early Hearing Detection and Intervention Program (<http://www.cdc.gov/ncbddd/ehdi/default.htm>), as reported in Hearing Loss Association of America. (n.d.). *Facts on hearing loss*. Retrieved May 14, 2007, at <http://www.hearingloss.org/docs/factsheet.pdf>

¹¹ Cheng, A.K., Rubin, H.R., Powe, N.R., Mellon, N.K., Francis, H.W., & Niparko, J.K. (2000). Cost-utility analysis of the cochlear implant in children. *Journal of the American Medical Association*, 284(7), 850-856. As reported in Hearing Loss Association of America. (n.d.). *Facts on hearing loss*. Retrieved May 14, 2007, at <http://www.hearingloss.org/docs/factsheet.pdf>

¹² National Institute on Deafness and Other Communication Disorders. (2006, May). *Cochlear implants* (NIH Publication No. 00-4798). Bethesda, MD: National Institutes of Health. Available online at: <http://www.nidcd.nih.gov/health/hearing/coch.asp>

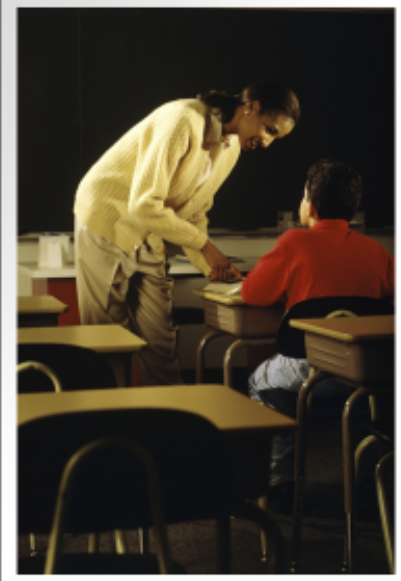
¹³ American Speech-Language-Hearing Association. (n.d.). *Cochlear implants*. Retrieved May 14, 2007, at http://www.asha.org/public/hearing/treatment/cochlear_implant.htm

View I

Definitions

Aligning with NCLB

- *Highly qualified special education teachers*




Slide loads with this view: Bullet 1, "Highly qualified special education teachers."

Click I

Definitions

Aligning with NCLB

- *Highly qualified special education teachers*
- *Core academic subjects*



Click 1: Bullet 2 appears: "Core academic subjects."


(continued on next page) 

D

Aligning with NCLB

Click 2

- *Highly qualified special education teachers*

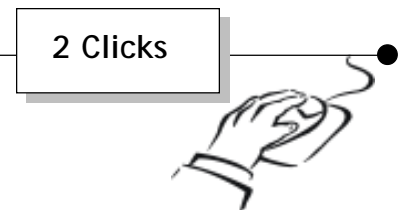


- *Core academic subjects*
- *Scientifically based research*

Click 2:
Bullet 3 appears, "Scientifically based research."

CLICK AGAIN to advance to next slide.

Slide 8: Background and Discussion



Slide 8 focuses on new definitions in IDEA that have purposefully been aligned with definitions within No Child Left Behind (NCLB). The alignment of these two laws is the subject of Theme B in this training curriculum and the six modules in Theme B, but is appropriate to mention here as a key change in IDEA.

The design of the slide allows you to discuss the definitions of highly qualified special education teachers (commonly referred to as HQT), core academic subjects, and scientifically based research one at a time, while the discussion below emphasizes how they are part and parcel of

the larger picture of improving results for children with disabilities.

HQT in NCLB and IDEA

In 2001, Congress passed Public Law 107-110, also known as the Elementary and Secondary Education Act (ESEA) or NCLB. The term "highly qualified teacher" (HQT) was first defined in NCLB and is the foundation upon which the term has been defined in IDEA 2004. How IDEA 2004's requirements for HQT are similar to, and different from, NCLB's requirements is thoroughly discussed in Module 7, *Highly Qualified Teachers*, which provides much additional information that trainers can use

here to expand discussion as need be. In the overview of key changes, discussion will be limited to summary points trainers can use to move quickly through the material.

NCLB's HQT provisions are available on Handout B-13 (as part of Theme B) but aren't provided here in Theme A. IDEA's provisions are provided—on **Handout A-6**, at §300.18—with selected excerpts in boxes on the next pages. As you can see, the provisions are lengthy, which is why only small parts of them have been excerpted on

these trainer pages. Suffice it to say that IDEA's HQT provisions borrow heavily from NCLB's and, in fact, often reference them directly. A teacher who meets IDEA's HQT provisions is considered to have met NCLB's [§300.18(g)].

Who Are We Talking About?

IDEA's provisions refer to "any public school special education teacher teaching in a public elementary school or public secondary school in the State" [§300.18(b)]. The emphasis here is on "public elementary school" and "public secondary school" in a State.

Preschool/early childhood special educators. Wondering if special educators working in public preschool or early childhood settings are included? The answer is dependent on a State's policy regarding those settings. The Department explains:

The highly qualified special education teacher requirements apply to all public elementary school and secondary school special education teachers, including early childhood or preschool teachers if a State includes the early childhood or preschool programs as part of its elementary school and secondary school system. If the early childhood or preschool program is not a part of a State's public elementary school and secondary school system, the highly qualified special education teacher requirements do not apply. (71 Fed. Reg. at 46555)

Special educators in private schools. What about special educators in private schools? Do they, too, need to meet IDEA's HQT standards? The answer is no, they do not, as long as they are employees of the *private* school. However, if a public school special educator is the person delivering services to a parentally-placed private school child (discussed in Module 16), then that special educator *is* required to meet IDEA's HQT standards.¹

Special educators in charter schools. Charter schools are, by their very nature, public schools. However, IDEA states at §300.18(b)(i) (see the box below) that public charter school special educators must meet "the certification or licensing require-

ments, if any, set forth in the State's public charter school law."

Changed Identified: What It Means To Be Highly Qualified



To be considered a highly qualified special education teacher depends on what type of special educator a person is. Have the audience take a summarizing look at §300.18 on **Handout A-6** and identify the specific types of special educators mentioned by IDEA (have participants find the italicized lead-ins). They should come away with a list like:

Special Education Teachers in General: HQT Requirements at §300.18(b)

(b) *Requirements for special education teachers in general.* (1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that—

(i) The teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;

(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(iii) The teacher holds at least a bachelor's degree.

- Special educators teaching core academic subjects
- Special educators in general
- Special educators teaching to alternate achievement standards
- Special educators teaching multiple subjects

These groupings recapitulate the predominant situations in which special educators are engaged in educating children with disabilities. Let's have a look at the most basic one of these: special educators in general.

Special educators in general. The precise meaning of §300.18(b)(1)—excerpted in the box on the previous page—may be a bit hard to untangle, because so much of teacher qualification is determined by individual State policy regarding certification or licensure. When it's boiled down to its core and intent, §300.18(b)(1) stipulates that, to be considered highly qualified, a special educator in general must meet the following requirements:

- Full State certification or licensure as a special education teacher;
- No waiving of above on an emergency, temporary, or provisional basis; and
- Minimum of Bachelor's degree.

All of these qualifications are discussed in detail in Module 7 on HQT. Refer to that module if you'd like to expand training here with a more elaborate discussion of State certification practices, what it means to waive certification on an emergency or

other basis, and the requirements and restrictions that apply to alternative routes to certification [stipulated in IDEA at §300.18(b)(2)].

Special educators teaching core academic subjects. The definition of *core academic subjects* is also part of this slide's discussion as its second bullet. You haven't gotten there yet, but you can still have participants take a look at its definition on **Handout A-6** as you talk about IDEA's HQT requirements for special educators teaching those subjects (subjects are listed in the box at the right, for quick reference). To be considered highly qualified, such special educators must meet the requirements for special educators in general and *demonstrate subject-matter competency in each subject taught.*

How does a teacher demonstrate subject-matter competency? That's an excellent question! As with most things HQT, the answer depends on a number of factors, including:

(a) whether the teacher is engaged at the elementary, middle, or secondary school level;

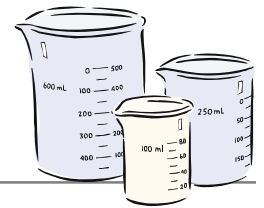
(b) whether the teacher is new to the profession or a "veteran;"

(c) what the State requires (e.g., that the teacher must pass a rigorous State academic test in each core subject area taught); *and*

(d) what criteria the State has established for its HOUSSE (High Objective Uniform State Standard of

Evaluation), which is basically an option by which veteran (and some new) teachers can demonstrate competency in subjects taught.

Thus, how subject-matter competency is demonstrated is not easily pinpointed. It will vary from State to State and by elementary, middle, and secondary school focus, among other things. The Department encourages States to examine, for each core academic subject, the degree of rigor and technicality of the subject matter that a teacher needs to know in relation to the State's content standards and academic achievement standards. Teachers, the Department recommends, should contact their



Core Academic Subjects

- English
- Reading or language arts
- Mathematics
- Science
- Foreign languages
- Civics and government
- Economics
- Arts
- History
- Geography

State Department of Education for more information about meeting the highly qualified teacher definition in the subjects they teach.²

Special educators teaching to alternate achievement standards. Alternate assessments based on alternate academic achievement standards are intended for children with the most significant cognitive disabilities. Connecting the dots, this means that we're talking about the special educators who teach the children with the most significant cognitive disabilities. The relevant HQT provisions for these teachers are found within IDEA at §300.18(c) and are provided in the box on this page and on **Handout A-6**.

Again, we have a case of multiple references to other provisions of law within NCLB and IDEA, which may make it difficult to understand at a glance what qualifications are actually required for the teachers in question to be highly qualified. Luckily, what's being referenced, in large part, is NCLB's definition of highly qualified teachers. The variety of factors impacting HQT (e.g., whether a teacher is working at the elementary, middle, or secondary school level; whether the teacher is new to the profession or not; and State-determined criteria for demonstrating subject-matter knowledge or competency), as discussed above, are applicable here as well.

In addition to those factors, then, IDEA's HQT requirements for special education teachers who teach core academic subjects to children with the most severe cognitive disabilities mean

IDEA's HQT Provisions at §300.18(c): Special Educators Teaching to Alternate Achievement Standards

(c) *Requirements for special education teachers teaching to alternate achievement standards.* When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the State.

that such teachers must either demonstrate:

- subject-matter competency in each academic subject taught as under NCLB; *or*
- subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards.

We've already talked generally about what's involved in demonstrating subject-matter competency. But what's the difference between subject-matter *competency* and subject-matter *knowledge*?

Two excerpts from the Analysis of Comments and Changes can help illuminate the dimensions of these HQT require-

ments. The first comment relates to how alternate achievement standards differ from grade-level achievement standards and how HQT requirements, by extension, differ as well.

An alternate achievement standard sets an expectation of performance that differs in complexity from a grade-level achievement standard. Section 602(10)(C)(ii) of the Act, therefore, allows special education teachers teaching exclusively children who are assessed against alternate achievement standards to meet the highly qualified teacher standards that apply to elementary school teachers. In the case of instruction above the

elementary level, the teacher must have subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, in order to effectively teach to those standards. (71 Fed. Reg. at 46558)

But what does it mean to have subject-matter knowledge “appropriate to the level of instruction being provided?” The Department also discussed this and provided an example as well:

The purpose of this requirement is to ensure that teachers exclusively teaching children who are assessed based on alternate academic achievement standards above the elementary level have sufficient subject matter knowledge to effectively instruct in each of the core academic subjects being taught, at the level of difficulty being taught. For example, if a high school student (determined by the IEP Team to be assessed against alternate achievement standards) has knowledge and skills in math at the 7th grade level, but in all other areas functions at the elementary level, the teacher would need to have knowledge in 7th grade math in order to effectively teach the student to meet the 7th grade math standards. (71 Fed. Reg. at 46558-9)

Special educators teaching multiple subjects. When IDEA talks about special educators who teach multiple subjects, it means special education teachers who teach *two or more* core academic subjects exclusively to children with disabilities. HQT

requirements for this group are divided by IDEA into two:

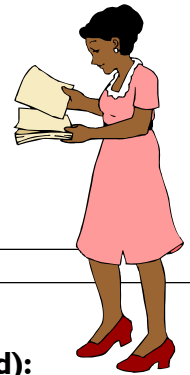
- requirements for those who aren’t new to the profession, and
- requirements for those who *are* new.

These provisions appear on **Handout A-7** at §300.18(d) and, as can be seen in the box below, again depend heavily on standards established within NCLB.

Let’s distill this straightforwardly as we can. To meet the applicable requirements at

§200.56(b) or (c), all special educators teaching multiple subjects at the *elementary school level* must:

- Have at least a Bachelor’s degree.
- Pass a rigorous State test that demonstrates their subject knowledge and teaching skills



IDEA’s HQT Provisions at §300.18(d): Special Educators Teaching Multiple Subjects

(d) *Requirements for special education teachers teaching multiple subjects.* Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either—

(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or

(3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.

in reading/language arts, writing, mathematics, and other areas of the basic elementary school curriculum.

All special educators teaching multiple subjects at the *middle or secondary school level* must:

- Have at least a Bachelor's degree.
- Comply with HQT requirements as specified for whichever of the two options describes them—are they *new* to the profession and *not new*? The requirements for teachers new to the profession and those who are not new are strikingly similar, as you can see in the regulations on the previous page. The only difference is that teachers not new to the profession have one more option for meeting highly qualified requirements—HOUSSE.

What's HOUSSE? A Brief Explanation

HOUSSE stands for "high objective uniform State standard of evaluation." It's basically a mechanism that allows some teachers—especially those who are not new to the profession—to demonstrate their subject-matter competency via the criteria a State may establish. This may include meeting HQT requirements through a combination of teaching experience, professional development, and subject-matter knowledge gained through working the field. In many States:

A teacher may choose this route instead of demonstrating competency through examination, college major, college

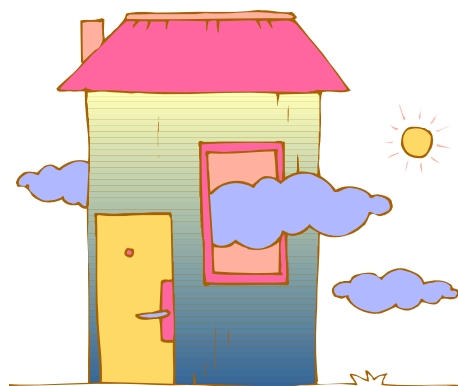
major equivalency, graduate degree, or advanced certification in the core content area taught.³

Who is Considered a New Teacher?

An inescapable question comes with these provisions and their reference to whether a special educator is new to the profession or not new: What's considered "new?"

IDEA does not define this term. "States have the authority to define which teachers are new and not new to the profession," the Department writes in the Analysis of Comments and Changes. "However, those definitions must be reasonable." (71 Fed. Reg. at 56560) And as stated in its non-regulatory guidance on improving teacher quality:

[T]he Department strongly believes that a teacher with less than one year of teaching experience is "new" to the profession (see Question A-6). (The guidance is available at <http://www.ed.gov/programs/teacherqual/guidance.doc>). This guidance is applicable to determinations of when a person is new or not new



to the profession under ...§300.18(c) and (d)(2). (*Id.*)

Additionally, as specified at §300.18(d)(3), a new special educator of multiple subjects who is already highly qualified in mathematics, language arts, or science has two years after the date of employment to demonstrate subject-matter competency in the other core academic subjects he or she teaches. This teacher may do so in the same manner as is required under NCLB's §200.56, which may include using the mechanism established in a State's single HOUSSE covering more than two subjects.

One Last HQT Requirement of Note

What about special educators who *support* regular instruction? What HQT qualifications must they meet? We're referring to the group of teachers who do not direct instruct students in core academic subjects and those who only provide consultation to highly qualified teachers about such matters as adapting curricula, using behavioral supports and interventions, or making appropriate accommodations for children with disabilities, to name a few examples. (71 Fed. Reg. at 46557)

IDEA does not require that these teachers demonstrate their subject-matter competency. However, it does require them to hold at least a Bachelor's degree and have special education certification or licensure in the State in which they teach. These are recognizably two of IDEA's basic requirements for special educators in general.

Core Academic Subjects



All of the above information was relevant to Bullet 1 on the slide, which appeared automatically when the slide loaded. The first **CLICK** you make, however, will bring up Bullet 2, core academic subjects. You may have already pointed out IDEA's definition of this term on **Handout A-6** when talking about HQT requirements for special educators teaching core academic subjects. But if not, here's IDEA's definition:

§300.10 Core academic subjects.

Core academic subjects means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

This definition is the same as NCLB's definition in section 9101 of the ESEA. This is in keeping with the alignment of the two laws and the emphasis within IDEA on ensuring that children with disabilities have access to, are involved in, and make progress in the general education curriculum and the associated academic achievement standards that States establish for all students.

Scientifically Based Research



The last element on this slide is IDEA's new definition at §300.35: scientifically based research. This new definition is provided on **Handout A-6** and reads "*Scientifically based research* has the meaning given the term

in section 9101(37) of the ESEA." ESEA's definition is provided in the box below.

'Scientifically based' is a term of significance in NCLB that has now been integrated into IDEA as part of the purposeful aligning of the two Acts. It's considered important to the implementation of Part B of IDEA 2004, which emphasizes the use of research-based decision making as a cornerstone of effective educational practice. One notable reference to using research can be found in §300.320(a)(4).

Every child's IEP must contain a statement of special education and related services and supplementary aids and services to be provided to a child or on behalf of the child. These must now be "based on peer-reviewed research to the extent practicable."

Similarly, in implementing coordinated, early intervening services—another new element in IDEA 2004 (see Module 6 for a thorough discussion)—a local educational agency (LEA) may carry out activities that include

ESEA's Definition of Scientifically Based Research

Scientifically based research—

(a) Means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs; and

(b) Includes research that—

1. Employs systematic, empirical methods that draw on observation or experiment;
2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;
3. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;
4. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;
5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and
6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

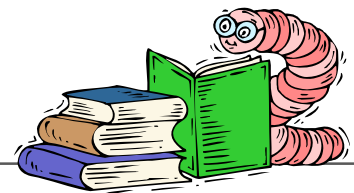
professional development for teachers and other school staff to enable them to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction. [§300.226(b)(1)]

But perhaps the most noteworthy reference in IDEA to using scientifically based research can be found in its revised provisions for determining whether a child has a specific learning disability (SLD). The criteria adopted by a State for determining whether a child has SLD:

- must permit the use of a process based on the child's response to scientific, research-based intervention; and
- may permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability.
[§300.307(a)(2)-(3)]

As examined in detail in Module 6, *Early Intervening Services and Response to Intervention*, IDEA 2004 does not refer directly to response to intervention (RTI) as an instructional or diagnostic approach, but RTI has become an important approach for State Education Agencies (SEAs) and LEAs to consider. The Department does not mandate, recommend, or endorse any one specific model of RTI, and the regulations themselves are written to accommodate different models of the basic concept—all of which include the use of research-based interventions with children who are experiencing academic or behavioral difficulties.

Both EIS and RTI will be brought under the microscope in later slides in this module. Here, looking at new definitions, however, it's fair to say that what's noteworthy about the actual definition of scientifically based research is the emphasis that IDEA now places on the use of research to guide special educational practice.



¹ See the Department's (2007) *Questions and answers on highly qualified teachers serving children with disabilities*, Section H, available online at: <http://idea.ed.gov/explore/view/p/2Croot%2Cdynamic%2CQaCorner%2C2%2C>

² U.S. Department of Education. (2004, March). *Fact sheet: New No Child Left Behind flexibility: Highly qualified teachers*. Washington, DC: Author. Available online at: <http://www.ed.gov/nclb/methods/teachers/hqtflexibility.pdf>

³ National Evaluation and Technical Assistance Center for the Education for Children and Youth Who Are Neglected, Delinquent or At Risk. (n.d.). *What is HOUSSE?* Retrieved May 4, 2007 at www.neglected-delinquent.org/nd/resources/legislate/HQT/HOUSSE.asp

Starting View

“It Wasn’t Always So”



Slide loads with this view, a teen with very thick eyebrows.

Note: The rest of the slide will automatically present, piece by piece.

No clicks are necessary except to advance to the next slide.

“It Wasn’t Always So”

Auto-Loads

Mona Lisa has no eyebrows

It was the fashion in Renaissance Florence to shave them off



NO Click necessary: A “change” observation will load on its own, then disappear, and the next “change” stat will appear, then disappear, until all have self-presented.

Here, we have some history about why the Mona Lisa had no eyebrows.

(continued on next page) 

“It Wasn’t Always So”



Pilgrims did not eat potatoes for Thanksgiving
(They thought potatoes were poisonous)

Auto-Loads

NO Click necessary:
Another observation
on change:

Pilgrims did not eat
potatoes for Thanks-
giving. (They thought
potatoes were
poisonous.)

“It Wasn’t Always So”



The “Star Spangled Banner”
did not become the National Anthem until 1931
when it was so designated by an Act of Congress

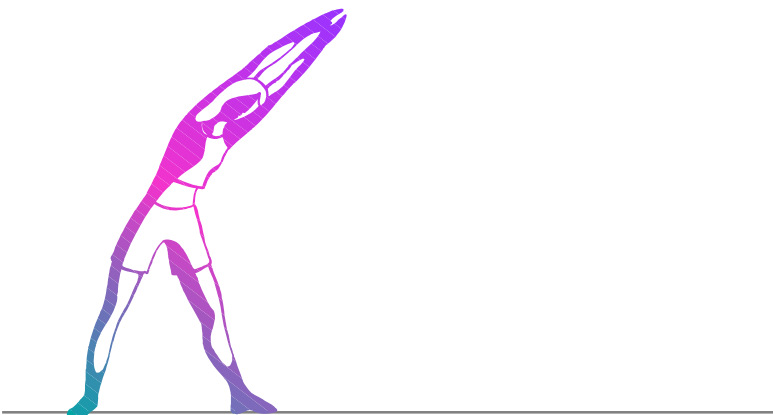
Auto-Loads

NO Click necessary:
And a third observa-
tion on change, this
one about the “Star
Spangled Banner.”

CLICK AGAIN to advance to next slide.

