

## Module 14

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### Meetings of the IEP Team



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**NICHCY is here for you.**

This training curriculum is designed and produced by NICHCY, the National Dissemination Center for Children with Disabilities, at the request of our funder, the Office of Special Education Programs (OSEP) at the U.S. Department of Education.

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

Under IDEA 2004, as with its predecessors, each public school child with a disability who receives special education and related services must have an individualized education program (IEP). This requirement also applies to each child with a disability who is placed in or referred to a private school or facility by a public agency. Each child's IEP, among other elements, contains a statement of the special education and related services and supplementary aids and services to be provided to the child or on behalf of the child. The process of developing this vital document is the subject of many of IDEA 2004's provisions and, as such, is of great interest and importance to educators, administrators, and families alike. Trainers have much material to cover on the IEP. To help you do this, we've divided training on the IEP (both the document and the process of developing the document) into five modules under the umbrella of **Theme D, the Individualized Education Program**, as follows:

- *The IEP Team: Who is a Member?* describes who the law requires participate in developing a child's IEP and what type of information or expertise they might contribute;
- *Content of the IEP* focuses on what type of information an IEP must contain;
- *Meetings of the IEP Team* describes what the law requires in terms of getting the IEP Team together and what goes on at such meetings;

### 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.<sup>1</sup>

- *LRE Decision Making* takes a close look at IDEA's least restrictive environment (LRE) provisions and how these affect a child's placement; and
- *Children Enrolled by Their Parents in Private Schools* examines the responsibilities of public agencies to provide equitable services to children with disabilities who have been placed by their parents in private schools.

You are currently reading the background section and discussion in the module on *Meetings of the IEP Team*, the third module in the IEP series.

### Files You'll Need for This Module

Module 14 includes the following components provided in separate files. If you need or want the entire module, be sure to download each of the components in either Word® or PDF format.

- **Trainer's Guide Discussion.** The discussion text for trainers (what you're reading right now) describes how the slides operate and explains the content of each slide, including relevant requirements of the statute signed into law by President George W. Bush in December 2004 and the final

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<sup>1</sup> Unless otherwise noted, the citations to the final Part B regulations are to those that took effect on October 13, 2006.

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. Part 300). Available online at:

- [www.nichcy.org/reauth/IDEA2004regulations.pdf](http://www.nichcy.org/reauth/IDEA2004regulations.pdf)
- <http://idea.ed.gov>

regulations for Part B  
published in August 2006.

The discussion is provided via two PDF files, with the equivalent content also available in one accessible Word file. Here are the files' full names and where to find them on NICHCY's Web site:

*PDF of discussion for Slides 1-16*  
[www.nichcy.org/training/  
14-discussionSlides1-16.pdf](http://www.nichcy.org/training/14-discussionSlides1-16.pdf)

*PDF of discussion for  
Slides 17-end*  
[www.nichcy.org/training/  
14-discussionSlides17-end.pdf](http://www.nichcy.org/training/14-discussionSlides17-end.pdf)

*The entire discussion in an  
accessible Word® file*  
[www.nichcy.org/training/  
14-discussion.doc](http://www.nichcy.org/training/14-discussion.doc)

- **Handouts in English.** The handouts for this module are provided within an integrated package of handouts for the entire umbrella topic of **Theme D, Individualized Education Programs**, which includes five different modules (described above). These handouts are available in both PDF and Word® files as follows:

*PDF version of the Handouts.*  
[www.nichcy.org/training/  
D-handouts.pdf](http://www.nichcy.org/training/D-handouts.pdf)

*Word® version of the Handouts,*  
for participants who need an accessible version of the handouts or if you'd like to create large-print or Braille versions:  
[www.nichcy.org/training/  
D-handouts.doc](http://www.nichcy.org/training/D-handouts.doc)



To launch the PowerPoint presentation, double-click the **PLAY.bat** file.

- **PowerPoint® slide show.**  
NICHCY is pleased to provide a slide show (produced in PowerPoint®) around which trainers can frame their presentations on the meetings at which a child's IEP is developed. Find this presentation at:

[www.nichcy.org/training/  
14slideshow.zip](http://www.nichcy.org/training/14slideshow.zip)

*Important note:* You do NOT need the PowerPoint® software to use these slide shows. It's set to display, regardless, because the PowerPoint Viewer® is included. You may be asked to agree to Viewer's licensing terms when you first open the slideshow.