Slide 9 serves as a transition slide, indicating that the training is moving out of changes in IDEA’s definitions and into discussing completely different changes. Nothing much needs to be said here; the slide self-presents and only requires your **CLICK** to advance to the next slide (where you’ll return to IDEA content).

The title of the slide is “It Wasn’t Always So.” Each of its three bullet points represents a change that has occurred over time. We take these things for granted now—eyebrows, eating potatoes, and the national anthem we hear at every sporting event—but it’s sometimes fun to consider past truths and practices and reflect on how inevitably change occurs. The latest reauthorization of IDEA is one instance of change in a sea of change and continual development. Presumably, with all this change, we’re getting wiser at what we know and can do!



Trainer’s Note
In addition to providing an interlude as transition to new content, the slide also gives you the opportunity to take a break if you feel one would be appropriate or to have the audience get up and stretch stiffening muscles.

Early Intervening Services

Assistance given to students:

- Who haven't been identified yet as needing special education and related services

But—

- Who may need additional support to succeed in general education environment



Slide loads fully.
No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Back in the saddle, this time to take up the topic of early intervening services, something completely new to IDEA.

Regulatory provisions related to early intervening services are presented on **Handout A-7** and throughout this discussion section (including the next three slides). They are also examined in some detail in a separate module in this training curriculum—Module 6, *Early Intervening Services and Response to Intervention*. You can draw from the discussion presented in Module 6 to enlarge the training you present here, as you deem appropriate to the needs of your audience. Much of the discussion below (and on the next three slides) reiterates what's said in Module 6.

What Are Early Intervening Services?

Early Intervening Services—in this module, EIS for short—are not the same thing as early intervention services. These are two very different initiatives, although, to be fair, both are about intervening early. Early intervention services are for babies and toddlers with disabilities; EIS are about catching problems early in school-aged children. As the opening EIS regulation in the box on the next page shows, EIS are aimed at grades K-12, with an emphasis on K-3. EIS are about identifying children who are struggling to learn—especially apparent in the early grades and in tasks like reading and math—and quickly intervening to provide support.

Under IDEA 2004, school districts may use up to 15% of their Part B funds to develop and provide EIS to children who are not currently identified as “children with disabilities” but who need academic or behavioral support to succeed in a general education environment. EIS are not services designated for children with disabilities—in fact, if a child has been determined eligible for special education and related services, that child would not be eligible for EIS.

The rationale behind using IDEA funds to pay for EIS is that the earlier school staff can identify children' learning problems or difficulties, the quicker

and less expensive will be the task of helping those children catch up. The research literature is very clear that addressing children's academic and behavioral needs as early as possible can be critical in ensuring those problems don't deepen and solidify. The longer a child goes without assistance, the longer the remediation time and the more intense those services will have to be. From child, administrative, fiscal, and instructional perspectives, providing EIS makes very good sense. EIS provide schools with another vehicle by which to take early and strategic action when children appear at risk of academic failure or behavioral challenges.

As the slide indicates, EIS involve assistance given to children who have not yet been identified as eligible for special education and related services under IDEA but who need extra help and support to progress in the general education environment. As the Department observes in the Analysis of Comments and Changes to the final Part B Regulations:

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. (71 Fed. Reg. at 46627)

EIS in Context

IDEA's EIS provisions—to be examined more closely in the next three slides—extend important concepts found within the NCLB, particularly its emphasis on using proven methods of early reading instruction in classrooms, applying scientifically based reading research—and the proven instructional and assessment tools consistent with that research—to ensure that all children learn to read well by the end of third grade.

Similarly, EIS can help children acquire readiness for learning and the essential components of specific skills (e.g., phonological skills, fluency), so that they will then be better prepared to apply those skills to

important academic content areas. Providing EIS across the academic spectrum (e.g., reading, math, science) can result in fewer referrals for special education evaluation and better enable children to have success in school. EIS can also focus on a child's behavior so that the personal and social skills important to classroom success can be developed and reinforced. Improving children's academic success frequently improves their behavior and vice versa, so providing appropriate services as early as possible makes good sense and sound educational policy.



The Beginning of IDEA's EIS Provisions: §300.226(a)

(a) *General.* An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), 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 three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.**

View 1

IDEA's Brand-New EIS Provisions

No more than 15% of Part B funds
to develop and implement EIS

Slide loads with this view, where the header and the first item in the list (15% cap) are visible.

Clicks 1-3

IDEA's Brand-New EIS Provisions

No more than 15% of Part B funds
to develop and implement EIS

Emphasis on students in K-3

K-12 students as well

Professional development
of teachers and other school staff

Clicks 1—3:
Each click loads
another item.

CLICK AGAIN to advance to next slide.



Slide 11 continues the discussion of IDEA’s new EIS provisions found at §300.226 (refer participants to **Handout A-7**) by looking at four initial points:

- No more than 15% of Part B funds may be used to develop and implement early intervening services.
- EIS emphasizes assistance to children in grades K-3.
- EIS may also be used with children in grades 4-12.
- EIS funds may be used for professional development of teachers and other school staff.

How Much May an LEA Spend?

An LEA is allowed to use not more than 15% of their IDEA Part B funds to develop and implement EIS, as the provision at the right shows.

And what does the rest of that intricate provision mean? What is “less any amount reduced by the LEA pursuant to §300.205...” referring to?

Section 300.205 contains provisions regarding local maintenance of effort (MOE). The section specifies conditions under which an LEA may reduce its local (or State and local) expenditures for special education from one year to the next. So the amount of money an LEA may spend on EIS is affected by the amount an LEA reduces its MOE and vice versa. The two aspects are interconnected. Just

how they’re interconnected is thoroughly explored in Module 6 and will not be repeated here. If your audience has a need to understand (and apply) this interconnection, turn to Module 6 for exercises and explanations you can use.

To What Age Groups May the LEA Provide EIS?

As this slide shows (in items 2 and 3), EIS are meant for children K-12, with an emphasis on those in K-3. What’s significant here is that preschool is specifically excluded from the age and grade range IDEA 2004 permits. As stated in the Analysis of Comments and Changes to the final Part B regulations:

Early intervening services may not be used for preschool children. Section 300.226(a) tracks the statutory language in section 613(f)(1) of the

Act, which states that early intervening services are for children in kindergarten through grade 12, with a particular emphasis on children in kindergarten through grade 3. (71 Fed. Reg. at 46627)

Use of Funds for Professional Development

As the slide also indicates, professional development for teachers and other school staff may also be a part of implementing EIS, as these relevant provision show:



Lead-In of IDEA’s EIS Provisions: §300.226(a) and the 15% Cap

(a) General. An LEA may not use more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to §300.205, if any, in combination with other amounts (which may include amounts other than education funds), 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 three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(b) *Activities.* In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include—

(1) Professional development (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based

academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.
[§300.226(b)]

This allowance should be very helpful to ensuring that all of the staff involved in instruction can receive the necessary staff development to build their capacity to deliver scientifically-based academic and behavioral interventions.

—Space for Notes—

View I

Slide loads with this view.

EIS' Relationship with Disproportionality:

Concern of Congress:
Children from racial or ethnic backgrounds overidentified as children with disabilities or overrepresented in particular educational settings



Click I

Click1:
Bottom text appears: "If an LEA has such a disproportionality..."


EIS' Relationship with Disproportionality:

Concern of Congress:
Children from racial or ethnic backgrounds overidentified as children with disabilities or overrepresented in particular educational settings

If an LEA has such a disproportionality:
Must reserve **full 15%** of Part B funds for EIS, especially targeting overidentified groups.



CLICK AGAIN to advance to next slide.

(discussion on next page) 



Slide 12 introduces the interaction between EIS and disproportionality.

What is Disproportionality?

In the context of this discussion, disproportionality refers to overrepresentation or the underrepresentation of children of specific racial or ethnic groups:

- in special education;
- in particular educational settings; and
- subjected to various forms of discipline.

Used more generally, the term could refer to the *overrepresentation* or *underrepresentation* of any given population group in an area of interest or concern—individuals from specific racial and ethnic backgrounds, socioeconomic status, national origin, English proficiency, or gender, for example.

In special education, our area of concern, research has repeatedly shown the relationship between race and ethnicity and other variables to children's placement in special education classes. The past 30 years have been marked by discussions of this phenomenon, research into what is causing it, and direct action against it, as can be seen in many of IDEA '97's provisions and those of IDEA 2004.

Congressional Concern

As the slide indicates, Congress has expressed its concern about this issue over the years and taken action to investigate and ameliorate it. IDEA '97, for example, mandated new State reporting requirements concerning enrollment by race and ethnicity in special education and the suspension and expulsion of children with disabilities. Public Law 108-446—IDEA 2004 signed by President George W. Bush on December 3, 2004—opens with a list of findings that specifically identify disproportionality as an issue to be addressed. These findings are presented in the box on the next page. As you can see, they are extensive.

Addressing Disproportionality

As might be expected, given the findings of Congress, IDEA 2004 includes numerous provisions intended to directly address disproportionate representation by race and ethnicity in special education. This topic will be dealt with separately and much more fully in the module *Disproportionality and Overrepresentation*, but it's important to mention it here as well, where it intersects with IDEA's EIS provisions. Indicate that States receiving funds under IDEA must collect and examine data "to determine if significant

disproportionality based on race and ethnicity is occurring in the State and the LEAs" with respect to:

- identification of children as children with disabilities, including identification in particular disability categories;
- the placement in particular educational settings of these children; and
- disciplinary actions (how many, how long, what type), including suspensions and expulsions.

If an LEA is identified as having significant disproportionality in any of these areas, then specific action must be taken. This includes requiring the LEA to:

...reserve the maximum amount of funds...to provide intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified ... [§300.646(b)(2)]

Excerpts from *Findings in IDEA 2004*

“(10)(A) The Federal Government must be responsive to the growing needs of an increasingly diverse society.

“(B) America’s ethnic profile is rapidly changing. In 2000, 1 of every 3 persons in the United States was a member of a minority group or was limited English proficient.

“(C) Minority children comprise an increasing percentage of public school children.

“(D) With such changing demographics, recruitment efforts for special education personnel should focus on increasing the participation of minorities in the teaching profession in order to provide appropriate role models with sufficient knowledge to address the special education needs of these children.

“(11)(A) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation.

“(B) Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education.

“(C) Such discrepancies pose a special challenge for special education in the referral of, assessment of, and provision of services for, our Nation’s children from non-English language backgrounds.

“(12)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

“(B) More minority children continue to be served in special education than would be expected from the percentage of minority children in the general school population.

“(C) African-American children are identified as having mental retardation and emotional disturbance at rates greater than their White counterparts.

“(D) In the 1998–1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities.

“(E) Studies have found that schools with predominately White children and teachers have placed disproportionately high numbers of their minority children into special education.

Public Law 108-446 (IDEA 2004), Section 601(c), *Findings*.

View 1

Early Intervening Services:



- Do not limit right to FAPE

Slide loads with
Bullet 1 in view.

Clicks 1-2

Early Intervening Services:



- Do not limit right to FAPE
- Do not create right to FAPE
- May not be used to delay appropriate evaluation of a child suspected of having a disability

Click 1:
Bullet 2 appears.

Click 2:
Bullet 3 appears.

(continued on next page) 

Early Intervening Services:



- Do not limit right to FAPE
- Do not create right to FAPE
- May not be used to delay appropriate evaluation of a child suspected of having a disability

Regardless of IDEA funds being used to provide EIS:

FAPE is an entitlement **only** for children currently eligible for special education under IDEA, as outlined in their IEPs

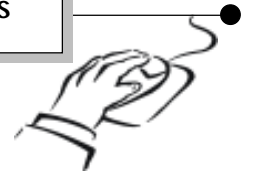
Click 3

Click 3:
Text at bottom
appears regarding
entitlement to FAPE.

CLICK AGAIN to advance to next slide.

Slide 13: Background and Discussion

3 Clicks



Slide 13 makes a series of important points about the meaning of EIS within IDEA 2004, which is essentially a special education law. While EIS are meant to be provided to children who are not currently receiving special education and related services under IDEA, doing so neither creates nor limits a child's right to FAPE. A child receiving early intervening services may later be found to be a "child with a disability," as IDEA 2004 defines that term, and may begin to receive special education and related services instead of EIS. But receiving EIS does not automatically create a right to eligibility for special education and the provision of FAPE. In this sense, FAPE and EIS

are not connected at all. As the text at the bottom of the slide indicates, regardless of the fact that EIS may be paid for with IDEA funds, FAPE is an entitlement only for children currently eligible for special education and related services under IDEA. This is embodied in the regulation at §300.226(c):

(c) *Construction.* Nothing in this section shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

This latter point—that EIS may not be used as a reason to delay an appropriate evaluation

of a child suspected of having a disability—is critical. EIS have been introduced into IDEA 2004 as a way to "benefit both the regular and special education programs by reducing academic and behavioral problems in the regular education program and the number of inappropriate referrals for special education and related services" (71 Fed. Reg. at 46628). Having the option of providing early intervening services to children who are struggling does not change

the public agency's affirmative obligation to evaluate any child it suspects of having a disability. For this reason, the Department did not specify a time limit on how long a child could receive EIS before an initial evaluation for special education services must be conducted.

We do not believe it is appropriate or necessary to specify how long a child

can receive early intervening services before an initial evaluation is conducted. If a child receiving early intervening services is suspected of having a disability, the LEA must conduct a full and individual evaluation in accordance with

§§300.301, 300.304 and 300.305 to determine if the child is a child with a disability and needs special education and related services. (71 Fed. Reg. at 46626)

—Space for Notes—



Slide loads fully. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 14 serves as another transition slide, indicating that the training on EIS is done and another set of changes in IDEA will be discussed. The slide alerts the audience that you're about to "change" the subject (pardon the pun).

Nothing much needs to be said here; the slide self-presents and only requires your CLICK to advance to the next slide (where you'll return to IDEA content).



As with all the transition slides in this training module, this slide gives you the opportunity to take a break if you feel one would be appropriate or to have the audience get up and stretch stiffening muscles.

Evaluation and Reevaluation

Starting View

Timeframes

Initial evaluation must be conducted **within 60 days** of receiving parental consent for the evaluation



Slide loads with this view, showing IDEA's new timeframe for initial evaluation.

Evaluation and Reevaluation

Click 1

Timeframes


Initial evaluation must be conducted **within 60 days** of receiving parental consent for the evaluation

OR

If a State establishes a timeframe... within the **State's** timeframe

Click 1: "Or—" appears and the information in the circle.

CLICK AGAIN to advance to next slide.

(discussion on next page) 

Slide 15: Background and Discussion

1 Click



The focus shifts now to key changes in initial evaluation and reevaluation procedures in IDEA 2004. The first change to be discussed will be IDEA's new provision establishing a timeframe within which an initial evaluation of a child must occur.



Setting Up the Discussion of Initial Evaluation

Evaluation is an incredibly important part of IDEA and is a topic in its own right. Three

modules in this training curriculum are devoted to it—Module 9, *Introduction to Evaluation*; Module 10, *Initial Evaluation and Reevaluation*; and Module 11, *Identification of Children with Specific Learning Disabilities*. Before launching into the discussion of how elements of evaluation have changed in IDEA 2004, talk for a few minutes with the audience about what they already know. This will activate their prior knowledge (upon which they will “hang” the new information to be presented) and create a foundation for those in the audience who aren't

familiar with IDEA's evaluation requirements.

Below we're provided a brief chart of prompting questions you might ask and answers you'll want to hear (or supply). These certainly don't cover all that's involved in evaluation, but they will help you sketch the broad picture of its purpose and some of its most basic considerations.

Prompting Question	Summary Answer
What's the purpose of evaluation?	<ul style="list-style-type: none"> • To see if the child is a “child with a disability,” as defined by IDEA • To gather information that will help determine child's educational needs • To guide decision making about appropriate educational program for the child
Who may request that a child be evaluated?	The parent or the public agency
What must the public agency do <i>before</i> it may evaluate a child?	<ul style="list-style-type: none"> • Provide parent with prior written notice • Provide parent with procedural safeguards notice • Obtain parent's informed consent
What kind of information must be gathered in the evaluation?	Relevant functional, developmental, and academic information about the child
May a child be evaluated as part of a large group?	No. An initial evaluation of a child under IDEA must be full and individual
Do the parents participate in the evaluation of their child?	Yes, definitely—they must give their informed written consent for the evaluation. They are part of the group that gathers information about the child and may contribute their own insights, outside evaluations, and other relevant data
How are the data from evaluation used?	See the “purposes” listed above

Change Identified: Establishing a Timeframe



Congress added a specific timeframe to IDEA within which initial evaluations must be conducted. This has been addressed in the regulations at §300.301(c)(1), appear on Handout A-8, and read as follows:

The initial evaluation—

(1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or

(ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe...[§300.301(c)(1)]

Under prior law, public agencies were required to conduct initial evaluations within a “reasonable period of time” after receiving parental consent [34 CFR §300.343(b) (1999)], so the specification of a 60-day timeframe in IDEA 2004 represents a significant change. It’s important to note, however, that *any timeframe established by the State takes precedence over the 60-day timeline required by IDEA*, as is clear in use of the word “or” between (i) and (ii). That State-established timeframe can be more than 60 days or less than 60 days, as the State chooses.

And of course there are certain permissible exceptions...



Exceptions to the 60-Day Timeframe

In addition to any timeframe a State might establish, there are two exceptions to the new 60-day timeframe for conducting initial evaluation. These are stated at §300.301 and on Handout A-8, and are:

- if the parent of a child repeatedly fails or refuses to produce the child for the evaluation.
- when a child enrolls in a school of another public agency after the relevant timeframe (either IDEA’s or the State’s) has begun, and before the child’s previous public agency makes a determination as to whether the child is a child with a disability under §300.8. [§300.301(d)]
Note the exception to this exception below!

In the second case, the exception only applies if the new public agency “is making sufficient progress to ensure a prompt completion of the evaluation,” and the parent and the new public agency “agree to a specific time when the evaluation will be completed” [§300.301(e)]. It also only applies to children who have transferred to a school in a *different* (new) public agency [§300.323(e)-(f)]. As the Department states:

[I]t is important that it is understood that the 60-day or State-established timeframe does not apply when a child transfers from one school to another school in the same public agency. When a child transfers from one school to another school in the same public agency, we expect that an initial evaluation will be conducted within 60 days of receiving parental consent for the evaluation, or within the State-established timeframe. (71 Fed. Reg. at 46638)

Starting View

Evaluation and Reevaluation

In identifying children with specific learning disabilities (SLD)



Slide loads only the intro "In identifying children with specific learning disabilities...."

Evaluation and Reevaluation


In identifying children with specific learning disabilities (SLD)

- State may not require the use of "severe discrepancy model"
- State must permit use of a process based on the child's response to scientific, research-based procedures
- State may permit the use of other alternative research-based procedures

Clicks 1-3

Clicks 1—3:
Each click brings up a new bullet.

CLICK AGAIN to advance to next slide.

(discussion on next page) 



IDEA has long included “Additional Procedures for Identifying Children with Specific Learning Disabilities.” This organizing title comes straight from the regulations and is immediately followed by what those additional provisions are—which span from §300.307 through §300.311 (see Module 11 for a detailed discussion). The key change in these procedures that’s in focus on this slide is found at §300.307 (see **Handout A-8** and the box below).

Use of Severe Discrepancy

Many in the audience may have heard of “severe discrepancy,” which has been a common approach to identifying SLD in children for a long time now. Ask participants to summarize what they know about this approach as a way to set the background and context for this change in IDEA.

“Discrepancy” refers to an unexpected difference between a child’s ability and his or her achievement in school. “Severe discrepancy” typically means a large or significant difference between ability and achievement.¹ Children who are of average or above-average intelligence are expected to perform at that level of ability. When they don’t, parents and school staff often become concerned, and the child may be referred for a full and individual evaluation under IDEA to discover potential reasons for the discrepancy.

In recent years, the severe discrepancy model has been controversial in determining whether a child has a specific learning disability. How much discrepancy is enough to be considered “severe” and, thus, evidence of a learning disability? This is an answer that States have individually defined. And it is also one of the reasons why using the discrepancy model to diagnose SLD has been criticized. Since States have varied in their definition of “severe discrepancy,” this could mean that a child may have been eligible in State A for special education and related services as a child with SLD, while in State B, that child would not have been eligible, because State B established a

higher cut-off point for “severe discrepancy.”

Another element of severe discrepancy models that has distressed educators, parents, and disability organizations alike has been the time it can take to establish a discrepancy. Children may struggle and even fail for several years before the discrepancy between ability and achievement is large enough to be judged significant or severe enough. And waiting years to make the determination that a child has an SLD “delays treatment to later grades when the



Key Change in Identifying Children with SLD: §300.307

(a) *General.* A State must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the State—

(1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);

(2) Must permit the use of a process based on the child’s response to scientific, research-based intervention; and

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

(b) *Consistency with State criteria.* A public agency must use the State criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

child is farther behind peers and effective interventions are more difficult to implement” (Reschly, Hosp, & Schmied, 2003, p. 6).²

Moving Away from Severe Discrepancy



As the slide indicates and as can be seen on **Handout A-8**, IDEA now states that the criteria a State adopts to determine whether a child is a child with a disability:

Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability. [§300.307(a)(1)]

This is a substantial change in IDEA. Previously, IDEA (at §300.541(a)(2), 1999) required States to use a discrepancy model to determine whether a child has an SLD. Now IDEA provides that State may *not* require its LEAs to consider a severe discrepancy in determining whether a child has an SLD. IDEA does not *prohibit* its use, although, as the Department notes, States may do so if they choose.

States are free to prohibit the use of a discrepancy model. States, including States that did not use a discrepancy model prior to the Act, are not required to develop criteria that permit the use of a discrepancy model. (71 Fed. Reg. at 46646)

Moving Towards...What?

If we're moving away from use of a severe discrepancy model in determining SLD, what are we moving *toward*? A child's response to research-based interventions or procedures, it would seem. These may now become an important element in determination of SLD, although such a determination may not be based only upon how a child responds to research-based interventions or alternative research-based procedures. IDEA requires that public agencies use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child.

That said, however, the changes in IDEA regarding use of a severe discrepancy approach in SLD determination and the inclusion of the two new approaches listed on the slide are significant, especially considering that more than 2.8 million children (ages 6-21) receive special education and related services in our public schools under the disability category of SLD.

These new provisions are found at §300.307 (they were cited above and appear on **Handout A-8**). Now States *must* permit “the use of a process



based on the child's response to scientific, research-based intervention” and *may* permit “the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).” Let's take a look at what those two things are.

Response to Research-Based Interventions



This new provision is a fine example of IDEA 2004's new emphasis upon scientifically based research and its potential to inform educational practice and improve results for children with disabilities. That's not the only reason that the provision is likely to be of high interest to participants; it's a hot topic in its own right, because it relates to the equally hot topic of response to intervention, or RTI.

RTI is the subject of the next two slides, so you may wish to defer any detailed discussion of this approach until then. Briefly, here, however, let us say that RTI is an approach new in IDEA 2004 (although IDEA never actually uses that term in its provisions) for sorting out whether a struggling student really is a child with a disability or just needs more intensive regular education strategies to succeed in school. When a child is identified as struggling to learn—usually through system-wide screening tests or through a teacher's observation or testing—RTI may be used to see how the child responds to deliberate research-based interventions and other direct supports. If the child fails to learn adequately when

provided with this assistance, then interventions will become increasingly more intensive. Student progress is closely monitored, so the school will know if the child is learning or improving. If the child still does not respond adequately to the intervention, then he or she may be referred for evaluation under IDEA to determine eligibility for special education and related services.

Response to Other Alternative Research-Based Procedures

The third bullet on the slide (which will come up on your third click of the mouse) relates to IDEA's new provision at §300.307(a)(3), which stipulates that States:

(3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

This is relatively vague, so your audience may be interested in more detail on what these "other alternative research-based procedures" might be. The Department's discussion may help you illuminate the matter.

New §300.307(a)(3) ... recognizes that there are alternative models to identify children with SLD that are based on sound scientific research and gives States flexibility to use these models. 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. We believe the evaluation procedures in section 614(b)(2) and (b)(3) of the Act give the Department the flexibility to allow States to use alternative, research-based procedures for determining whether a child has an SLD and is eligible for special education and related services. (71 Fed. Reg. at 46648)



¹ Kavale, K. (2001, August). *Discrepancy models in the identification of learning disability*. Paper presented at the Learning Disabilities Summit: Building a Foundation for the Future, Washington, DC. Available online at: <http://www.nrld.org/resources/ldsummit/kavale.shtml>

² Reschly, D.J., Hosp, S.L., & Schmied, C.M. (2003). *And miles to go...: State SLD requirements and authoritative recommendations*. Retrieved on November 14, 2006 from <http://www.nrld.org/research/states/MilestoGo.pdf>

View I

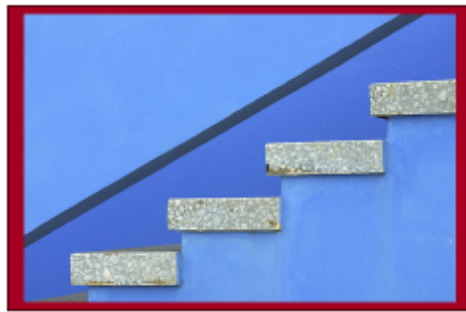
What is RTI?

Research-based approach to helping children who are struggling



Slide loads with this view.

What is RTI?




Typically involves 3 levels of assistance that increase in intensity

1. Screening and classwide interventions
2. Targeted, small-group interventions
3. Intensive interventions

Click I

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Paragraph 2 loads ("Typically involves..."), as well as the three levels of assistance.

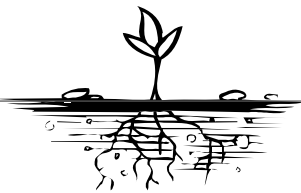
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(discussion on next page) 



Slide 17 elaborates on the topic of RTI as introduced in the last slide and allows you and the audience to take a more detailed look at both IDEA's corresponding new provisions and the use of RTI in the field.

RTI is explored in detail in a separate module *Early Intervening Services and Response to Intervention* (which is provided as part of the umbrella category of **IDEA and General Education**). That module can be used to enrich the audience's understanding of RTI and the role that it can play in identifying SLD in States that permit their LEAs to use this process as part of SLD determination. You can use the description of RTI from that module, as you deem appropriate. If you need to flesh out the discussion on SLD in general and how children are identified as having an SLD, you can also turn to Module 11 on that very subject.



The Roots of RTI

RTI is a new component within IDEA 2004 and the final Part B regulations and represents a process that schools may use to help children who are struggling. One of its underlying premises is the possibility that a child's struggles may be due to inadequacies in instruction or in the curriculum either in use at the moment or in the child's past. With RTI, these struggling

children can be identified early and provided appropriate instruction, thus increasing the likelihood that they can be successful and maintain their class placement.

Describing RTI

The National Joint Committee on Learning Disabilities (2005) sums up the core concepts of RTI in the following way:

Core concepts of an RTI approach are the systematic (1) application of scientific, research-based interventions in general education; (2) measurement of a child's response to these interventions; and (3) use of the RTI data to inform instruction.¹

How these concepts play out in reality can readily be observed in almost any RTI implementation. Typically, struggling children are identified through poor performance in a classwide, schoolwide, or districtwide screening process intended to indicate which children are at risk of academic or behavioral problems. A child also may be identified through other means, such as teacher observation. The school may then ensure that an RTI process is faithfully implemented and provides the child with research-based interventions while the child is still in the general education environment.

As the slide indicates, RTI typically has different levels of intensity. At the first level, interventions focus more on helping struggling children in a group. A certain amount of time

is allotted to see if the child responds to the intervention—hence, the name RTI. Progress is monitored closely. If the child does, indeed, respond to the research-based intervention, then this indicates that perhaps his or her difficulties have resulted from less appropriate or insufficiently targeted instruction.

If, however, the child does not respond to the first level of group-oriented interventions, he or she typically moves to the next RTI level, which is more targeted and intensive. Again, child progress is closely monitored. The time allotted to see if the child responds to interventions in this more intensive level may be longer than in the first level—a marking period, for instance, rather than six weeks—but the overall process is much the same. If the child shows adequate progress, then the intervention has been successful and a “match” has been found to what type of instruction works with that child. It is quite possible that, if the problem is caught early enough and addressed via appropriate instruction, the child learns the skills necessary to continue in general education without further intervention.

On the other hand, if the child does not respond adequately to the intervention, then a third level becomes an option for continued and yet more intensive intervention. This third level is typically more individualized as well.

Important Note: It is worthwhile saying that, regardless of RTI as an option for struggling children or its potential use in diagnosing specific learning disabilities, at any point in its multileveled process, a child may be referred for evaluation under IDEA to determine if he or she is a “child with a disability” as IDEA 2004’s regulation defines that term at §300.8. Becoming involved in RTI does not mean that a child has to complete a level, or all levels, of an RTI approach before he or she may be evaluated for eligibility for special education and related services. The IDEA 2004’s regulation is very clear about this. Similar to EIS, RTI may not be used as a means of delaying or refusing to conduct such an evaluation if the LEA suspects that the child has a disability or if the parents request that the school system evaluate the child.

What About RTI for Children with Disabilities in Special Education?

The use of an RTI process with children who are struggling in school naturally raises questions regarding its use with children with disabilities who are receiving special education and

related services. When asked if children with disabilities would be eligible to receive services using RTI strategies, the Department (2007) responded:

Response to intervention (RTI) strategies are tools that enable educators to target instructional interventions to children’s areas of specific need as soon as those needs become apparent. There is nothing in IDEA that prohibits children with disabilities who are receiving special education and related services under IDEA from receiving instruction using RTI strategies unless the use of such strategies is inconsistent with their... IEPs... (p. 2).²

The Department *does* note an exception, however—a child with a disability who is currently receiving special education and related services “may not receive RTI services that are funded with IDEA funds used for EIS pursuant to 34 CFR §300.226” (*Id.*).



Why this restriction? If the audience considers the intent and scope of EIS, they should be able to guess the answer. As the Department explains, this restriction exists:

...because EIS is...“for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and

behavioral support to succeed in a general education environment.” (*Id.*)

The Intersection of RTI and SLD



The role of RTI is to address the needs of children who are not succeeding within the general instructional approach by identifying and implementing other research-based interventions that will work with those children. Not responding or making sufficient progress within such an intervention is an indication that learning disabilities may lie at the root of the child’s academic difficulties. This is where the intersection of RTI and SLD occurs and why RTI is seen as a promising component in identifying SLD.

The RTI language, while new to the statute and its implementing regulations, has been conceptually connected to the determination of SLD in the past. IDEA ‘97 specifically included a provision (maintained in IDEA 2004) that, in evaluating children to determine eligibility for special education, the child must not be determined to be a “child with a disability” if the determining factor is a lack of appropriate instruction in reading or math [§300.306(b)]. The responsiveness-to-intervention concept in IDEA 2004 is an elaboration or greater specification on this basic concept.

Other Contributions of RTI

The RTI component focuses on developing a profile of a child's in-class performance over a designated time interval rather than just cognitive and achievement measures that represent one point in time performance and are less tied to in-class performance. So RTI is considered to yield more ecologically or socially accurate information.

Additionally, information about a child's response should be helpful in designating the features of instruction, curriculum, goals, and placement considerations that are beneficial regardless of the child's disability determination. When RTI is incorporated into the SLD determination process, instructional staff will likely emerge with a clearer framework for evaluating the child's performance and setting targets for successful outcomes.



- ¹ National Joint Committee on Learning Disabilities. (2005, June). *Responsiveness to intervention and learning disabilities*. Austin, TX: Pro-Ed. Available online at: www.nclld.org/index.php?option=content&task=view&id=497
- ² U.S. Department of Education. (2007, January). *Questions and answers on response to intervention and early intervening services*. Washington, DC: Author. Available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C8%2C>

View I

RTI in Practice

- There are many RTI models in use*

Slide loads top bullet and the bottom disclaimer.

* The Department does **not** mandate or endorse any particular RTI model

Click I

RTI in Practice

- There are many RTI models in use*
- In RTI, progress monitoring is critical to:
 - ✓ Pinpoint child's areas of difficulty
 - ✓ Keep close track of child's progress

Click 1:
The 2nd bullet loads fully, including the sub-bullets.

* The Department does **not** mandate or endorse any particular RTI model

(continued on next page) 

RTI in Practice

- There are many RTI models in use*
- In RTI, progress monitoring is critical to:
 - ✓ Pinpoint child's areas of difficulty
 - ✓ Keep close track of child's progress
- Staff use formal guidelines to decide which children are not making adequate progress or responding to the intervention

* The Department does **not** mandate or endorse any particular RTI model

Click 2

← Click 2:
Bullet 3 loads.

CLICK AGAIN to advance to next slide.

Slide 18: Background and Discussion

2 Clicks



Slide 18 adds to the discussion of RTI by emphasizing the key points listed on the slide. The most important of these is that there are many RTI models in use and the Department does not mandate, recommend, or endorse any one specific model. As discussed more fully in the module *Early Intervening Services and Response to Intervention*, many RTI and RTI-influenced models exist. They are also the focus of extensive investigation, as can readily be seen with one visit to the Web site of the National Research Center on Learning Disabilities (www.nrclid.org). The language in both the statute and the final Part B regulations implementing IDEA 2004 does not address any particular implementation of RTI, while at

the same time ensuring that LEAs are aware that States must permit their LEAs to use a process based on a child's response to scientific, research-based intervention in SLD determinations.

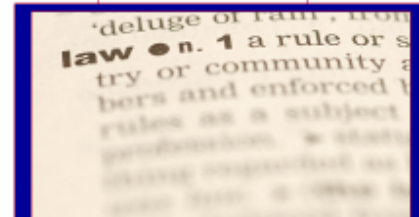
The importance of progress monitoring as a component of RTI should also be emphasized. Intrinsic to RTI is the question, "Has the child made sufficient progress?" Answering that question "yes" versus "no" leads in two distinct directions—one, back to regular instruction, and the other, on to a more intensive level of intervention or to comprehensive evaluation under IDEA 2004. So—what is adequate progress, significant progress? How much progress is enough? Are there guidelines for making these decisions? Formal

guidelines? Written down. Understood by practitioners. Implemented. Monitored to make sure they are consistently applied. Documented. Obviously, a great deal could be said about the benefits of implementing RTI with formal guidelines that spell out where performance cutoffs will be for children—and more.

View 1

IDEA and RTI

- IDEA 2004 regulations do not define RTI
- Regulations are written to accommodate different models of RTI

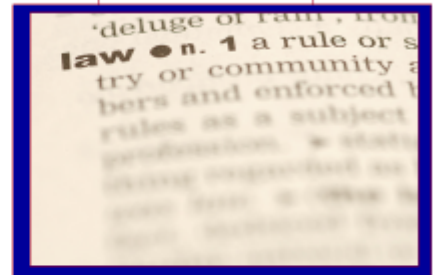


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Clicks 1-3

IDEA and RTI


- IDEA 2004 regulations do not define RTI
- Regulations are written to accommodate different models of RTI



- RTI does not replace a comprehensive evaluation
- Evaluation teams must use a variety of tools and strategies, even if RTI is used
- Results of RTI may be one part of information reviewed

Click 1, 2, and 3: Each click brings up a different bullet.

CLICK AGAIN to advance to next slide.

(discussion on next page) 



We're almost done discussing RTI...The top half of Slide 19 loads with these two bulleted items:

- IDEA 2004's regulations do not define RTI.
- Regulations are written to accommodate different models of RTI.

Both of these items may already be apparent to some who are reading between the lines of what IDEA 2004 does state about RTI, but it is worthwhile to explicitly draw audience attention to these two points.

The bottom half of the slide puts RTI within the broader context of IDEA-required evaluation and perhaps explains why the topic of RTI has been included in this module as part of a look at key changes in evaluation. One disadvantage of focusing narrowly upon a given provision of IDEA is that the big picture and other requirements of law fall out of focus. Here, to bring that bigger picture back into view, are three points to emphasize:

- RTI does not replace a comprehensive evaluation.
- Evaluation teams must use a variety of tools and strategies, even if RTI is used.
- Results of RTI may be one part of information reviewed.

RTI is not intended to replace comprehensive evaluation in IDEA, as the Department discusses in the Analysis of Comments and Changes to the final Part B regulations (see 71 Fed. Reg. 46648). It's meant to intervene in a research-based and hopefully effective way to address difficulties children are having, either academically or behaviorally. It rests on the possibility that prior or current instructional methods, not disability, might be at the root of the problem. It's meant for all children, even as it may also be used as part of making SLD determinations. IDEA 2004 requires that evaluation teams gather a wide range of informa-

tion about a child suspected of having a disability, any disability. This evaluation must involve a variety of tools and strategies, as explored in *Introduction to Evaluation*. The part that RTI results can play in diagnosing a specific learning disability has been summarized in this training, so that participants see the connections between this approach and the identification of SLD. The details of IDEA 2004's regulations for identifying SLD will be thoroughly examined in their own right, in the module on *Identification of Children with Specific Learning Disabilities*. Make it clear to your audience that there is more involved than the summary presented here.

View I

Evaluation and Reevaluation

Reevaluation

Not more than once a year *



* Unless parent and public agency agree otherwise

Slide loads the title Reevaluation and "not more than once a year" information, including the asterisked info.

Evaluation and Reevaluation

Reevaluation

Not more than once a year *



At least once every 3 years**

* Unless parent and public agency agree otherwise

** Unless parent and public agency agree reevaluation is not necessary

Click I

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CLICK AGAIN to advance to next slide.

(discussion on next page)



Back to key changes in IDEA’s procedures and requirements for evaluation—this time reevaluation. The purpose of reevaluation is to find out:

- if the child continues to be a “child with a disability,” as defined by IDEA and the final regulations, and
- the child’s educational needs.

There’s a lot that can be said about reevaluation, as most of the provisions regarding initial evaluation apply to the reevaluation process as well. These are amply covered in the separate modules on the evaluation process (Theme C), with reevaluation provisions examined primarily in Module 10, *Initial Evaluation and Reevaluation*. We refer you to that module for additional material and discussion you can incorporate here, as needed.



Here, though, we’re looking at what’s *changed* in reevaluation, not the process in general. The slide captures two such changes. Each of these comes with a caveat that the slide notes via the asterisked text. Specifically, under IDEA 2004:

- Reevaluations are not to occur more than once a year—unless the parent and the public agency agree otherwise.
- Reevaluations must occur at least once every three years—unless the parent and public agency agree that a reevaluation is unnecessary.

These provisions are found in the final regulations at §300.303(b), as shown below and on **Handout A-8**.

The limitations the law places on reevaluations are intended to reduce the burden on the public agency and the child of repeated and often costly evaluations. As the Senate Committee Report on S. 1248 states: “The Committee believes that requiring costly and time-consuming reevaluations when both parents and local educational agencies deem them to be unnecessary is counterproductive” [S. Rep. No. 108-185 at 24 (2003)].¹ However, the law also provides flexibility to parents and public agencies alike, so that if they agree either that a reevaluation is warranted or, conversely, that it is not necessary, the need for a reevaluation can be addressed in a responsive and child-focused manner.

“Agreement” and “Consent”

The discussion in the Analysis of Comments and Changes also includes a point we feel is important to highlight here—the difference between parent agreement and parent consent. This difference has been discussed elsewhere in this training package, but each time it comes up, it is worth noting because there is a difference between the two that is often overlooked.

An *agreement* between a parent and a public agency—as is required for either not conducting a three-year reevaluation or for conducting more than one

§300.303 Reevaluations.

(a) *General.* A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—

(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child’s parent or teacher requests a reevaluation.

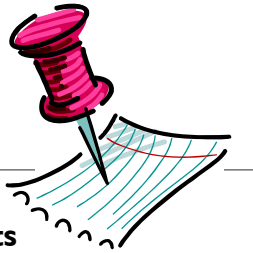
(b) *Limitation.* A reevaluation conducted under paragraph (a) of this section—

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

reevaluation of a child in a year—is not the same thing as *parent consent* as defined in §300.9. The Department summarizes the implications of the term “agreement” as it is used in IDEA’s reevaluation provisions:

Rather, an agreement refers to an understanding between a parent and the public agency and does not need to meet the requirements for parental consent in §300.9. (71 Fed. Reg. at 46641)



Additional Points of Interest

The Department discusses the new aspects of reevaluation and how they might play out in reality. We’ve summarized several relevant points below.

Do parents have to give a reason for requesting a reevaluation of their child? No. As the Department notes:

Section 300.303(b)...states that a reevaluation may occur if the child’s parent or teacher requests a reevaluation. There is no requirement that a reason for the reevaluation be given and we agree that a reevaluation cannot be conditioned on the parent providing a reason for requesting a reevaluation. (71 Fed. Reg. at 46640)

If a parent requests a reevaluation and the public agency disagrees that a reevaluation is needed, *may the public agency refuse to conduct the reevaluation of the child?* Yes. As in so many other areas when parents and public agencies disagree, the IDEA provides a process to be followed and options for resolving disputes. In this case:

[T]he public agency must provide the parents with written notice of the agency’s refusal to conduct a reevaluation, consistent with §300.503...that explains, among other things, why the agency refuses to conduct the reevaluation and the parent’s right to contest the agency’s decision through mediation or a due process hearing. (*Id.*)

May the parent disagree with (and refuse) the public agency’s request to reevaluate the child? Yes. As the Department discusses:

In situations where a public agency believes a reevaluation is necessary, but the parent disagrees and refuses consent for a reevaluation, new §300.300(c)(1)(ii) is clear that the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in §300.300(a)(3). (*Id.*)

If parents and the public agency agree that a three-year reevaluation is unnecessary, does the agency have to again offer to reevaluate the child next year? No. Of this situation, the Department points out:

[I]f parents who have waived a three year reevaluation later decide to request an evaluation, they can do so. (*Id.*)

However, this point is also worth noting, with respect to agency responsibility:

Also, public agencies have a continuing responsibility to request parental consent for a reevaluation if they determine that the child’s educational or related services needs warrant a reevaluation. (*Id.*)

And this last point is similarly important:

It is not necessary to add language clarifying that waiving three-year reevaluations must not be a routine agency policy or practice because the regulations are clear that this is a decision that is made individually for each child by the parent of the child and the public agency. (*Id.*)

¹ S. Rep. No. 108-185. (2003). Available online at: www.nichcy.org/reauth/SenateReportonIDEA.pdf

View I

Evaluation and Reevaluation

Reevaluation is not required...

... when a student with a disability is graduating from secondary school with a regular diploma or due to exceeding the age eligibility for FAPE under State law



Slide loads with this view.

Click I

Evaluation and Reevaluation

Reevaluation is not required...


... when a student with a disability is graduating from secondary school with a regular diploma or due to exceeding the age eligibility for FAPE under State law

The public agency must...

... provide a summary of the student's academic achievement and functional performance, including recommendations on how to assist the student in meeting his or her postsecondary goals

Click1: All of 2nd paragraph loads.

CLICK AGAIN to advance to next slide.

(discussion on next page) 

Slide 21: Background and Discussion

1 Click



Slide 21 brings up two new provisions of IDEA that will be significant for public agencies, children, and parents alike. The first one appears at §300.305(e), below and on **Handout A-8**, and identifies two exceptions to IDEA's requirement that an evaluation must be conducted before a public agency may determine that the child is no longer "a child with a disability." Such a determination would bring about a change in the child's eligibility for special education and related services and, thus, is important for both the public agency and the child.

As the slide indicates, IDEA now permits the public agency to *not* conduct a reevaluation before terminating a student's eligibility under IDEA when:



- the student graduates from secondary school with a regular diploma, or
- when the student exceeds the age eligibility for FAPE under State law.

What the Public Agency Must Do

The public agency must provide prior written notice regarding the termination of such children's eligibility, because it is proposing to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. [§300.503(a)] The law also expressly requires prior written

notice when a student graduates from high school with a regular diploma, as follows:

- (iii) Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with §300.503. [§300.102(a)(3)(iii)]

This slide also focuses on another obligation of public agencies in these two circumstances: The public agency must provide the child with a summary of his or her academic achievement and functional performance. This summary must include recommendations on how to assist the child in meeting the child's postsecondary goals. This new



provision is discussed more fully below (and is covered as well in the separate module, *Initial Evaluation and Reevaluation*).

Senate Committee Remarks

The Senate Committee Report on S. 1248 included an explanation of why these new provisions were included in the reauthorized law. The Committee states:

Exit evaluations

The committee has heard that local educational agencies feel compelled by current statutory language to conduct a reevaluation of a child with a disability



New Provisions in IDEA and the Final Regulations: Exceptions to Reevaluation Before a Change in Eligibility

(e) *Evaluations before change in eligibility.* (1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. [§300.305(e)]

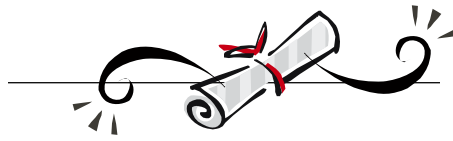
when he or she either graduates from secondary school or ages out of IDEA eligibility. Both parents and schools have complained that a reevaluation seems unnecessary, time-consuming, and costly. The committee agrees. Therefore, the committee has included language in section 614(c)(5)(B), based upon existing Federal education regulations (34 C.F.R. 300.534(c)(2)), stating that a student does not need to be reevaluated before leaving secondary school. [S. Rep. No. 108-185 at 27 (2003)]

Department Analysis

The Department elaborates on the dimensions of a public agency's obligations to reevaluate students who meet the exceptions noted here.

While the requirements for secondary transition are intended to help parents and schools assist children with disabilities transition beyond high school, section 614(c)(5) in the Act does not require a public agency to assess a child with a disability to determine the child's eligibility to be considered a child with a disability in another agency, such as a vocational rehabilitation program, or a college or other postsecondary setting. The Act also does not require LEAs to provide the postsecondary services that may be included in the summary of the child's academic achievement and functional performance.

We believe it would impose costs on public agencies not contemplated by the Act to include such requirements in the regulations. (71 Fed. Reg. at 46644)



What is Considered a Regular Diploma?

Also relevant to these new provisions is how the final regulations implementing IDEA 2004 define "regular diploma." As stated in §300.102(a)(3)(iv):

[T]he term *regular high school diploma* does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED).

New Provision: Summaries for Students



The second point on the slide addresses another new provision in IDEA: what the public agency must do for a student whose eligibility terminates under the circumstances being discussed here. As stated at §300.305(e)(3):

...a public agency must provide the child with a summary of the child's academic achievement and functional performance,

which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

Go over the slide and this requirement with your audience. You may wish to share the Senate committee's remarks on this new provision as well.

The bill also requires local educational agencies to provide a summary of the child's performance. The committee intends for this summary to provide specific, meaningful, and understandable information to the student, the student's family, and any agency, including postsecondary schools, which may provide services to the student upon transition. The committee does not intend that the contents of this summary be subject to any determination of whether a free appropriate public education has been provided. Further, the committee does not expect local educational agencies to conduct any new assessments or evaluations in providing the summary; rather, it should be based upon information the school has already gathered on the child. [S. Rep. No. 108-185 at 27-28 (2003)]

The Senate Report on IDEA (S. Rep. No. 108-185) is available online at: www.nichcy.org/reauth/SenateReportonIDEA.pdf



What Might the Summary Contain?

As to the content of this summary, the law specifies only what you see in the provision at §300.305(e)(3). Urged by commenters to specify the summary's contents in greater detail, the Department declined, saying:

The Act does not otherwise specify the information that must be included in the summary and we do not believe that the regulations should include a list of required information. Rather, we believe that State and local officials should have the flexibility to determine the appropriate content in a child's summary, based on the child's individual needs and postsecondary goals. (71 Fed. Reg. at 46645)

—Space for Notes—

View I

Evaluation and Reevaluation

Independent Educational Evaluations (IEE)

If a parent disagrees with an evaluation or reevaluation...



Slide loads with the title and "If a parent disagrees..."

Evaluation and Reevaluation

Independent Educational Evaluations (IEE)

If a parent disagrees with an evaluation or reevaluation...



... the parent is entitled to **only one IEE** at public expense each time the agency conducts an evaluation with which the parent disagrees.

Click I

Click 1: Picture changes, and the concluding part of the sentence loads.

CLICK AGAIN to advance to next slide.

(discussion on next page)



The last slide in this “new-to-evaluation” section of the training module focuses upon a key change to IDEA’s provisions regarding independent educational evaluations (IEEs). All of IDEA’s IEE provisions at §300.502 are provided on **Handout A-8**, to guide the discussion.

Many in the audience may know about IEEs, but you can’t assume that everyone does, so a summarizing statement about IEEs would be important to offer. Say something like:

IEEs... this is one of IDEA’s procedural safeguards and gives parents the right to have an evaluation of their child conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. This is a right parents may exercise if they don’t agree with the evaluation results obtained by the school. Part of the right includes the right to ask the school (public agency) to pay for the cost of the independent evaluation.

Who pays for the IEE?

The answer is that some IEEs are at public expense and others are not. For example, the parent of a child with a disability may disagree with the public agency’s evaluation and request an IEE at public expense. “At public expense” means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent

[§300.502(a)(3)(ii)]. The public agency may grant the parent’s request and pay for the IEE or arrange to have one conducted at no cost to the parent, or it may file a complaint seeking a due process hearing to show that its own evaluation was appropriate.

If the public agency initiates a hearing and the final decision of the hearing officer is that the agency’s evaluation was appropriate, then parents still have the right to an IEE but not at public expense [§300.502(b)(3)].

Other IEE Provisions

- Parents have the right to obtain an IEE of their child, subject to these procedures. [§300.502(a)(1)].
- If the parent requests an IEE, the public agency may ask the parent why he or she objects to the public evaluation. However, the agency may not *require* the parent to explain, and it may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend the public evaluation. [§300.502(b)(4)].
- Whenever an IEE is at public expense, it must meet any criteria that the public agency uses when it initiates an evaluation—such as the location of the evaluation and the qualifications of the examiner—to the extent consistent with a parent’s right to an IEE. However, the public agency may not impose other conditions or timelines related

to obtaining an IEE at public expense. [§300.502(e)].

- If the parents request an IEE, the public agency must inform them about any agency criteria that apply to an IEE and provide information about where an IEE may be obtained. [§300.502(a)(2)].
- The results of an IEE at public expense or an evaluation obtained at private expense that has been shared by the parent must be considered by the public agency in any decision made with respect to the provision of FAPE to the child *if the IEE or evaluation meets agency criteria*. [§300.502(c)(1)].
- As part of a hearing on a due process complaint, a hearing officer may request an IEE; if so, that IEE must be at public expense. [§300.502(d)].

So—What’s the Change?



While there are several new aspects of IEEs introduced in these regulations, one in particular is noted on this slide (although you can certainly share the other changes as you see fit).

Limiting an IEE at public expense for each disputed evaluation. These regulations state that a parent is entitled to only one IEE at public expense each time

the public agency conducts an evaluation with which the parent disagrees [§300.502(b)(5)]. This new regulatory provision is “consistent with a parent’s statutory right to an IEE at public expense, while recognizing that public agencies should not be required to bear the cost of more than one IEE when a parent disagrees with an evaluation conducted or obtained by the public agency.” (71 Fed. Reg. 46690)

Other Changes in IEEs You May Wish to Mention



IEEs are more fully discussed in Module 17, *Introduction to Procedural Safeguards* (because IEEs are, in fact, one of IDEA’s procedural safeguards, however much they may also be seen as related to the topic of evaluation we’re currently discussing). As part of that module, the following changes in IEEs are also discussed:

Presenting the results of an IEE as evidence in a due process hearing. The regulations at §300.502(c) now include specific language that permits “any party to present the results of a publicly-funded IEE” as evidence in a due process hearing (71 Fed. Reg. 46691). Parents should not have the “expectation of privacy regarding an evaluation that is

publicly-funded or for which they seek public funding (71 Fed. Reg. 46690-46691). Accordingly, the regulations have changed §300.502(c)(2) “to ensure that public agencies have the opportunity to introduce the results of publicly-funded IEEs at due process hearing” (71 Fed. Reg. 46691).

Privately funded evaluations. The regulations also clarify that if a parent shares a privately-funded evaluation with the public agency, that evaluation may be presented as evidence in a due process hearing. The exact regulatory language reads:

(c) *Parent-initiated evaluations.* If the parent obtains an independent educational evaluation at public expense *or shares with the public agency an evaluation obtained at private expense*, the results of the evaluation—

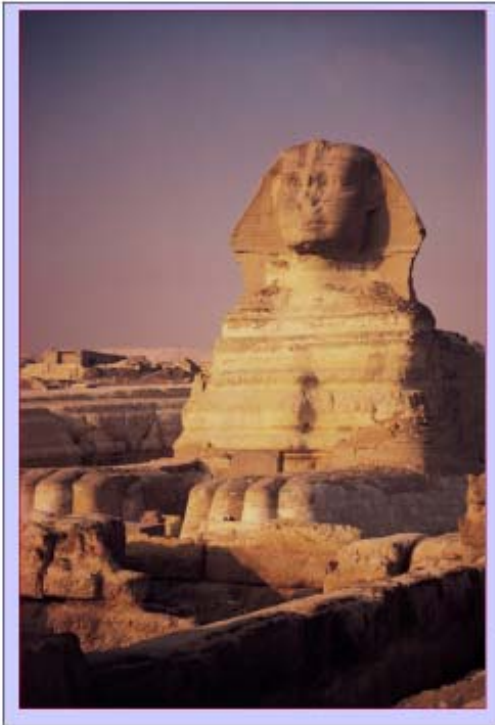
(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child. [§300.502(c), *emphasis added*]

Explaining this provision, the Department noted:

If a parent obtains an evaluation at private expense, there is nothing in the Act or these regulations that requires a parent to share that evaluation with the public agency. A privately funded evaluation that is not shared with a public agency would not be considered an IEE under this regulation. (71 Fed. Reg. 46690)

View I



Ancient Egyptians
slept on pillows made
of stone.

Slide loads the
observation at the
top and a picture of
the Sphinx.

Click I




*Time
to refresh!*

Click 1:
Picture changes,
new picture of people
exercising appears,
and the rest of the
text.

Who wants to sit like
stone or sleep on it?

CLICK AGAIN to advance to next slide.

(discussion on next page) 

Slide 23: Background and Discussion

1 Click



Here we have another transition slide, indicating that the training on changes in evaluation and reevaluation (including the role that RTI can play) is done and another set of changes in IDEA will be discussed. Next up? Changes in the IEP. Big topic!

Nothing much needs to be said here, except perhaps to discuss with your audience how stiff (hungry, restless, sleepy...) they've become or how glad they are that humankind has changed the practice of sleeping on pillows of stone. The slide self-presents and only requires your **CLICK** to advance to the next slide (where you'll return to IDEA content).



Here's a perfect opportunity to take a break, or have participants get up from their chairs and move around, shaking out the kinks, visiting the bathroom, getting a beverage, and returning with refreshed attention spans.

View I

Slide loads with title, subtitle, and the first paragraph ("Designated IEP Team members...").

Changes in IEP Meetings

Excusing a Member from Attending IEP Meeting

Designated IEP Team members are **not** required to attend IEP meeting, in whole or in part, *given specific conditions*



Click I

Changes in IEP Meetings


Excusing a Member from Attending IEP Meeting

Designated IEP Team members are **not** required to attend IEP meeting, in whole or in part, *given specific conditions*

- Which members?



Click 1:
Bullet 1 appears, asking "Which members?"

(continued on next page) 

Click 2

Changes in IEP Meetings

Excusing a Member from Attending IEP Meeting

Designated IEP Team members are **not** required to attend IEP meeting, in whole or in part, *given specific conditions*

- Which members?
- Under what conditions?



Click 2:
Bullet 2 appears,
asking "Under what
conditions?"

CLICK AGAIN to advance to next slide.

Slide 24: Background and Discussion

A new chapter of key changes opens in the training module! This time we're focused on what IDEA requires with respect to the individualized education program (IEP). These provisions span from §300.320, where the IEP is defined, to §300.328, which discusses alternative means of meeting participation.

The IEP is extremely relevant to a great many people, since every child with a disability receiving special education and related services under IDEA must have one. That's why this training curriculum includes multiple modules on the IEP (see Modules 11-16) and discusses IDEA's IEP provisions at length. The next six slides will identify key changes in those provisions,

with much of the associated discussion being drawn from the separate modules, especially *Content of the IEP* (Module 13) and *Meetings of the IEP Team* (Module 14).

Change Identified: Excusing Members from IEP Meetings



For the first time, IDEA includes provisions that permit certain IEP Team members to be excused from attending the IEP meeting, in whole or in part, given specific conditions. The slide's design allows you to summarize these new provisions by dividing discussion into two parts:

2 Clicks



- Which members?
- What are the specific conditions under which a certain member can be excused?

Answers to both questions can be found at §300.321(e), which is provided in the box on the next page and on **Handout A-9**.

Members for Whom Agreement or Consent is Needed Before Excusal

As can be seen in the provisions above, IDEA refers to members of the IEP Team “described in paragraphs (a)(2) through (a)(5) of this section....” And these paragraphs refer to:

- the child’s regular education teacher, if the child is, or may be participating in the regular education environment;
- the child’s special education teacher, or where appropriate, the child’s special education provider;
- a representative of the public agency, who is qualified to provide (or supervise the provision of) specially designed instruction, who knows the general education curriculum, and who knows what resources the public agency has available; and
- an individual who can interpret the instructional implications of evaluation results.

Before any of these members may be excused from an IEP meeting (in whole or in part), the child’s parents and the public agency must be in agreement about excusing the member. (“Being in agreement” comes with specific conditions to be discussed in a moment.) This is not required for other members of the IEP Team, although specific conditions apply if their area of expertise is going to be discussed at the meeting.



What Conditions Apply to Excusal?

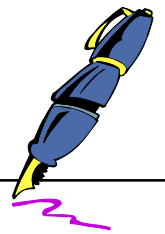
The conditions that apply to excusal vary, depending on whether the member’s area of expertise is or is *not* going to be discussed or modified at the meeting.

Area of expertise is not going to be discussed or modified. If the member’s area of expertise is *not* going to be discussed or modified, then that member may be excused from the meeting (in whole or in part) if the parent and the public agency agree in writing to do so.

As discussed much more fully in Module 11 (*The IEP Team: Who*

Is A Member?) and as mentioned already in the current training module (see Slide 20), it’s important to note that *agreement* is not the same as *consent*. It’s one of the distinguishing elements in these new provisions—whether IDEA requires parents and LEA to merely agree or whether informed parent consent is needed. The following response to a comment in the Analysis of Comments and Changes published with the final Part B regulations is instructive:

If the member’s area is not being modified or discussed, §300.321(e)(1) ...provides that the member may be excused from the meeting if the parent and LEA agree in writing that



Excusing a Member of the IEP Team from Attending an IEP Meeting in Whole or in Part: §300.321(e)

(e) *IEP Team attendance.* (1) A member of the IEP Team described in paragraphs (a)(2) through (a)(5) of this section is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member’s area of the curriculum or related services is not being modified or discussed in the meeting.

(2) A member of the IEP Team described in paragraph (e)(1) of this section may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of the curriculum or related services, if—

(i) The parent, in writing, and the public agency consent to the excusal; and

(ii) The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

the member's attendance is not necessary.

An agreement is not the same as consent, but instead refers to an understanding between the parent and the LEA. Section 614(d)(1)(C) of the Act specifically requires that the agreement between a parent and an LEA to excuse a member's attendance at an IEP Team meeting must be in writing. If, however, the member's area is being modified or discussed, 300.321(e)(2), consistent with section 614(d)(1)(C)(ii) of the Act, requires the LEA and the parent to provide written informed consent. (71 Fed. Reg. at 46673)

"Consent" in IDEA refers to "written informed consent"—which has a distinct and precise meaning under the law, as captured in IDEA 2004's definition of consent, which is provided in the box on this page.

This level of consent is not required when the area of expertise of the member to be excused is not going to be discussed or modified at the meeting. It is needed if the excused member's area is going to be discussed or modified.

Which begs the question: If *consent* differs from *agreement*, what does *agreement* entail? As the Department explained in the Analysis of Comments and Changes:

We believe it is important to give public agencies and parents wide latitude about the content of the agreement and, therefore, decline to regulate on the specific information that

§300.9 Consent.

Consent means that—

(a) 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;

(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

an LEA must provide in a written agreement to excuse an IEP Team member from attending the IEP Team meeting when the member's area of the curriculum or related services is not being modified or discussed. (71 Fed. Reg. at 46674)

Yes, area of expertise is going to be discussed or modified. For a member to be excused from the IEP meeting (in whole or in part) when his or her area of expertise is going to be discussed or modified, then these conditions must be met:

- The parent and the public agency must *consent* in writing to excuse the member, and
- The member to be excused must submit, in writing to the parent and the IEP Team, input into the development of the IEP before the meeting.

Requiring parental consent triggers IDEA's procedural safeguards and the requirements that must be met as part of requesting consent. Those requirements are discussed in detail in the module on *Introduction to Procedural Safeguards*. The Department nicely summarized how those requirements apply in this circumstance:

Consistent with §300.9, consent means that the parent has been fully informed in his or her native language, or other mode of communication, and understands that the granting of consent is voluntary and may be revoked at any time. The LEA must, therefore, provide the parent with appropriate and sufficient information to ensure that the parent fully understands that the parent is consenting to excuse an IEP Team member from attending an IEP Team meeting in which

the member's area of the curriculum or related services is being changed or discussed and that if the parent does not consent the IEP Team meeting must be held with that IEP Team member in attendance. (71 Fed. Reg. at 46674)

The Department also explained, in response to a comment, that it believes:

...the safeguard of requiring consent will be sufficient to prevent parents from feeling pressured to excuse an IEP Team member. Furthermore, parents who want to confer with an excused Team member may ask to do so before agreeing or consenting to excusing the member from attending the IEP Team meeting" (*Id.*)

How far in advance of the meeting must the parent be notified of an agency's request to excuse a member from attending an IEP Team meeting? This question arose during the public comment period following publication of the draft Part B regulations. The Department provided the following explanation, which we present below in a series of bullet points to emphasize its various aspects.

- The Act does not specify how far in advance of an IEP Team meeting a parent must be notified of an agency's request to excuse a member from attending an IEP Team meeting or when the parent and LEA must sign a written agreement or provide consent to excuse an IEP Team member. (71 Fed. Reg. at 46676)

- Ideally, public agencies would provide parents with as much notice as possible to request that an IEP Team member be excused from attending an IEP Team meeting, and have agreements or consents signed at a reasonable time prior to the IEP Team meeting. (*Id.*)
- However, this might not always be possible, for example, when a member has an emergency or an unavoidable scheduling conflict. (*Id.*)
- To require public agencies to request an excusal or obtain a signed agreement or consent to excuse a member a specific number of days prior to an IEP Team meeting would effectively prevent IEP Team members from being excused from IEP Team meetings in many situations and, thus, be counter to the intent of providing additional flexibility to parents in scheduling IEP Team meetings. (*Id.*)
- Furthermore, if an LEA requests an excusal at the last minute or a parent needs additional time or information to consider the request, the parent always has the right not to agree or consent to the excusal of the IEP Team member. (*Id.*)

Note that this explanation relates to both circumstances of excusing a member: (a) when agreement in writing between the parent and the public agency is required because the member's area is not going to be discussed or modified; and (b) when consent of the parent and the public agency in writing is required, because the member's

area is going to be addressed in the meeting.

Submitting Written Input



Questions naturally arise as to the nature of the written input the excused member must submit before the meeting. Two elements are clear in the final Part B regulations:

- the input must be in writing, and
- the input must be provided to the parent and to the IEP Team before the meeting.

IDEA 2004 and the final Part B regulations do not specify what form this input must take or how far in advance of the meeting the member must submit it. With respect to the lack of a specified timeline, the Department provided the following explanation in the Analysis of Comments and Changes published with the final Part B regulations:

Section 614(d)(1)(C)(ii)(II) of the Act requires that input into the development of the IEP by the IEP Team member excused from the meeting be provided prior to the IEP Team meeting that involves a modification to, or discussion of the member's area of the curriculum or related services. The Act does not specify how far in advance of the IEP Team meeting that the written input must be provided to the parent and IEP Team members.

For the reasons stated earlier, we do not believe it is appropriate to impose a specific timeframe for matters relating to the excusal of IEP Team members. Parents can always reschedule an IEP Team meeting or request that an IEP Team meeting be reconvened if additional time is needed to consider the written information. (71 Fed. Reg. at 46676)

Similarly, neither the law nor its regulations specify the form or the content of the written input that is required. The Department provided the following explanation in the Analysis of Comments and Changes:

The Act does not specify the format or content to be included in the written input provided by an excused member of the IEP Team. Neither does the Act specify the method(s) by which a public agency provides parents and the IEP Team with the excused IEP Team member's written input. We believe that such decisions are best left to local officials to determine based on the circumstances and needs of the individual child, parent, and other members of the IEP Team.... (71 Fed. Reg. at 46677)



Sharing the Resulting IEP

If a member is excused from the meeting, he or she will then not be aware of the IEP that emerges from that meeting—what's new, what's different, what remains unchanged. Does the IDEA specify any procedures or requirements for informing the excused member about the updated IEP or other results of the meeting?

The Department provided the following relevant explanation in the Analysis of Comments and Changes:

Section 300.323(d) already requires each public agency to ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider and other service provider who is responsible for its implementation, regardless of whether the IEP Team member was present or excused from an IEP Team meeting.

How and when the information is shared with the IEP Team member who was excused from the IEP Team meeting is best left to State and local officials to determine. (71 Fed. Reg. at 46677)

Reflecting on These New Provisions

The latitude to excuse a team member from attending an IEP meeting is intended to reduce the burdens placed upon teachers, related services personnel, and others who routinely participate in IEP meetings as members of the IEP Team. These provisions do not offer an ironclad "hall pass," though. Not only do specific conditions apply to their use, but they also exist within a much broader and well-established purpose.

The IEP Team is expected to act in the best interest of the child. As with any IEP Team meeting, if additional information is needed to finalize an appropriate IEP, there is nothing in the Act that prevents an IEP Team from reconvening after the needed information is obtained, as long as the IEP is developed in a timely manner.... The parent can request an additional IEP Team meeting at any time and does not have to agree to excuse an IEP Team member. Likewise, if a parent learns at the IEP Team meeting that a required participant will not be at the meeting, the parent can agree to continue with the meeting and request an additional meeting if more information is needed, or request that the meeting be rescheduled. (71 Fed. Reg. at 46676)

Other aspects of this new provision were discussed in the Department's Analysis of Comments and Changes and are excerpted below.



Selected Additional Remarks in the Analysis of Comments and Changes

The U.S. Department of Education's discussion of this new provision of IDEA 2004 includes many other interesting statements and explanations. Several are excerpted below.

- An LEA may not routinely or unilaterally excuse IEP Team members from attending IEP Team meetings as parent agreement or consent is required in each instance. We encourage LEAs to carefully consider, based on the individual needs of the child and the issues that need to be addressed at the IEP Team meeting whether it makes sense to offer to hold the IEP Team meeting without a particular IEP Team member in attendance or whether it would be better to reschedule the meeting so that person could attend and participate in the discussion. (71 Fed. Reg. at 46674)
- An LEA that routinely excuses IEP Team members from attending IEP Team meetings would not be in compliance with the requirements of the Act, and, therefore, would be subject to the State's monitoring and enforcement provisions. (*Id.*)
- It is up to each public agency to determine the individual in the LEA with the authority to make the agreement (or provide consent) with the parent to excuse an IEP Team member from attending an IEP Team meeting. The designated individual must have the authority to bind the LEA to the agreement with the parent or provide consent on behalf of the LEA. (71 Fed. Reg. at 46676)

View I

Changes in IEP Meetings

After the annual IEP meeting...



Parent and public agency can agree *not to convene* an IEP meeting to make changes to child's IEP and instead develop a written document to amend or modify the IEP

Slide loads with the title, the subtitle, and the first paragraph.

Changes in IEP Meetings

After the annual IEP meeting...




Parent and public agency can agree *not to convene* an IEP meeting to make changes to child's IEP and instead develop a written document to amend or modify the IEP

Upon request, a parent must be provided a copy of this revised IEP with the amendments incorporated

Click I

Click 1: Picture changes, and "Upon request" paragraph appears.

CLICK AGAIN to advance to next slide.

(discussion on next page) 



Slide 25 introduces yet another entirely new provision in



IDEA 2004: the possibility that the IEP Team does not actually have to physically meet to amend the IEP, given certain conditions. This change is also examined in Module 15, *Meetings of the IEP Team*.

First, to summarize the new provision: Now, IEP Teams have the option of drafting a written amendment to the IEP, agreeing to the amendment, and incorporating this modification into the IEP. Before the IEP Team can utilize this new alternative, specific conditions must be met. Let's have a look at what those conditions are (see IDEA's regulations on **Handout A-9** and in the box).

Discussion of These Conditions

Parent and LEA agreement. A number of aspects are worth noting about the law's requirement that the parent and public agency have the option of agreeing "not to convene an IEP Team meeting to make changes to the child's IEP, and instead, to develop a written document to amend or modify the child's current IEP." The Analysis of Comments and Changes contained the following pertinent explanation of these provisions:

- The "Act does not place any restrictions on the types of changes that may be made, so long as the parent and public agency agree... [T]he procedural safeguards in §300.500

through §300.520 are sufficient to ensure that a child's IEP is not changed without prior notice by a public agency and an opportunity to discuss any changes with the public agency." (71 Fed. Reg. at 46685)

- The "Act does not require the agreement between the parent and the public agency to be in writing." (*Id.*)
- The parent is not required to provide consent (as defined in §300.9 and discussed on earlier slides) to amend the IEP without an IEP meeting. (*Id.*)

Main Conditions

Three primary conditions must be met in order for a child's IEP to be amended without the IEP Team physically meeting.

- This option cannot be used with the IEP meeting that is required at least annually to review and revise the IEP. This option applies only to modifications the Team might want to make after the annual IEP meeting has been held.
- Parents and the LEA must agree to not meet, but to take this approach instead.
- The amendment or modification to the IEP must be in writing.

**New Provisions in IDEA 2004:
Amending the IEP Without Meeting:
§300.324(a)(4) and (6)**

(4) *Agreement.* (i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

(5)...

(6) *Amendments.* Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

- With respect to the latter observation, the Department observed that “. . . it would be prudent for the public agency to document the terms of the agreement in writing, in the event that questions arise at a later time. Of course, changes to the child’s IEP would have to be in writing” (*Id.*).

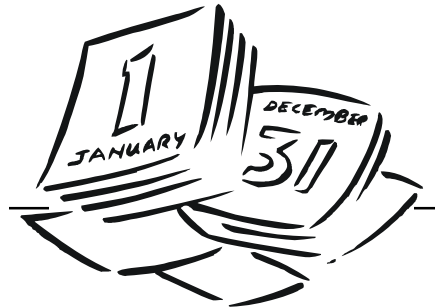
And finally, as the Department pointed out in response to a comment:

If the parent needs further information about the proposed change or believes that a discussion with the IEP Team is necessary before deciding to change the IEP, the parent does not have to agree to the public agency’s request to amend the IEP without an IEP Team meeting. (*Id.*)

Inapplicability to the annual IEP meeting. The option of amending the IEP via a written document instead of via an IEP Team meeting cannot be used in lieu of the requirement that the IEP Team meet at least annually to review and, as appropriate, revise the child’s IEP. Point out the lead-in phrase “In making changes to a child’s IEP after the annual IEP Team meeting for a school year” [at §300.324(a)(4)]. The Department, responding to public comments on the matter, provided the following clarification in the Analysis of Comments and Changes:

We do not believe that an amendment to an IEP can take the place of an annual IEP Team meeting. It is unnecessary to regulate on this issue because section 614(d)(4)(A)(i) of the Act

clearly requires the IEP Team to review the child’s IEP annually to determine whether the annual goals for the child are being achieved. (71 Fed. Reg. at 46685)



Changes must be in writing. This requirement is not surprising, given that the IEP is a written document and, as such, is used to specify the child’s educational program, including special education and related services and supplementary aids and services. Neither the Act nor its regulations speak to the issue of what form this written amendment must take. As with many other aspects of the law, this is left to the discretion of State and local public agency officials.

Informing the IEP Team. In keeping with IDEA’s requirements that all service providers of the child must have access to the child’s IEP and must be informed of their responsibilities for implementing it, the Department included an explicit regulatory provision at §300.324(a)(4) (ii) requiring the public agency to ensure that the child’s IEP Team is informed of any changes made to the child’s IEP as the result of a written document to amend or modify the child’s current IEP made by the parents and the public agency. The team must also be informed when

and how the IEP has been changed. Modifications to the document, especially to the services or supports enumerated there, may directly affect their involvement and responsibilities. However, the Department declined to add regulatory requirements as to the “timeframe within which the public agency must make the IEP accessible to the service providers... or otherwise notify them of the changes” (71 Fed. Reg. at 46686). Again, this is a matter that is best left to State and local public agency officials to determine, given the circumstances—whether the changes were minor or major, for example.



Final Note

If the parent requests a copy of the revised IEP with the amendments incorporated, the public agency must provide it [§300.324(a)(6)]. In keeping with §300.322(f) (cited below), the public agency may not charge the parent for providing this requested copy of the amended IEP.

(f) *Parent copy of child’s IEP.* The public agency must give the parent a copy of the child’s IEP at no cost to the parent.

Changes in IEP Content

“A statement of the child’s **present levels** of *academic achievement and functional performance*...”



Slide loads fully. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

This module now moves into key changes made in IDEA 2004 to *content* of the IEP, that all-important document in the education of every child with a disability receiving special education and related services under IDEA.

Change Identified: “Present Levels”



Refer participants to Handout A-9, where changes in IDEA’s provisions on content of the IEP are identified (the entire content of the IEP is not listed, only provisions where key changes identified in this module have occurred). Starting at §300.320 (a)(1), IDEA requires that each IEP must include:

(1) A statement of the child’s present levels of academic achievement and

functional performance, including—

(i) How the child’s disability affects the child’s involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(ii) For preschool children, as appropriate, how the disability affects the child’s participation in appropriate activities;

This part of the IEP is often referred to as the “present levels” statement or simply as “present levels”—a short term for a much bigger concept. Under IDEA 2004 the concept has gotten even bigger. Prior to IDEA 2004, a child’s “present levels” referred to a child’s present levels of *educational* performance. Now, under IDEA 2004, the statement

of “present levels” must describe “the child’s present levels of *academic achievement* and *functional performance*” [§300.320 (a)(1)]. You’ll notice that both of these new terms appear on this slide in italicized text, and that’s why. This is one of the changes in the IEP brought about by IDEA 2004.

What’s *not* new to IDEA 2004 is that the “present levels” statement must also include how the child’s disability affects the child’s involvement and progress in the general education curriculum—which is the same curriculum as for children without disabilities.

But what does this mean—present levels of academic achievement and functional performance? Let’s take a closer look and think about this a moment, because a lot of the

other information in the IEP will emerge from this “present levels” statement.

A Closer Look at “Present Levels”

The “present levels” statement is crafted by considering the areas of development in which a child with a disability may need support. These are now roughly divided into the two areas of development: academic and functional. Neither of these terms—academic achievement, functional performance—is defined in the regulations. However, both are discussed by the Department in its Analysis of Comments and Changes. Responding to public comments asking that the terms be defined, the Department states:

“Academic achievement” generally refers to a child’s performance in academic areas (e.g., reading or language arts, math, science, and history). We believe the definition could vary depending on a child’s circumstance or situation, and therefore, we do not believe a definition of “academic achievement” should be included in these regulations. (71 Fed. Reg. at 46662)



It is not necessary to include a definition of “functional” in these regulations because we believe it is a term that is generally understood to refer to skills or activities that are not considered academic or related to a child’s academic achievement. Instead, “functional” is often used in the context of routine activities of everyday living. We do not believe it is necessary to include examples of functional skills in the regulations because the range of functional skills is as varied as the individual needs of children with disabilities. We also decline to include examples of how functional skills are measured because this is a decision that is best left to public agencies, based on the needs of their children. However, it should be noted that the evaluation procedures used to measure a child’s functional skills must meet the same standards as all other evaluation procedures, consistent with §300.304(c)(1). (71 Fed. Reg. at 46661)

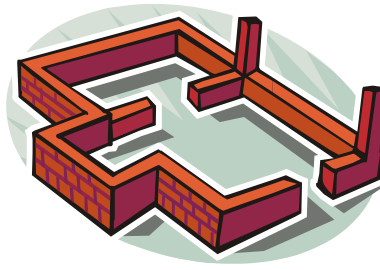
Academic achievement: How do we ordinarily interpret that term? If academic achievement generally refers to a “child’s performance in academic areas,” then we are talking about the academic subjects a child studies in school and the skills the student is expected to master in each. Recall with participants the definition of “core academic subjects” found at §300.10 and on Hand-out A-6:

- English
- Reading or language arts
- Mathematics
- Science
- Foreign languages
- Civics and government
- Economics
- Arts
- History
- Geography

Children’s circumstances will vary, as the Department notes, which means that the examination of the child’s academic achievement and performance is an *individualized* consideration. Where does that child stand academically, and—a critical question—how does the child’s disability affect his or her involvement and progress in the general education curriculum? The “present levels” statement must contain a description that answers these questions. Given that in prior law the “present levels” statement focused on describing the child’s levels of *educational performance*, IDEA

2004's requirement to describe a child's academic achievement is not markedly different. Those in the audience familiar with developing IEPs will recognize the similarities between the two terms.

Functional performance: How do we ordinarily interpret that term? If, as the Department indicates in the quote above, functional performance refers to those activities or skills that are not academic and not related to a child's academic achievement, then we are speaking of the skills and activities of everyday living—daily living skills such as dressing, eating, going to the bathroom; social skills such as making friends and communicating with others; behavior skills, such as knowing how to behave oneself across a range of settings; and mobility skills, such as walking, getting around, going up and down stairs. All of these types of skills are important to consider when writing the child's "present levels" statement. This is a new requirement in IDEA. Where does the child stand in terms of functional performance? How does the child's disability affect functional



performance and, from there, his or her involvement in, and progress in, the general education curriculum? As with academic achievement, consideration of a child's functional performance is highly *individualized*.

The Change in Context

Discussing the change that IDEA 2004 has brought to the "present levels" statement also requires emphasizing how critical the "present levels" statement is to the overall IEP that's developed for a child with a disability. In many ways, "present levels" is the foundation upon which the rest of the IEP is developed. The "present levels" description of the child's academic and func-

tional performance should directly inform other parts of the IEP —most notably, what annual goals are appropriate for the child and what services, supports, and accommodations are necessary to assist the child in meeting those goals.

FYI: Additional Resources

This training curriculum includes a separate module on *Content of the IEP* (Module 13) that provides a more extensive discussion of this key change in IDEA and the new, more comprehensive "present levels" statement that is now required. That discussion includes examples of "present levels" statements you can use to illuminate the kinds of information that such a statement might contain. Since many in the audience will be familiar with developing IEPs, you can also ask for input from participants and move the discussion from IDEA's provisions to real-life examples.

Starting View

Slide loads with the title and "Short-term objectives or benchmarks..."

Changes in IEP Content

"Short-term objectives or benchmarks ..."



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
Changes in IEP Content

"Short-term objectives or benchmarks ..."

Required *only* for children with disabilities who take alternate assessments aligned to alternate achievement standards



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(discussion on next page) 



Slide 27 looks at another change in IDEA's required IEP content—this time regarding short-term objectives or benchmarks. This is likely to be a topic of interest to the audience because, in the past, benchmarks and short-term objectives were required elements in every child's IEP. Now, however, benchmarks or short-term objectives are required *only* for children with disabilities who take alternate assessments aligned to alternate achievement standards, as the regulation below indicates. Refer participants to **Handout A-9**, so they can read IDEA's exact language at §300.320(a)(2)(ii):

(ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives...

Identifying the "Who"

Which children are we talking about when we refer to "children with disabilities who take alternate assessments aligned to alternate achievement standards?" *Alternate academic achievement standards* is a term drawn directly from NCLB at §200.1(d), which reads:

(d) *Alternate academic achievement standards*. For students under section 602(3) of the Individuals with Disabilities Education Act with the most significant cognitive disabilities who take an alternate assessment, a State may, through a documented and validated

standards-setting process, define alternate academic achievement standards, provided those standards—

- (1) Are aligned with the State's academic content standards;
- (2) Promote access to the general curriculum; and
- (3) Reflect professional judgment of the highest achievement standards possible.

Alternate assessments based on alternate academic achievement standards, then, are intended for children with the most significant cognitive disabilities. The Department describes this group as:


...that small number of students, who are (1) within one or more of the 13 existing categories of disability (e.g. autism, multiple disabilities, traumatic brain injury, etc.); and (2) whose cognitive impairments may prevent them from attaining grade-level achievement standards, even with the very best instruction. (68 Fed. Reg. at 68704)¹

In general, the Department "expects that no more than 9.0 percent of students with disabilities will participate in an assessment based on alternate achievement standards" (68 Fed. Reg. at 68700).¹ While this type of alternate assessment must be linked to grade-level content, it

typically does not fully represent grade-level content, only a sampling of it. Moreover, States may define these content standards in grade clusters (e.g., grades 3-5), which they may not do with the other types of assessment.

This is the type of alternate assessment with which your audience may be most familiar. It's the "1% cap in NCLB" people are always talking about—which we will *not* talk about in this module. Instead...let's get back to the main subject of this slide.

Discussing Benchmarks and Short-Term Objectives

One of the changes made by IDEA 2004  *New in IDEA!* concerns the requirement for benchmarks or short-term objectives in IEPs. Previously, benchmarks or short-term objectives were required to be developed in connection with every child's annual IEP goals. While this requirement has changed in IDEA 2004, the



general purpose of benchmarks and short-term objectives has not. Benchmarks indicate the interim steps a child will take to reach an annual goal. They also serve as a measurement gauge to monitor a child's progress and determine if the child is making sufficient progress towards attaining an annual goal. To apply a roadmap analogy, benchmarks and short-term objectives divide a trip into the concrete, smaller steps it will take to reach a final destination (the goal).

As was said above, now benchmarks or short-term objectives are only *required* for children who take alternate assessments aligned to alternate achievement standards. Interestingly, States may still choose to use benchmarks with other children, but this is a matter left up to State discretion, as the Analysis of Comments and



Changes makes clear. Responding to public commenters opposed to removing benchmarks and short-term objectives as required components of every child's IEP, the Department states:

Benchmarks and short-term objectives were specifically removed from...the Act. However, because benchmarks and short-term objectives were originally intended to

assist parents in monitoring their child's progress toward meeting the child's annual goals, we believe a State could, if it chose to do so, determine the extent to which short-term objectives and benchmarks would be used. However, consistent with §300.199(a)(2) and sections 608(a)(2) and 614(d)(1)(A)(ii)(I) of the Act, a State that chooses to require benchmarks or short-term objectives in IEPs in that State would have to identify in writing to the LEAs located in the State and to the Secretary that such rule, regulation, or policy is a State-imposed requirement, which is not required by Part B of the Act or the Federal regulations. (71 Fed. Reg. at 46663)

¹ Title I—Improving the Academic Achievement of the Disadvantaged, Final Rule, 68 Fed. Reg. 68697 (December 9, 2003). Available online at: www.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.pdf

View I

Changes in IEP Content

Transition Planning

Beginning not later than the first IEP to be in effect **when the child turns 16**, or younger if determined appropriate by the IEP Team...



Slide loads with this title and intro paragraph.

Changes in IEP Content

Transition Planning

Beginning not later than the first IEP to be in effect **when the child turns 16**, or younger if determined appropriate by the IEP Team...



IEP must include:

- measurable postsecondary goals
- transition services (including courses of study) needed to assist the child in reaching those goals

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(discussion on next page)



Transition Statements in the IEP Now

The evolution of transition planning within IDEA is an interesting one. Transition services and planning for a student's life after secondary school has been a component of IDEA dating back to the amendments of 1990 when transition services first appeared in the law (this was also when EHA became known as IDEA).

The subsequent reauthorization, IDEA '97, added new transition requirements to the law and its Part B regulations. One of these changes related to "transition service needs" and required that, beginning no later than when the student was age 14 and every year thereafter, the IEP had to include a statement of that student's transition service needs in his or her courses of study (i.e., AP courses or vocational education).

IDEA 2004 *removes* this requirement.

Under IDEA 2004, all transition needs and services are now to be included in the IEP not later than the first IEP to be in effect when the child turns 16. The very beginning of the revised provision—found at §300.320(b) and on **Handout A-9**—can be seen on the slide. These provisions fall under "Content of the IEP" in the final Part B regulations and are presented in the box below.

However, as you can see, the language, "or younger, if determined appropriate by the IEP Team," is retained from prior law. In keeping with the individualized nature of the IEP, the IEP Team (which includes the parent and, when appropriate, the child) retains the authority to include transition services at

an earlier age, as appropriate to the student's needs and preferences.

If this is a subject of high interest to the audience, you may wish to extend the discussion of this key change to go over the pieces that comprise it—e.g., training, education, employment, and so on—and have the audience identify key words in IDEA's regulations that describe the type of information to be included in the IEP when transition to adulthood is addressed. This topic is discussed at some length in *Content of the IEP*, where the definition of transition services is provided and examined (for your convenience, it's also included in the box at the end of this discussion). We excerpt some of that discussion below, should you care to use it now.

With respect to the revised provision examined on this slide, you can organize a large-group exchange as if it were a cloze exercise where the audience fills in the missing piece, given your prompt. An example of such a back-and-forth is provided in the chart on the next page.

More About "Transition Services"

If you take a moment and think about what's to be listed in the IEP about transition (this slide) and what's included in the definition of transition services, you'll see that the domains of

IDEA and Transition Services: §300.320(b)

Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include—

(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

(2) The transition services (including courses of study) needed to assist the child in reaching those goals.

independent and adult living are emphasized. The community... employment...adult services... daily living skills... vocational... postsecondary education. The definition clearly acknowledges that adulthood involves a wide range of skills areas and activities, and that preparing a student with a disability to perform functionally across this spectrum of areas and activities may involve considerable planning, attention, and focused, coordinated services. Note that word—*coordinated*. The services are to be planned as a group and are intended to drive toward a result—they should not be haphazard or scattershot activities, but *coordinated* with each other to achieve that outcome or result.

For students themselves, the outcome or result sought via coordinated transition activities must be personally defined, taking into account a student's interests, preferences, needs, and strengths. This is why the public agency both must invite the student with a disability to attend the IEP Team meeting "if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under §300.320(b)" and "must take other steps to ensure that the child's preferences and interests are considered" if the student is not able to attend [§300.321(b)].



Points of Discussion in the Analysis of Comments and Changes

While transition services haven't changed all that much from IDEA '97 to IDEA 2004, a number of interesting points came up in the Department's Analysis of Comments and Changes that accompanied publication of the final Part B regulations. We've excerpted several below.

- Commenter request: To clarify whether "*transition assessments*" are formal evaluations or competency assessments.

The Department did not believe such a clarification was necessary, because "...the specific transition assessments used to determine appropriate measur-

If you were to say aloud leadingly...	The audience would supply IDEA's words...
Postsecondary goals must be...	<ul style="list-style-type: none"> • appropriate • measurable
Postsecondary goals must also be based on...	age-appropriate transition assessment
Transition assessment in what...?	<ul style="list-style-type: none"> • training • education • employment • independent living skills, where appropriate
Transition services include...	courses of study
Transition services for a student as those that the student needs...	...to assist the student in reaching those goals
What goals?	the postsecondary goals

able postsecondary goals will depend on the individual needs of the child, and are, therefore, best left to States and districts to determine on an individual basis." (71 Fed. Reg. at 46667)

- Commenter request: To define *postsecondary goals*.

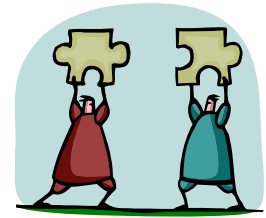
The Department did not believe such a definition was necessary, stating that: "The term is generally understood to refer to those goals that a child hopes to achieve after leaving secondary school (i.e., high school)." (71 Fed. Reg. at 46668)

- Commenter question: Does §300.320(b)(1) require measurable postsecondary goals in each of the areas mentioned?

The Department responded:

[T]he only area in which postsecondary goals are not required in the IEP is in the area of independent living skills. Goals in the area of independent living are required only if appropriate. It is up to the child's IEP Team to determine whether IEP goals related to the development of independent living skills are appropriate and necessary for the child to receive FAPE. (71 Fed. Reg. at 46668)

Resources of More Information



Transition is a huge topic. Its treatment within this module and in the module *Content of the IEP* is necessarily brief, given all that can be said on the subject. Not all audiences will need extensive information on transition planning; it really is a topic that comes in its own time. You can therefore enlarge its treatment here for participants who live with or work with children with disabilities of transition age, or keep this key change in the IEP a brief mention only.

Should you wish to enlarge the training (or connect interested participants with more information), here are several truckloads of transition-related materials, all summed up in NICHCY's Transition Suite, which is divided into the nine different resource pages listed below, beginning at: <http://www.nichcy.org/schoolage/transitionadult>

- *Transition to Adulthood*
This entrance page into the Transition Suite first gives you a quick summary. Details are then given, including IDEA's definition and its requirements with respect to transition planning.
- *Transition "Starters" for Everyone*
Start with these beginning links to transition resources, divided into resources for general audiences, for parents, for professionals, and for students.
- *Transition Goals in the IEP*
What kind of information might you include in a student's IEP as part of transition planning? Here's a closer look at writing transition-related IEP goals.
- *Students Get Involved!*
Very important! Come here if you're looking for resources about involving students in transition planning, person-centered planning tools, or materials and connections made just for students themselves.
- *Adult Services: What Are They? Where Are They?*
Representatives of outside agencies may be invited to the IEP transition-planning table. Read about four of the primary agencies in adult services: Vocational Rehabilitation, the Social Security Administration, state-level agencies, and independent living centers. And, of course, there's an "other" category—other players and groups you may want to involve, too.
- *Potential Consultants to the Transition Team*
In addition to the main players at the transition planning table, have you thought about inviting any of these potential consultants to join the discussion?

- *Education/Training Connections*
Learn more about postsecondary education options such as college, trade schools, adult or continuing education, and vocational education. Connect with resources and helpful organizations.
- *Employment Connections*
What about work? What about preparing for a career? What career? Who can help? Find out here.
- *Independent Living Connections*
Independent living involves so very much---making choices about how and where we live in the community. It involves everything from setting an alarm clock to getting out of bed, to self-care, to getting to work and back home again, to what to eat for dinner. Lots to think about and get ready for!



And for your reference...

§300.43 Transition services.

(a) *Transition services* means a coordinated set of activities for a child with a disability that—

(1) 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 postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes—

(i) Instruction;

(ii) Related services;

(iii) Community experiences;

(iv) The development of employment and other post-school adult living objectives; and

(v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) *Transition services* for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

View I

New IEP Considerations

Slide loads with the title and the question.

Does the child need print instructional materials in accessible formats?



Click I

New IEP Considerations


Does the child need print instructional materials in accessible formats?

Click 1: Arrow appears, leading downward to "NIMAS."

NIMAS



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(discussion on next page) 

Slide 29: Background and Discussion

This slide takes a look at NIMAS, the newest acronym in the special education field.

NIMAS stands for National Instructional Materials Accessibility Standard. While no reference is made to NIMAS in the IEP provisions of IDEA 2004, what NIMAS is and what it can provide to selected students with disabilities may nonetheless be an IEP consideration for many IEP Teams. It's also the subject of a separate training module in this curriculum (see Module 8). Because of the detailed, often technical nature of NIMAS, it won't be extensively examined here, merely summarized, with the bulk of the discussion devoted to its relevance to children who are blind or have print disabilities and their IEP Teams.

Brief Summary of NIMAS



NIMAS refers to the new national standard and specifications for the production of print instructional materials in accessible formats. Those are big words for an even bigger system, both of which lead to a worthwhile goal: Giving children with print disabilities or blindness access to the printed instructional materials used in schools—textbooks, stories the class reads together, blackline masters and workbooks for practice and drill, for example. These materials can be provided in alternate formats: Braille, audio, digital text, large print.

Under IDEA 2004, each State must adopt the NIMAS, which is published as Appendix C to part 300 of the federal regulations. It is also provided as a *Resource for Trainers* under **Theme B, IDEA and General Education**.

The Department provided a useful summary of *why* NIMAS was created.

States use electronic files from publishers of educational materials to produce accessible versions (e.g., Braille or digital audio) of these materials or contract to have accessible versions produced from these files. Because States have different requirements for these electronic files, however, publishers often experience increased costs for production, and States experience delays and inconsistencies in the materials produced. (70 Fed. Reg. at 37302)¹

To address this problem, the Department funded the National Center on Accessing the General Curriculum (NCAC) to establish the technical specifications for a voluntary standard that all publishers could use to create electronic files of the print instructional materials they produce. In November 2002, a panel of experts was convened; three public meetings were held in 2003, as well as extensive teleconference and online discussions. In the end, the panel developed "a common standard for digital source files that can be used to accurately and reliably produce instructional materials in a variety of

1 Click



alternate formats using the same source file" (*Id.*). That standard is NIMAS, and it applies to all print instructional materials published after July 19, 2006.

Timely access to appropriate and accessible instructional materials is inherent in a public agency's obligation under IDEA to ensure that FAPE is available to all children with disabilities—which most certainly includes enabling them to participate in the general curriculum consistent with their IEPs. The Department succinctly states the potential costs and benefits of NIMAS:

The adoption of NIMAS is expected to be highly valuable to students who are blind or who have print disabilities because they will have access to accessible versions of textbooks in a timely manner. Current methods of converting print textbooks into Braille and other specialized formats are complex and time consuming, and the

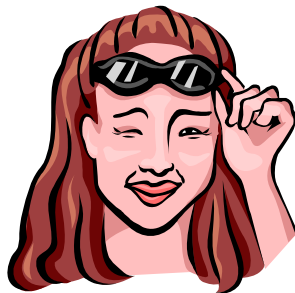


process can take months to complete. In many cases students who are blind or who have print disabilities now receive accessible textbooks and other instructional materials well after the beginning of the instructional period. The adoption of the NIMAS will improve both the speed of the process and the quality and consistency of books converted into specialized formats. (70 Fed. Reg. at 37303)¹

Relevant Definitions

Within the context of IEP development, several NIMAS-related definitions are noteworthy. The first is IDEA 2004's definition of "blind persons or other persons with print disabilities" found at §300.172(e)(i).

(i) *Blind persons or other persons with print disabilities* means children served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the Act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C 135a...



1931, you're saying! Yes, 1931. The Department kindly provides the referenced definition in the Analysis of Comments and Changes published with the final Part B regulations.

The Library of Congress regulations (36 CFR 701.6(b)(1)) related to the Act to Provide Books for the Adult Blind (approved March 3, 1931, 2 U.S.C. 135a) provide that *blind persons or other persons with print disabilities* include:

(i) Blind persons whose visual acuity, as determined by competent authority, is 20/200 or less in the better eye with correcting glasses, or whose widest diameter if visual field subtends an angular distance no greater than 20 degrees.

(ii) Persons whose visual disability, with correction and regardless of optical measurement, is certified by competent authority as preventing the reading of standard printed material.

(iii) Persons certified by competent authority as unable to read or unable to use standard printed material as a result of physical limitations.

(iv) Persons certified by competent authority as having a reading disability resulting from organic dysfunction and of sufficient severity to prevent their reading printed material in a normal manner. (71 Fed. Reg. at 46621)

You'll notice that certification by a "competent authority" is a key phrase in this definition. Which raises the question: How is "competent authority" defined? The Department also supplies that vital information.

Competent authority is defined in 36 CFR 701.6(b)(2) as follows:

(i) In cases of blindness, visual disability, or physical limitations "competent authority" is defined to include doctors of medicine, doctors of osteopathy, ophthalmologists, optometrists, registered nurses, therapists, professional staff of hospitals, institutions, and public or welfare agencies (e.g., social workers, case workers, counselors, rehabilitation teachers, and superintendents).

(ii) In the case of a reading disability from organic dysfunction, competent authority is defined as doctors of medicine who may consult with colleagues in associated disciplines. (*Id.*)

And how about the definition of "printed instructional materials?" What is the range of materials covered by NIMAS? This is defined in the Act itself, at section 674(e)(3)(c):

(C) PRINT INSTRUCTIONAL MATERIALS.—The term 'print instructional materials' means printed textbooks and related printed core materials that are written and published primarily for use in elementary school and secondary school instruction and are required by a State educational agency or local educational agency for use by students in the classroom.

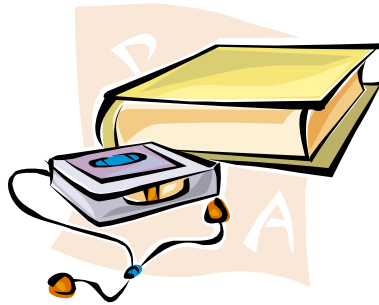
How NIMAS Relates to IEPs

How are the new NIMAS provisions in IDEA 2004 relevant to the work that IEP Teams must do? For one, the provisions directly address a longstanding problem that LEAs have had with providing certain children with disabilities with timely access to instructional materials in alternative formats. Whether or not a child needs such materials is a decision made by that child's IEP Team. IEP Teams need to be aware of the NIMAS provisions and how they are being implemented in their State. As explained in Module 8 on NIMAS, States have extensive authority in determining how NIMAS will be implemented in the State and by its LEAs, including deciding whether it will coordinate with the OSEP-funded center charged with producing alternative formats from the source files provided by publishers. If a State decides not to coordinate with the center (called NIMAC, the National Instructional Materials Access Center), then it must provide an assurance to the Secretary that it will provide instructional materials to blind persons and others with print disabilities "in a timely manner" [§300.172(b)(2)] and define that term. All this aside, nothing relieves the State of its responsibility to make such materials available to children who need them, as determined by their IEP Teams and certified by a competent authority. In fact, under IDEA 2004:

...the SEA must ensure that all public agencies take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials. [§300.172(b)(4)]

The Department discusses the intersection of NIMAS and IEP Teams in its *Questions and Answers On the National Instructional Materials Accessibility Standards (NIMAS)* as follows:

Question A-10: Are IEP Teams authorized to determine if a student requires accessible instructional materials? Are LEAs required to pay for additional medical certification to verify that a student's print disabilities are organic in nature?



Answer: The IEP Team determines the instructional program, modifications, and accommodations needed for students with disabilities, including the need for accessible instructional materials. However, according to the Library of Congress regulations (36 CFR §701.6(b)), only a competent authority can certify students eligible to use instructional materials produced in specialized formats from NIMAS files. In the case of a reading disability from organic dysfunction, these regulations define a competent authority as doctors of medicine who may consult with colleagues in associated disciplines. In the case of an individual who is blind, has a visual disability, or has physical limitations, other medical professionals and school officials such as social workers and counselors are included among those who are competent authorities. LEAs have the responsibility, including the assumption of any costs, to obtain the appropriate certification for the students. The complete Library of Congress regulations for certifying students who are blind or who have print disabilities can be found on footnote 2 of the OSEP Topical Brief on NIMAS. This information is available at <http://nimas.cast.org/downloads/OSEP.NIMAS.Summary.doc>.²

In moving from IDEA 2004's NIMAS requirements to what might actually go on in an IEP Team meeting, the OSEP-funded NIMAS Technical Assistance Center (2006) offers guidance for States and LEAs regarding the type of language to include in a child's IEP. This is presented verbatim in the box on the next page.

Discussing the Slide

The overview of NIMAS given here only scratches the surface of a very complex process that's in development. How much information you share with the audience will depend on their needs and concerns as well as the amount of time you have available. **Handout A-9** provides the key definitions discussed above and lists resources of additional information for participants. Please refer to Module 8 as necessary to expand the discussion here.

**From the NIMAS Technical Assistance Center:
Suggested Accessible Instructional Materials
Language in the IEP**

State and local education agencies are encouraged to include language relating to a student's need for accessible, alternate format versions of print instructional materials in the IEP in order to ensure—

- Access to General Curriculum (34 CFR 300.138(a) and 300.347 (a)(3)) Students with disabilities are to be provided access to the general curriculum with modifications, accommodations, supplementary aids, and supports in order to make satisfactory educational progress.
- "Supplementary aids and services"—the term 'supplementary aids and services' means 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)" (IDEA '97's provision on least restrictive environment).

It is recommended that the IEP include a query such as the following:

Does the student require accessible, alternate format versions of printed textbooks and printed core materials that are written and published primarily for use in elementary and secondary school instruction and are required by a SEA or LEA for use by students in the classroom?

A query of this kind is designed to prompt the IEP Team to consider each 'print disabled' student's need for accessible, alternate format versions of print instructional materials.

If a student with a print disability does need a specialized format, the IEP should specify the following:

- the specific format(s) to be provided (Braille, audio, e-text, large print, etc.)
- the services and/or assistive technology the student needs to use the specialized format
- the individual or individuals responsible for providing the specialized format, and
- whether or not the format is required to be used in the student's home or in another setting in order for the student to receive a free appropriate public education.

NIMAS Technical Assistance Center (2006)³



¹ U. S. Department of Education. (2005, June 29). National Instructional Materials Accessibility Standard (Notice of proposed rulemaking). *Federal Register*, 70(124), 37301-37306. Available online at: <http://www.ed.gov/legislation/FedRegister/proprule/2005-2/062905a.pdf>

² U.S. Department of Education. (2007, January). *Questions and answers on the National Instructional Materials Accessibility Standards (NIMAS)*. Washington, DC: Author. Available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C5%2C>

³ NIMAS Technical Assistance Center. (2006). *Accessible instructional materials and the IEP*. Retrieved May 22, 2007, from http://nimas.cast.org/about/resources/accessible_iep.html

New IEP Considerations



...if the IEP Team determines that the child must take an *alternate assessment*

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Modified Academic Achievement Standards and Assessments

CLICK AGAIN to advance to next slide.

Earlier in this module (Slide 27), the subject of alternate achievement standards and assessments for children with significant cognitive disabilities was raised. The current slide adds to that discussion by looking at another type of alternate assessment based on altered achievement standards: *modified* academic achievement standards and assessments.

The Change Identified



New in
IDEA!

As also discussed in Module 13, *Content of the IEP*, this type of alternate assessment is a new option recently made available to States (April 2007) with the publication of final regulations

in NCLB governing its use. States are not required to develop such assessments, but they may if they so choose. Given how recently this option has been incorporated into NCLB regulations, it may not yet be available to children with disabilities, but we describe it here because it is certainly on the horizon.

Alternate assessments based on modified academic achievement standards are intended for a small group of children "whose disability has precluded them from achieving grade-level proficiency and whose progress is such that they will not reach grade-level proficiency in the same time frame as other children" (U.S. Department of Education, 2007, p. 8). For these

children, the general grade-level assessments are too difficult, and the alternate assessments based on alternative academic achievement standards (meant for children with the most significant cognitive disabilities) are too easy. Either type of assessment will not provide teachers, children, families, and others with accurate information on what a child knows or can do and, thus, what type of instruction or supports will help the child progress toward grade-level achievement.

The Department has responded to this gap in assessment options by giving States "the option of developing

modified academic achievement standards for a small group of students with disabilities who can make significant progress, but who may not reach grade-level achievement in the time frame covered by their IEP” (p. 12). Using this approach does not alter the *content* standards established by a State for a specific grade level; in fact, such an alternate assessment must cover the same grade-level content as the general assessment. However, “the *achievement* expectations are less difficult than those on the general test” (p. 20, emphasis added), which means that “the same content is covered in the test, but with less difficult questions overall.”

What Does This Have To Do With IEPs?



When an IEP Team determines that this new type of alternate assessment is appropriate for a child, it must say so in the IEP *and* include IEP goals that are based on the academic content standards for the grade in which that child is enrolled. As the NCLB regulation at §200.1(f)(2)(ii) states:

These students’ IEPs must—

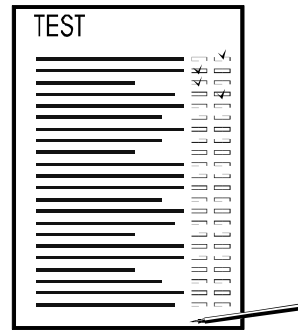
(A) Include IEP goals that are based on the academic content standards for the grade in which a student is enrolled; and

(B) Be designed to monitor a student’s progress in achieving the student’s standards-based goals.

While incorporating State standards in IEP goals is not new as a practice, it is new as a requirement of law. Luckily, because of the emphasis that IDEA ‘97 placed upon child involvement and progress in the general education curriculum, many States “already require standards-based IEP goals and have developed extensive training materials and professional development opportunities for staff to learn how to write IEP goals that are tied to State content standards”¹ (U.S. Department of Education, 2007, p. 28). This current practice is summarized in Project Forum’s (an OSEP-funded technical assistance and dissemination project) brief called *Standards-based IEPs: Implementation in Selected States*,²

which is cited in the Department’s guidance and at the end of this slide’s discussion. It makes for interesting reading and is available online at the address given in the footnote.

Two final points about alternate assessments that are based on *modified* academic achievement standards. First, a child may take this type of alternate assessment in one subject—for example, reading—yet take the general assessment in another subject (e.g., math). Deciding how the child will be assessed in each applicable subject area is the responsibility of the IEP Team. However, just as it is the State’s choice to develop (or not) an alternate assessment based on modified



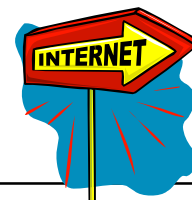
academic achievement standards, it also can decide to modify academic achievement standards only for certain grades (e.g., grades 6 through 8, or for high school) and develop only those

alternate assessments corresponding to those modified standards. Similarly, the State can choose to “develop an alternate assessment based on modified academic achievement standards in only one subject (e.g., reading), but not in all subjects (e.g., math, science)” (U.S. Department of Education, 2007, p. 23).¹

Second point: Every year the IEP Team must review its decision to assess a child based on modified academic achievement standards. As the Department (2007) states:

We expect that there will be students with disabilities who take an alternate assessment based on modified academic achievement standards one year, make considerable progress during the school year, and then take the general grade-level assessment the following year. Therefore, an IEP Team must consider a student’s progress annually based on multiple, objective measures of the student’s achievement before determining that the student should be assessed based on modified academic achievement standards. (p. 18)

The option that States now have to develop and implement alternate assessments based on modified academic achievement standards clearly adds another dimension to how children with disabilities may participate in a State's assessment programs. However, as has been said, a State is not required to develop such assessments and, given the recent inclusion of this option, may not currently have such assessments available. A rigorous development and review process is prescribed and will take some time to complete. We've included, in the box at the right, direct links to the new regulations, the Department's 51-page guidance for States, and its two-page Fact Sheet on this option to assessment. These resources are also listed on **Handout A-9** for participants to consult at a later time, as needed.



Regulations on Alternate Assessment Based on Modified Academic Achievement Standards

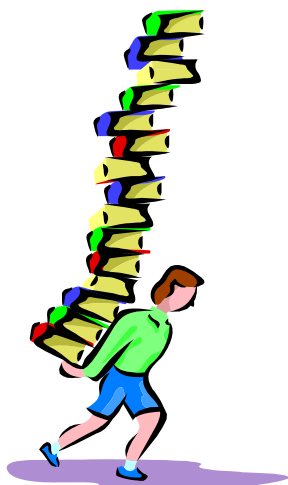
<http://www.ed.gov/legislation/FedRegister/finrule/2007-2/040907a.html>

Department's Non-Regulatory Guidance

<http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc>

Fact Sheet

<http://www.ed.gov/parents/needs/speced/twopercent.html>



¹ U.S. Department of Education. (2007, April). *Modified academic achievement standards* [non-regulatory guidance draft]. Washington, DC: Author. Available online at: <http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc>

² Ahearn, E. (2006). *Standards-based IEPs: Implementation in selected states*. Alexandria, VA: Project Forum, National Association of State Directors of Special Education (NASDSE). Available online at: <http://projectforum.org/docs/Standards-BasedIEPs-ImplementationinSelectedStates.pdf>

Slide loads completely. No clicks are necessary except to advance to the next slide.

New IEP Considerations

When Students Transfer*



* Between 2 public agencies, in same school year

CLICK AGAIN to advance to next slide.

Slide 31 introduces important new provisions of IDEA around a circumstance that is quite common—children moving from one school to another. Questions naturally arise when this happens, such as:

- Does the IEP travel with the child and get implemented as written in the new school? Or...
- Does the new school start the process over and work with the parents to develop a new IEP?
- Does the child have to be evaluated anew to determine eligibility for special education and related services?

- If the transfer is between States, what are each agency's obligations?

This slide will summarize the answers to these questions by taking a summary look at the provisions that IDEA now includes. This discussion is drawn from the more extensive examination provided in Module 14, *Meetings of the IEP Team*.

Context of the Change

There are different scenarios when children move from one place to another. The two scenarios of relevance here are:

A—the schools are in the same State but in the jurisdiction of different public agencies; and

B—the schools are in different States (which definitely would put them under the jurisdiction of different State educational agencies and different public agencies!).

Each of these scenarios brings up a set of requirements with respect to IEP development and implementation (and evaluation processes, too).

Scenario A: Same State, Different Public Agency

The regulatory provision from IDEA is presented on **Handout A-9** and in the box on the next page.

This is a new provision within IDEA, but it may already be familiar to participants because it incorporates a longstanding policy clarification of the Department governing such moves. When a child with a disability who has an IEP in effect from one public agency transfers from one school in that public agency to another school in a different public agency in the same State, the move/transfer changes the public agency responsible for the child's education. The new public agency must provide FAPE to the child—in consultation with the parents—until it either adopts the IEP the child brought with him or her, or it develops its own IEP for the child and implements that IEP. If the new agency decides to develop and implement its own IEP, then it must adhere to all applicable requirements of IDEA for IEPs from §300.320 through §300.324.



a child who transfers to a new public agency from a previous public agency in the same State (or from another State), “comparable services means services that are “similar” or “equivalent” to those that were described in the child’s IEP from the previous public agency, as determined by the child’s newly-designated IEP Team in the new public agency. (p. 71 Fed. Reg. at 46681)

That last phrase is worth noting to your audience: *as determined by the child’s newly-designated IEP Team.*

What happens if the parents and the new public agency do not agree as to what constitutes comparable services? One of the responses to a comment in the Analysis of Comments and Changes published with the final Part B regulations suggests that:

...the dispute could be resolved through the

mediation procedures in §300.506, or, as appropriate, the due process hearing procedures in §§300.507 through 300.517. (71 Fed. Reg. at 46682)

Scenario B: Different State, Different Public Agency

IDEA’s provisions for this scenario appear on Handout A-9 and in the box on the next page. These regulations require similar actions on the part of the new public agency, with one important difference. As with children who transfer public agencies in the same State in the same school year, the new public agency, in consultation with the parents, must provide FAPE to the child, including services comparable to those described in the IEP developed in the previous public agency. It must do so until—and here’s the

Several elements of these new provisions may generate discussion or require clarification. One is what is meant by “comparable services”—what the new agency must provide, according to IDEA. The Department provided the following pertinent explanation in the Analysis of Comments and Changes published with the final Part B regulations:

We do not believe that it is necessary to define “comparable services” in these regulations because the Department interprets “comparable” to have the plain meaning of the word, which is “similar” or “equivalent.” Therefore, when used with respect to



IDEA 2004’s Provisions at §300.323(e): Transferring to a New School and New Public Agency in the Same State

(e) *IEPs for children who transfer public agencies in the same State.* If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child’s IEP from the previous public agency), until the new public agency either—

- (1) Adopts the child’s IEP from the previous public agency; or
- (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§300.320 through 300.324.

difference—the new public agency conducts an evaluation of the child pursuant to §§300.304 through 300.306, if the new public agency determines that the evaluation is necessary, and the parents consent to the evaluation. Such an evaluation is considered an *initial* evaluation (71 Fed. Reg. at 46682) and is conducted for the purposes of determining that the child is a “child with a disability” as defined by IDEA and to determine the educational needs of the child. The evaluation needs to yield detailed information about the child’s needs and levels of performance, to be used not only to determine eligibility but also to inform development of the IEP. The new public agency may decide that such an evaluation is not necessary—in which case, the agency would not be required to conduct it.

Regardless, the agency can either continue to provide FAPE using the existing IEP of the child (from the previous public agency) or develop, adopt, and implement a new IEP, if appropriate, that meets applicable requirements in §§300.320 through 300.324.

Children Who Move in the Summer

OK. These new provisions of IDEA clarify and codify what must be done for children who transfer and enroll in a new school in the same school year. What about children who move in the summer? To these children, other provisions of IDEA apply. IDEA requires that at the beginning of each school year each public agency must have an IEP in effect for each child with a disability in its jurisdiction

IDEA 2004’s Provisions at §300.323(f): Transferring to a New School and New Public Agency in Different States:

(f) *IEPs for children who transfer from another State.*
If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child’s IEP from the previous public agency), until the new public agency—



(1) Conducts an evaluation pursuant to §§300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§300.320 through 300.324.



[§300.323(a)]. Consistent with this responsibility, the Analysis of Comments and Changes provides the following pertinent explanation:

... [P]ublic agencies need to have a means for determining whether children who move into the State during the summer are children with disabilities and for ensuring that an IEP is in effect at the beginning of the school year. (71 Fed. Reg. at 46682)

It is up to the public agency in question to implement procedures to make sure that the child has an IEP in place when he or she begins at the new school when summer ends and school is once again in session.

One Final Matter: Transferring the Child’s Records

As discussed in Module 14, *Meetings of the IEP Team*, there’s also the matter of transferring the child’s records. IDEA 2004 includes new provisions in this area as well, which are presented in **Handout A-9** and in the box on the next page. These aren’t actually “New IEP Considerations” (the title of this series of slides), but they are discussed here while we’re on the subject of children who transfer between public agencies in the same school year. You may wish to share this information with participants, depending on their needs, concerns, and responsibilities.

The new provisions can be summarized as follows:

- The regulations are intended to facilitate the transition of the child from one location to another.
- The new public agency must take reasonable steps to promptly obtain the child's records from the previous public agency.
- The previous public agency must take reasonable steps to promptly respond to the request.

Several additional elements, described below, can be discussed as part of training on these provisions.

Applicability of FERPA



These provisions include the phrase "pursuant to 34 CFR 99.31(a)(2)." This refers to a provision of the Family Educational Rights and Privacy Act, or FERPA (see *Resource for Trainers D-11*, provided as part of Theme D's training materials). FERPA's provision explains the conditions under which one educational institution may disclose personally identifiable information from the education records of a child without the consent required by 34 CFR §99.30. Section 99.31(a)(2) of the FERPA regulations provides that disclosure without consent is permissible (subject to the requirements of §99.34) when it is "to officials of another school, school system, or institution of postsecondary

education where the child seeks or intends to enroll."

The requirements at §99.34 describe the conditions that apply to disclosure of information to other educational agencies or institutions. Certain salient points are summarized below. However, in the interests of accuracy and comprehensiveness, you may wish to read the precise language of the regulation, as provided on *Resource for Trainers D-11*.

An educational agency or institution that discloses an education record under §99.31(a)(2) must:

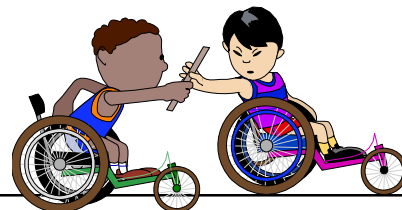
- Make a reasonable attempt to notify the parent or eligible child at the last known address, unless—

...the disclosure is initiated by the parent or eligible child; or...

...the annual notification of the agency or institution under §99.6 includes a notice that the agency or institution forwards education records to

other agencies or institutions that have requested the records and in which the child seeks or intends to enroll.

- Give the parent or eligible child, upon request, a copy of the record that was disclosed; and
- Give the parent or eligible child, upon request, an opportunity for a hearing.
- An educational agency or institution may disclose an education record of a child in attendance to another educational agency or institution if:
 - The child is enrolled in or receives services from the other agency or institution; and
 - The disclosure meets the requirements already described.



IDEA 2004's Provisions at §300.323(g): Transferring the Child's Records

(g) *Transmittal of records.* To facilitate the transition for a child described in paragraphs (e) and (f) of this section—

(1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and

(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.

Timeframes for Transferring Records



The IDEA 2004 does not specify any timeframe within which the new public agency must obtain the records of the transferring child (the IEP and supporting documents and any other records relating to the provision of special education and related services), or the previous public agency must respond to the request to provide them. What IDEA requires is “reasonable steps” on both agencies’ parts—the one, to “promptly obtain the child’s records,” the other to “promptly respond to the request” for the records.

View I

Moving Right Along...

Slide loads with the title "Moving Right Along..." and four pictures (which are covering the snippets of odd changes).




Click I

Moving Right Along...

Click 1:
Top left picture disappears, leaving change 1 in view.

You're born with 300 bones. When you get to be an adult, you only have 206.



(continued on next page) 

Moving Right Along...

Click 2

You're born with **300** bones. When you get to be an adult, you only have **206**.

The **first email** was sent over the Internet in **1972**.



Click 2:
Picture on top right disappears, revealing change 2.

Moving Right Along...

Click 3

You're born with **300** bones. When you get to be an adult, you only have **206**.

The **first email** was sent over the Internet in **1972**.

Click 3:
Picture on bottom left disappears, revealing change 3.

In **1950**, only **7%** of Americans dyed their hair. Now **75%** do.



(continued on next page) 

Moving Right Along...

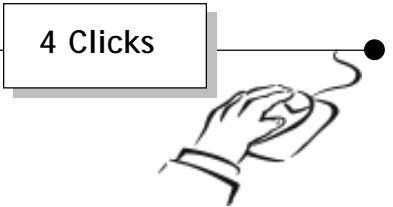
<p>You're born with 300 bones. When you get to be an adult, you only have 206.</p>	<p>The first email was sent over the Internet in 1972.</p>
<p>In 1950, only 7% of Americans dyed their hair. Now 75% do.</p>	<p>Average major league career of a baseball: 5 to 7 pitches.</p>

Click 4

Click 4: Picture on bottom right disappears, revealing change 4.

CLICK AGAIN to advance to next slide.

Slide 32: Background and Discussion



Here we have another transition slide, indicating that the training on changes in IEP matters (content, meetings, and other considerations) is done and another set of changes in IDEA will be discussed. Next up? One of the biggest changes in IDEA 2004—provisions related to parentally-placed private school children with disabilities.

But, first, relax a bit over the slide. Since the training session is nearly done (only two more slides to go) and you've just finished a large segment, this is a perfect opportunity to offer participants a break or have them get up from their chairs and move around, shaking out the kinks, visiting the bathroom, getting a beverage, and returning

with refreshed attention spans for the homestretch.

OR:

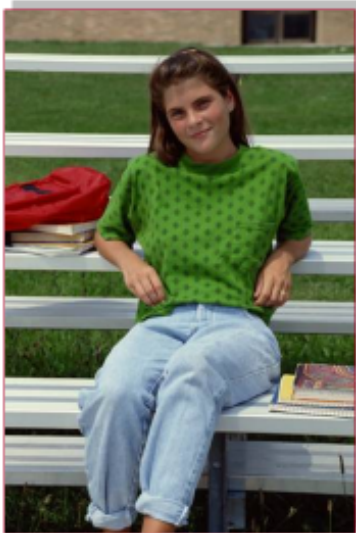
You can save the slide until *after* the break and use it to reawaken and reorient the brains in the room. When the slide comes up, for example, just leave it displayed with its four vivid and unconnected photographs (don't **CLICK** the mouse or that plan's blown) and speculate with the audience about:

- what these pictures could possibly have to do with one other, or
- what trivia or telling statistics might relate to any of the pictures.

When everyone's back in their seats, or you want to draw them back to their seats, **CLICK** once and the first stat (about bones in the human body) will come off. You can then go through the slide as you wish, clicking to reveal each new quadrant.

View I

“Parentally Placed” Children—Oh, what a change!



School District Responsibility

Which school district is responsible...

...for decisions about services to parentally-placed private children with disabilities?

Slide loads with the title and the question.

“Parentally Placed” Children—Oh, what a change!



School District Responsibility

Which school district is responsible...


The LEA where the private school is located

...for decisions about services to parentally-placed private children with disabilities?

Click I

Click 1: The answer appears.

CLICK AGAIN to advance to next slide.

(discussion on next page) 



One of the biggest changes in IDEA 2004 occurred in its provisions regarding children with disabilities who are placed by their parents in private schools. Module 16, *Children with Disabilities Enrolled by Their Parents in Private School*, is devoted to what those provisions are—from those maintained from prior law to those that are so different, they startle you. Here we’re just going to look at one very significant change.

**Change Identified:
Who’s Responsible?**



In the past, when children with disabilities were placed in private school by their parents, the LEA of their residence was responsible for child find, evaluation, and service-related matters associated with that child (including fiscal obligations). Now the responsibility has shifted to the LEA where the private school is located. For children who attend a private school in the jurisdiction of their parents’ resident LEA, this change is not significant. We’re talking about the same LEA then. But if the private school is located in *another* public agency’s jurisdiction... well, we’ll get to that in a moment. First, a little background.

“Parentally-Placed Children” in Context

Parents have the right to choose where their children will be educated. This choice includes public or private elementary and secondary schools,

including religious schools. It also includes charter schools and home schools. When parents place their child with a disability in a private elementary or secondary school at their own expense (including religious schools), that child will not have the same rights under IDEA as he or she would if enrolled in public school—or, for that matter, if the public agency itself chose to place the child in the private school (as is sometimes the case when a public agency cannot provide the child with FAPE). Two of the major differences that parents, teachers, other school staff, private school representatives, and the child need to know about are that:

- children with disabilities who are placed by their parents in private schools may not get the same special education and related services they would receive if they attended a public school, and
- not all children with disabilities placed by their parents in private schools will receive services.

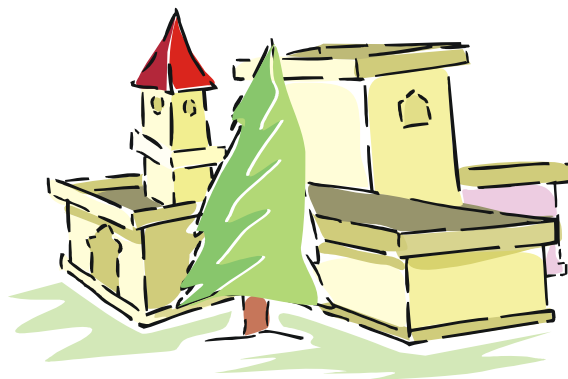
Under the Act, “LEAs only have an obligation to provide parentally-placed private school children with disabilities an

opportunity for equitable participation in the services funded with Federal Part B dollars” (U. S. Department of Education, 2007, p. 3).¹ How these children will equitably participate is determined through consultation between the responsible public agency (the LEA) and “private school representatives and representatives of parentally-placed private school children with disabilities” (§300.134).

Discussing the Change

This slide asks the question: Which school district is responsible for decisions about services to parentally-placed private children with disabilities? It also gives the answer: The LEA (local educational agency, school district/public agency) *where the private school is located*, not the LEA of the parents’ residence (as was the case prior to the 2004 reauthorization of IDEA).

The change in LEA responsibility is a major revision under IDEA 2004. It significantly changes the obligations of States and LEAs to children with disabilities enrolled by their parents in private elementary and secondary schools, including religious schools. In many respects, the shift will make the process of “providing opportunity for equitable participation” logistically simpler. Prior to the reauthoriza-



tion, private schools had to coordinate with numerous LEAs, depending upon where a child lived. Now, private schools only have to coordinate with a single LEA to determine how equitable participation will be achieved. Of course, LEAs still must often deal with more than one private school, but these private schools are now located within the LEAs' own jurisdictions.

Using Handout A-10. With a few exceptions, IDEA's requirements for parentally-placed private school children with disabilities can be found in §§300.129 through 300.144. These provisions are included in their entirety in this training curriculum as Handout D-16 (see the handout package for **Theme D** on Individualized Education Programs). Within the handout package for the current theme (**Theme A**, Welcome to IDEA), *excerpts* from those

provisions can be found on **Handout A-10**. You can use this much briefer handout (only two pages, as opposed to eight) to highlight the range of responsibilities that have shifted from resident LEAs to LEAs where private schools are located. This includes but isn't limited to: child find, expenditures (including calculating the proportionate share to be spent on parentally-placed private school children with disabilities), consultation, determination of and provision of equitable services, use of highly qualified personnel, and more. If you need to go into more detail about any or all of these, please refer to Module 16.

As suggested on **Handout A-10**, certain key phrases mark this key change in IDEA's parentally-

placed provisions. The phrase noted on the handout is "Each LEA in which private, including religious, elementary schools and secondary schools are located must..." and comes from §300.131(f). That's only one phrase, however. Have participants use **Handout A-10** to locate other such telltale phrases—for example, how about the phrase "in private, including religious, elementary schools and secondary schools located in the school district served by the LEA" (emphasis added)? While they're busy at that, also have them identify what specific responsibilities have shifted. This will quickly give them the sense of what a major shift these new provisions of IDEA bring to LEAs where private schools are located.



¹ U.S. Department of Education. (2007, January). *Questions and answers on serving children with disabilities placed by their parents at private schools*. Washington, DC: Author. (Available online at: <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C1%2C>)

Key Changes in Discipline Procedures



Authority of school personnel to consider unique circumstances on a case-by-case basis

View 1

Slide loads title and Point 1.

Key Changes in Discipline Procedures



Authority of school personnel to consider unique circumstances on a case-by-case basis

Removals for “serious bodily injury”

New standards for manifestation determination


The “stay-put” provision

Clarifying “basis of knowledge”

Clicks 1-4

Clicks 1-4:
Each click brings up a separate paragraph.

CLICK AGAIN to advance to next slide.

(discussion on next page) 



Last content slide! Yes, we've come to the final topic in this training module—the discipline of children with disabilities who violate a school code of conduct.

The final Part B regulations bring significant improvements in IDEA's discipline procedures that attempt to balance the protection of children's rights while giving school personnel the authority to maintain safety and order for the benefit of all children. The new requirements simplify the discipline process and make it easier for school officials to discipline children with disabilities when discipline is appropriate and justified. At the same time, the new regulations retain provisions from the IDEA '97 regulations and revise others to ensure that the rights of children with disabilities and their families are protected. All of these are covered in Module 19, *Discipline Procedures in IDEA 2004*, to which you should refer if you need additional information beyond what's offered here.

Before actually launching into what's new or different in IDEA's discipline procedures, a bit of background may be helpful.



Evolution of Disciplinary Procedures in IDEA

IDEA '97 introduced, for the first time, specific disciplinary procedures to guide how public agencies were to address behavioral infractions of children with disabilities. Because of the very newness of those provisions, the training package OSEP developed on IDEA '97 provided a lengthy historical discussion of legislation, court cases, and memoranda that contributed to the design and conceptualization of IDEA '97's discipline procedures. That information—being historical—remains true today and is certainly helpful in understanding how discipline procedures came to be added to the law. We've provided the discussion, as it appeared in the IDEA '97 training package, in the *Resources for Trainers* under Theme E, Procedural Safeguards to enable trainers using Module 19 on IDEA's disciplinary procedures to elaborate, as they deem appropriate, upon the historical roots of discipline in IDEA. We won't repeat that information here where we're looking primarily at changes in discipline procedures, not IDEA's overall requirements. But it is available to you, should you care to lay a foundation for talking about this important part of the regulations.

Offering a brief overview of how IDEA '97 focused and organized its discipline procedures will help participants reactivate any prior knowledge or, alternatively, build a broad mental structure into which to integrate the information you're

going to cover in this section. Here are several points you may wish to offer in a quick summary.

IDEA '97 added explicit new requirements regarding the disciplining of children with disabilities:

- who violate a school rule or code of conduct subject to disciplinary action;
- who carry a weapon to school or a school function under the jurisdiction of an SEA or LEA;
- who knowingly possess or use illegal drugs or sell or solicit the sale of a controlled substance while at school or a school function under the jurisdiction of an SEA or LEA; and
- who, if left in their current educational placement, are substantially likely to injure themselves or others.

IDEA '97's discipline procedures were divided into 10 subparagraphs, each of which treated a different aspect of the disciplinary process. These subparagraphs were:

- Authority of school personnel
- Authority of hearing officer
- Determination of setting



- Manifestation determination review
- Determination that behavior was not manifestation of disability
- Parent appeal
- Placement during appeals
- Protections for children not yet eligible for special education and related services
- Referral to and action by law enforcement and judicial authorities.
- Definitions

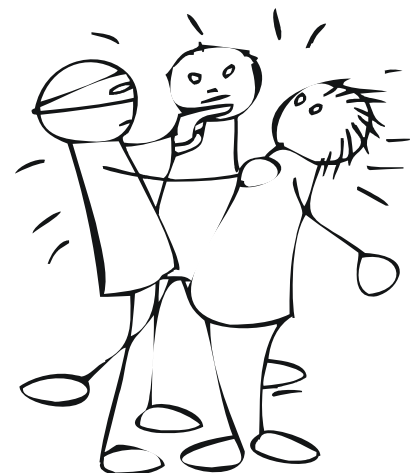
Would it help to add some meat to this bare-bones list? All right...here are some key elements introduced by IDEA '97 that remain relevant under IDEA 2004.

- IDEA '97 clarified the authority of school personnel to take disciplinary action in well-specified instances when a child with a disability violated the school code of content.
- This authority included ordering a change in the child's placement (again, in well-specified circumstances) to what is called an appropriate

"interim alternative educational setting" or IAES.

- The authority of hearing officers to place children in an appropriate IAES in certain circumstances was also clarified in IDEA '97.
- Provisions were included setting forth the requirements for how an IAES would be determined for a child.
- The manifestation determination review— reviewing the relationship between the child's disability and his or her misconduct—became an important element in IDEA's disciplinary procedures. This review had a clear line of precedent in various court cases dealing with disciplinary issues (see the historical discussion of legislation, court cases, and memoranda provided in the *Resource for Trainers* section for Theme E).
- The type and extent of disciplinary action that a public agency could permissibly take against a child with a disability varied depending whether or not the child's misconduct was determined to be a "manifestation" of his or her disability.
- IDEA's disciplinary provisions included the requirement that schools continue to provide FAPE to children with disabilities held to disciplinary action, including those who were suspended or expelled from school. Specific conditions applied to this requirement.

- Parents had the right to disagree with, and request a hearing on, the manifestation determination and any decision regarding their child's placement.
- The longstanding "stay-put" provision (which maintained the child's current placement during any appeal process) was retained in IDEA '97, with one marked exception.
- And what about a child who violated a school code of conduct, was subject to disciplinary action, but who had not yet been found eligible for special education and related services? Could the child assert the protections of IDEA if the public agency had knowledge that the child was, in fact, a "child with a disability" before the behavior occurred? IDEA '97 incorporated into law specific standards for what constituted "basis of knowledge."
- IDEA '97 also addressed the right of a public agency to report a crime committed by a child with a disability to the appropriate authorities and made clear that its provisions did not prevent State law



enforcement and judicial authorities from exercising their responsibilities.

- Last but not least, IDEA '97 included definitions of specific terms that were critical to interpreting and implementing its new disciplinary provisions.

Change I Identified: Authority of School Personnel to Take Unique Circumstances into Account



Okay, let's get down to it: the first point on the slide. This examines a new authority in IDEA 2004 that allows school personnel to consider any unique circumstances on a case-by-case basis when determining whether a change in placement (consistent with other requirements of §300.530) is appropriate for a child with a disability who violates a code of child conduct. The relevant provision is the very first paragraph on **Handout A-11**; it also appears in the box on this page.

This authority clarifies that, on a case-by-case basis, school personnel may consider whether a change in a child's placement that is otherwise permitted under the disciplinary procedures is appropriate and should occur. On first blush, this provision may appear to give school personnel the authority to unilaterally determine a change of placement for a child—not the case. The phrase in the provision "consistent with

§300.530 Authority of school personnel.

(a) *Case-by-case determination.* School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

the other requirements of this section" means any change of placement contemplated on the case-by-case basis mentioned in the provision at hand must have already met the letter of the law and, thus, be permissible. As the Department states:

Section 300.530(a)...does not independently authorize school personnel, on a case-by-case basis, to institute a change in placement that would be inconsistent with §300.530(b) through (i), including the requirement

in paragraph (e) of this section regarding manifestation determinations... [A]ny consideration regarding a change in placement under paragraph (a) of this section must be consistent with all other

requirements in §300.530. (71 Fed. Reg. 46714)

What is at work in this provision is the authority of school personnel to take unique circumstances or factors into consideration as part of change-of-placement decision making for a child with a disability.

Is the IEP Team Involved in a Case-by-Case Determination?

While the IEP Team is not specifically mentioned in this authority, "there is nothing...in the Act or these regulations that would preclude school personnel from involving parents or the IEP Team when making this determination" (71 Fed. Reg. 46714).

Which School Personnel Are Involved?

The Department declined to clarify which school personnel must be involved in making case-by-case determinations as described in §300.530(a), saying that:

...such decisions are best made at the local school or district level and based on the circumstances of each disciplinary case. (71 Fed. Reg. 46714)

Considering Unique Circumstances

The Analysis of Comments and Changes included a substantial discussion about whether the phrase "consider any unique circumstances on a case-by-case basis" needed to be clarified and whether specific criteria should be used when making a case-by-



case determination. It was determined that clarification was not needed, because what constitutes “unique circumstances” is best determined at the local level by school personnel who know the individual child and all the facts and circumstances regarding a child’s behavior.

Unique circumstances, according to the Department, could include factors such as a child’s:

- disciplinary history,
- ability to understand consequences,
- expression of remorse, and
- supports provided to a child with a disability prior to the violation of a school code. (71 Fed. Reg. 46714)

Attempting to regulate how a local authority is to interpret the meaning of “consider any unique circumstances on a case-by-case basis,” the Department states, “would impede efforts of school personnel responsible for making a determination as to whether a change in placement for disciplinary purposes is appropriate for a child” (71 Fed. Reg. 46714).

We believe providing school personnel the flexibility to consider whether a change in placement is appropriate for a child with a disability on a case-by-case basis and to determine what unique circumstances should be considered regarding a child who violates a code of conduct...will limit the inappropriate removal of a child with a disability from his or her current placement to an interim

alternative educational setting, another setting, or suspension. (71 Fed. Reg. 46714)

When a Child’s Placement is Changed

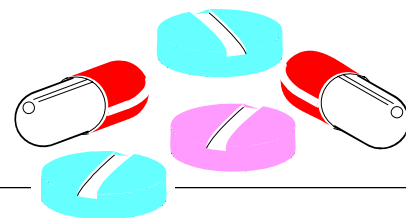
If a decision is made to change the child’s placement because of a violation of a code of child conduct, within 10 school days of that decision a manifestation determination must be conducted [§300.530(e)]. Manifestation determinations will be discussed further below.

Change 2 Identified: **Serious Bodily Injury**



Time to move on to the second point on the slide: removals for serious bodily injury.

Under IDEA '97, school personnel were given the authority to remove a child with a disability from his or her current placement to an IAES for knowingly possessing, using, or selling drugs and for carrying a weapon to or possessing a weapon at school or at a school function. These authorities are maintained under IDEA 2004—which also adds a new removal authority if the child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. All three of these circumstances are covered in the provision in the box below, which also appears on Handout A-11.



IDEA’s Provisions at §300.530(g): Special Circumstances and Authority of School Personnel

(g) *Special circumstances.* School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child’s disability, if the child—

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

Thus, in any one of these special circumstances, school personnel may remove that child to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability.

[§300.530(g)] It's important to note that other provisions of IDEA kick in under these special circumstances—the need for a manifestation determination, for example, notifying parents, and determining the extent of services to be provided to the child. It's also important to consider the definition in IDEA 2004 (new) for "serious bodily injury." This appears at §300.530(i)(3), is provided on **Handout A-11**, and states:

(3) *Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

Clear as mud, eh? Let's go looking for that referenced paragraph and see what it says.

The term *serious bodily injury* means bodily injury that involves—

1. A substantial risk of death;
2. Extreme physical pain;
3. Protracted and obvious disfigurement; or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (71 Fed. Reg. 46723)



This Provision in Context

In its *Report [to Accompany S. 1248]*, the Senate HELP committee painted a clear picture of how IDEA's "special circumstances" disciplinary provisions fit into current initiatives to ensure safe schools for all children. The committee goes on to say:

Because of the inherent and immediate dangers connected with this category of cases, school personnel need to retain the ability to take swift action to address these situations, to ensure the safety of all students, teachers, and other such personnel. Indeed, Congress recognized this when it passed the Gun Free Schools Act, which provides that a State wishing to receive federal education dollars must have in place a State law requiring the one year expulsion of a student found with a firearm at school. If the child's behavior is determined not to be a manifestation of the disability, regular disciplinary consequences can be applied in addition to the 45-day removal, subject to section 612(a)(1). Even if the child's behavior is later determined to be a manifestation of his disability, the committee believes it is critical that schools have the flexibility to keep the child out of his regular setting for up to 45 days. (Senate Committee on Health, Education, Labor, and Pensions, 2003, pp. 43-44)

Change 3 Identified: Manifestation Determination



The third bullet on the slide states “New standards for manifestation determination.” It’s time to look at what those new standards are.

To understand when a manifestation determination is required has become much simpler under IDEA 2004. The Department summarizes the “when” of manifestations determinations very succinctly:

[M]anifestation determinations are limited to removals that constitute a change in placement under §300.536. (71 Fed. Reg. at 46720)

One of the purposes of a manifestation determination is to determine whether or not the child’s behavior is linked to his or her disability. IDEA 2004 states this as determining if the conduct in question “was caused by, or had a direct and substantial relationship to, the child’s disability” (see IDEA 2004’s provision in the box on this page and on **Handout A-11**). The link between the child’s conduct violation and his or her disability is important, because:

...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. (71 Fed. Reg. 46720)

The relationship between the child’s behavior and disability is not the only factor to be considered in a manifestation determi-

nation, however. As §300.530(e)(1)(ii) indicates, a manifestation determination must also consider if the child’s conduct was the direct result of the LEA’s failure to implement the IEP. Such a finding requires the LEA to take specific remedial actions to correct the situation.

Historically Speaking

The requirement to conduct manifestation determinations first appeared in IDEA ‘97 and is carried forward, with significant changes, in IDEA 2004. As a *Resource for Trainers* in Theme E describes, however, manifestation determination has a long history in court cases. You may wish to share some of that information with the audience, as time permits.



Examining IDEA’s Provision

Direct the audience to §300.530(e) on **Handout A-11**. Ask a series of questions that requires participants to tease apart the elements of this provision, such as:

- Under what circumstances must a manifestation determination be conducted? (Whenever a decision is made to change the placement of a child with a disability because he or she has violated a code of child conduct.)
- What’s the time frame for conducting a manifestation determination? (It must occur within 10 school days of the decision to change the child’s placement.)
- Who is involved in conducting a manifestation determination? (The LEA, parent, and relevant members of the IEP Team.)
- Who decides who’s a “relevant member” of the team? (The parent and the LEA.)

Manifestation Determination: The Beginning of IDEA’s Provision at §300.530(e)

(e) *Manifestation determination.* (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA) 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 to 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 LEA’s failure to implement the IEP.

Changes in Manifestation Determination Processes

IDEA 2004 changes the manifestation determination process while retaining the purposes behind it. What is now required is, as the Senate HELP committee (2003) observes, “a more simplified, common sense procedure for schools to use.”



Under the 1997 law, schools were forced to prove a negative: that a child’s behavior was not a manifestation of his or her disability based upon a complicated set of factors. Many schools found this test to be confusing and unfair. S.1248 directs a school to determine whether the child’s behavior was a manifestation of his or her disability based upon two questions... (Senate Committee on Health, Education, Labor, and Pensions, 2003, p. 44)

As a result, the “Act no longer requires that the appropriateness of the child’s IEP and placement be considered when making a manifestation determination” (71 Fed. Reg. 46720). For those in the audience who are familiar with IDEA ‘97’s requirements, it will be important to point out this change.

Scope of the Review

IDEA 2004 states that the LEA, the parent, and relevant members of the child’s IEP Team must review “all relevant information in the child’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents” as

part of conducting a manifestation determination [§300.530(e)(1)]. While the provision makes the scope of review sufficiently clear, the Department indicates that this list is not exhaustive and may include other relevant information in the child’s file, including those mentioned by various commenters (“placement appropriateness, supplementary aids and services, and if the behavior intervention strategies were appropriate and consistent with the IEP”) (71 Fed. Reg. 46719).

Also included in the Analysis of Comments and Changes is an excerpted remark from the Conference Report that is illuminating as to both the scope of the review to be conducted and the intent behind it.

[The]...Conferees intend to assure that the manifestation determination is done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented. The Conferees further intended that “if a change in placement is proposed, the manifestation determination will analyze the child’s behavior as

demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability.” (As cited in 71 Fed. Reg. at 46720)

What Happens Next?

So the group has met, reviewed all relevant information in the child’s file, considered the LEA’s implementation of the IEP, considered the child’s conduct in light of his or her disability, and come to a determination. What happens if that determination is yes—or no?

As befitting your audience’s needs, interests, and responsibilities, you’ll want to examine what must occur in either circumstance. IDEA’s relevant provisions are provided in the box on the next page and, for the audience, on **Handout A-11**.

Basis for the Determination

Two possible paths exist to making a manifestation determination of “yes”—either (a) the conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or (b) the conduct in question was the direct result of the LEA’s failure to implement the IEP. These are the “conditions” mentioned in the first paragraph in the box—“paragraphs (e)(1)(i) or (1)(ii).” If either condition is met, then the determination must be “yes.”

But it matters which of the two conditions was the basis for the determination of “yes.”

“Yes,” for Failure to Implement the IEP

If the LEA, parent, and relevant IEP Team members determine that the child’s misconduct was the direct result of the LEA failing to implement the child’s IEP, the “LEA must take immediate steps to remedy those deficiencies.” For such a determination:

[T]he LEA has an affirmative obligation to take immediate steps to ensure that all services set forth in the child’s IEP are provided, consistent with the child’s needs as identified in the IEP. (71 Fed. Reg. 46721)

The child is also returned to the placement from which he or she was removed as part of disciplinary action, except in two circumstances:

- if the behavioral infraction involved “special circumstances” (weapons, drugs, or serious bodily injury);
- if the parent and LEA agree “to a change of placement as part of the modification of the behavioral intervention plan” [§300.530(f)(2)].

“Yes,” for Conduct Directly Related to Disability

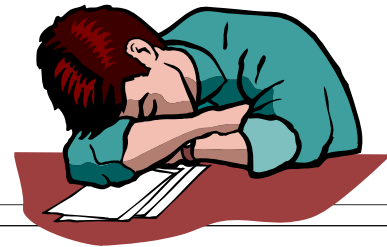
If the LEA, parent, and relevant members of the IEP Team involved in making the manifestation determination find that the child’s misconduct had a direct and substantial relationship to his or her disability, then the group must reach a manifestation determination of “yes.” Such a determination carries

with it two immediate considerations:

- Functional behavioral assessment—Has the child had one? Does one need to be conducted?
- Behavioral intervention plan—Does the child have one? If so, does it need to be reviewed and revised? Or does one need to be written?

The provisions covering these considerations are found at §300.530(f)—see **Handout A-11** and the box below.

Functional behavioral assessment (FBA) focuses on identifying the function or purpose behind a child’s behavior. Typically, the process involves look-



When Conduct is a Manifestation of the Child’s Disability: IDEA’s Provisions at §300.530(e)(2) and (f)

(e)...(2) The conduct must be determined to be a manifestation of the child’s disability if the LEA, the parent, and relevant members of the child’s IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child’s IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) *Determination that behavior was a manifestation.* If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child’s disability, the IEP Team must—

(1) Either—

(i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

ing closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP Team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior.

If a child's misconduct has been found to have a direct and substantial relationship with his or her disability, then the IEP Team will need to immediately conduct an FBA of the child, unless one has already been conducted. Similarly, the IEP Team must write a behavioral intervention plan for this child, unless one already exists. If the latter is the case, then the IEP Team will need to review the plan and revise it, as necessary, to address the behavior. Requirements to conduct an FBA and write a BIP existed in IDEA '97, but were more extensive than in IDEA 2004. As the Department states:

[W]e must recognize that Congress specifically removed from the Act a requirement to conduct a functional behavioral assessment or review and modify an existing behavioral intervention plan for all children within 10 days of a disciplinary removal, regardless of whether the behavior was a manifestation or not. (71 Fed. Reg. 46721)

The IEP Team must address a child's misbehavior via the vehicle of the IEP as well. As the Department states:

When the behavior is related to the child's disability, proper development of the child's IEP should include development of strategies, including positive behavioral interventions, supports, and other strategies to address that behavior, consistent with §300.324(a)(2)(i) and (a)(3)(i). When the behavior is determined to be a manifestation of a child's disability but has not previously been addressed in the child's IEP, the IEP Team must review and revise the child's IEP so that the child will receive services appropriate to his or her needs. Implementation of the behavioral strategies



identified in a child's IEP, including strategies designed to correct behavior by imposing disciplinary consequences, is appropriate under the Act and section 504, even if the behavior is a manifestation of the child's disability. (71 Fed. Reg. 46720-1)

Finally, the child must also be returned to the placement from which he or she was removed as part of the disciplinary action. The same two exceptions to this mentioned earlier apply—if the behavioral infraction involved special circumstances of

weapons, drugs, or serious bodily injury; or if the parents and LEA agree to change the child's placement as part of modifying the BIP.

Addressing Behavior Proactively

It's important to note to the audience that no FBA or BIP is required if the child's behavior is determined to NOT be a manifestation of his or her disability. However, as the Department states:

...as a matter of practice, it makes a great deal of sense to attend to behavior of children with disabilities that is interfering with their education or that of others, so that the behavior can be addressed, even when that behavior will not result in a change in placement. In fact, the Act emphasizes a proactive approach to behaviors that interfere with learning by requiring that, for children with disabilities whose behavior impedes their learning or that of others, the IEP Team consider, as appropriate, and address in the child's IEP, "the use of positive behavioral interventions, and other strategies to address the behavior."

...This provision should ensure that children who need behavior intervention plans to succeed in school receive them. (71 Fed. Reg. 46721)

Thus, the vehicle exists within IDEA's other provisions to address a child's misbehavior that has been determined not to be a manifestation of his or her disability. If the IEP Team has not

previously considered the special factor of behavior when developing the child's IEP, then a behavioral infraction invoking IDEA's discipline procedures would most likely be a very good reason for the Team to consider that special factor now.

Change 4 Identified: What Happened to Stay-Put?



One of the central tenets of P.L. 94-142, the Education for All Handicapped Children Act passed in 1975, and nearly every amendment to the law since its enactment in 1975, has been what is known as the "stay-put provision." This provision, cited immediately below, has served to prevent public agencies from unilaterally removing a child with a disability from his or her current educational placement and placing the child in another setting during administrative proceedings.

During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child...
[Public Law 94-142, 20 USC 1415 Section 615(e)(3), 1975]

While IDEA '97 largely maintained the "stay-put" provision, it also included an exception to it—"Except as provided in subsection (k)(7)..." [IDEA '97 statute, Section 615(j)]. This subsection of IDEA '97 addressed disciplinary removal of a child with a disability from his or her current placement to an IAES, appeal, expedited due process hearing, and the question of where the child will remain during the pendency of that hearing. IDEA '97 introduced the first exception to the "stay-put" provision to give school systems a means of addressing school safety issues and removing a child from a current placement if they maintained that "it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative educational setting)." [IDEA '97, Section 615(k)(7)(C)]



Where does "stay-put" stand under IDEA 2004? Changed, that's where. Section 300.533 makes this clear:

§300.533 Placement during appeals.

When an appeal under §300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in §300.530(c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

The Department discusses this significant change in the Analysis of Comments and Changes, as follows:

The Act changed the stay-put provision applying to disciplinary actions. The provisions regarding stay-put in current §300.527(b) are not included in these regulations because the provisions upon which §300.527(b) were based, were removed by Congress from section 615(k)(4) of the Act. We, therefore, are not revising the regulations in light of Congress' clear intent that, when there is an appeal under section 615(k)(3) of the Act by the parent or the public agency, the child shall remain in the interim alternative educational setting chosen by the IEP Team pending the hearing officer's decision or until the time period for the disciplinary action expires, whichever occurs first, unless the parent and the public agency agree otherwise. Section 300.533 reflects the statutory requirements in section 615(k)(4)(A) of the Act. For example, consistent with §300.533, if a child's parents oppose a proposed change in placement at the end of a 45-day interim alternative educational placement, during the pendency of the proceeding to challenge the change in placement, the child remains in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period for the disciplinary action, whichever occurs first, unless the parent and the public agency agree otherwise. (71 Fed. Reg. 46726)

Change 5 Identified: Clarifying “Basis of Knowledge”



The “Basis of Knowledge” provisions were introduced in IDEA '97 as part of the protections offered in tandem with the then-new disciplinary procedures. These provisions applied to children who hadn't yet been identified as “children with disabilities” under IDEA but who were subject to disciplinary action for child misconduct and wished to invoke IDEA's protections. Part and parcel of such an action was the claim that the LEA had knowledge that the child was a “child with a disability” at the time the misconduct occurred. IDEA '97 specified what constituted “basis of knowledge.” And it is that specification that has been revised in IDEA 2004.

IDEA's “basis of knowledge” provisions have been revised to be more precise about “who” needs to say (or write) “what” to “whom” in order for the LEA to be considered to have a “basis of knowledge” that the child in question was, in fact, a “child with a disability” before the misbehavior occurred and precipitated disciplinary action. These provisions are found at §300.534(b), are included on **Handout A-11**, and appear in the box below.

The Senate HELP committee's *Report [to Accompany S.1248]* sheds light on why Congress made these revisions.

The committee maintains its intent that children who have not yet been identified for IDEA should be afforded certain protections under the law. However, the committee has heard many concerns



§300.534 Protections for children not determined eligible for special education and related services.

(a)...

(b) *Basis of knowledge.* A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

(c) *Exception.* A public agency would not be deemed to have knowledge under paragraph (b) of this section if—

(1) The parent of the child—

(i) Has not allowed an evaluation of the child pursuant to §§300.300 through 300.311; or

(ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.

regarding the abuses resulting from the provision in the 1997 law affording these protections. For example, under current law, a school is deemed to have knowledge that a child has a disability based on a claim that the child's "behavior or performance demonstrates the need" for special education and related services, or because a teacher made a stray, isolated comment expressing "concern about the behavior or performance of the child" to another teacher. The committee believes that these provisions as written have had the unintended consequence of providing a shield against the ability of a school district to be able to appropriately discipline a student. Therefore, S. 1248 revises this provision to ensure that schools can appropriately discipline students, while maintaining protections for students whom the school had valid reason to know had a disability. (Senate Committee on Health, Education, Labor, and Pensions, 2003, pp. 45-46)

"Basis of Knowledge" for Children Receiving Early Intervening Services?

Not mentioned in either "basis of knowledge" or the "exception" provisions at §300.534 is whether or not a public agency would be deemed to have "knowledge" if the child in question is receiving early intervening services. Early intervening services were discussed earlier in this training module and are the subject of a stand-alone module, *Early Intervening Services and Response to Intervention*. Among other things, they are provided to:

...students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. [§300.226(a)]

So, by their very nature, early intervening services are intended for children who are not currently identified as needing special education or related services—phrasing that bears a strong resemblance to the "basis of knowledge" language ("Protections for children not determined eligible for special education and related services"). Would an LEA, then, be vulnerable to claims of "basis of knowledge" if such a child became subject to a disciplinary action and wished to assert the protections of IDEA? Yes and no. It depends on the circumstances (big surprise!). Here's the Department's much more precise answer:

A public agency will not be considered to have a basis of knowledge under §300.534(b) merely because a child receives services under the coordinated, early intervening services... However, if a parent or a teacher of a child receiving early intervening services expresses a concern, *in writing* [emphasis added], to appropriate agency personnel, that the child may need special education and related services, the public agency would be deemed to have knowledge that the child is a child with a disability under this part. (71 Fed. Reg. 46727)

In Conclusion

Congratulations, you've ploughed through this lengthy discussion section on key changes in IDEA's disciplinary procedures. There are lots of little language tweaks in its provisions that aren't identified in this module; the key changes have been enough to cover, and now you've covered them! And the rest of the key changes in IDEA, too! Well done.

Slide loads completely. No clicks are necessary except to END the next slide.

**Roundup Time!**

CLICK AGAIN to END the slide show.

Use this slide for a review and recap of your own devising, open the floor up for a question and answer period, or have participants complete **Handout A-12** (described at the right) and discuss in the large group afterwards. Emphasize the local or personal application of the information presented here.

Closing Activity

Total Time Activity Takes: 10-15 minutes.

Group Size: Individual work, then work in pairs.

Materials:
Handout A-12

Instructions

1. Refer participants to Handout A-12. Indicate that this is the activity sheet they have to complete. They will have 5 minutes to work individually. Then they are to share their answers with a partner.
2. At the end of the time allotted for individual work, have the audience split into pairs, working with the person on their right (or using whatever other strategy you'd prefer). Give the pairs 5 minutes (or more) to share their answers, then call the audience back to large-group focus.
3. Take 2-3 minutes to see the kind of answers that people gave and what changes in IDEA are most relevant to their personal or professional lives. Don't have a full report-out from individuals or pairs. Ask for a show of hands for each item A-M.