## References



Center for Effective Practice and Collaboration. (2006). *Functional behavior assessment*. Retrieved October 11, 2006, from <http://cecp.air.org/fba/default.asp>

Gruenfeld, D.H., & Preston, J. (2000, August). Upending the status quo: Cognitive complexity in U.S. Supreme Court justices who overturn legal precedent. *Personality and Social Psychology Bulletin*, 26, 1013-1022.

Hopstock, P.J., & Stephenson, T.G. (2003). *Descriptive study of services to LEP children and LEP children with disabilities: Native languages of LEP children* (Special Topic Report #1). Arlington, VA: Development Associates, Inc. Available online at: [http://www.ncela.gwu.edu/resabout/research/descriptivestudyfiles/native\\_languages1.pdf](http://www.ncela.gwu.edu/resabout/research/descriptivestudyfiles/native_languages1.pdf)

National Technical Assistance Center on Positive Behavioral Interventions and Supports. (2006). *School-wide PBS: Tertiary prevention*. Retrieved October 11, 2006, from [www.pbis.org/tertiaryprevention.htm](http://www.pbis.org/tertiaryprevention.htm)

Neale, M.A., & Northcraft, G.B. (2006). *Unleashing effectiveness and efficiency in teams* [video]. Stanford, CA: Stanford University. Available online at: [www.gsb.stanford.edu/news/research/pod\\_teams.shtml](http://www.gsb.stanford.edu/news/research/pod_teams.shtml)

## Looking for IDEA 2004?

### *The Statute:*

- [www.nichcy.org/reauth/PL108-446.pdf](http://www.nichcy.org/reauth/PL108-446.pdf)
- <http://idea.ed.gov>

### *Final Part B Regulations:*

- [www.nichcy.org/reauth/IDEA2004regulations.pdf](http://www.nichcy.org/reauth/IDEA2004regulations.pdf)
- <http://idea.ed.gov>

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## 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.

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## 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/reauth/IDEA2004regulations.pdf](http://www.nichcy.org/reauth/IDEA2004regulations.pdf)

## References *(continued)*

Snyder, B. (2004, April). *Better decisions through teamwork*. Stanford, CA: Stanford University, Graduate School of Business. Retrieved October 8, 2006, from [www.gsb.stanford.edu/news/research/ob\\_teamdecision\\_making.shtml](http://www.gsb.stanford.edu/news/research/ob_teamdecision_making.shtml)

U.S. Department of Education (2006, August 14). Assistance to states for the education of children with disabilities and preschool grants for children with disabilities; Final rule. *Federal Register*, 71(156), 46540-46845.

Wang, Q. (2005, July). *Disability and American families: 2000* (CENSR-23). Washington, DC: U.S. Census Bureau. Available online at: [www.census.gov/prod/2005pubs/censr-23.pdf](http://www.census.gov/prod/2005pubs/censr-23.pdf)

Zehler, A.M., Fleischman, H.L., Hopstock, P.J., Stephenson, T.G., Pendzick, M.L., & Sapru, S. (2003). *Descriptive study of services to LEP children and LEP children with disabilities: Summary of findings related to LEP and SpEd-LEP children* (Policy Report). Arlington, VA: Development Associates, Inc. Available online at: [www.ncela.gwu.edu/resabout/research/descriptivestudyfiles/policy\\_report.pdf](http://www.ncela.gwu.edu/resabout/research/descriptivestudyfiles/policy_report.pdf)

## Slide 1

### Introductory Slide and Opening Activity



*How to Operate the Slide:*

No clicks necessary.  
Slide self-presents.

CLICK to advance to next slide.

Use this slide to orient your audience to what this training will be about: what IDEA requires in terms of IEP Team meetings; the types of considerations, discussions, and decisions made by IEP Teams; and what's new or revised in the regulations regarding IEP Team meetings.

#### **Note to Trainers**

All references for this module are provided on page 14-5 of the module.

**View I**

### A waterfall of information?



Slide loads with this view.

### The IEP series...

- IEP Team
- Contents of the IEP
- **Meetings of IEP Team**
- LRE Decision Making
- Children with Disabilities Enrolled by Their Parents in Private Schools

**Click I**

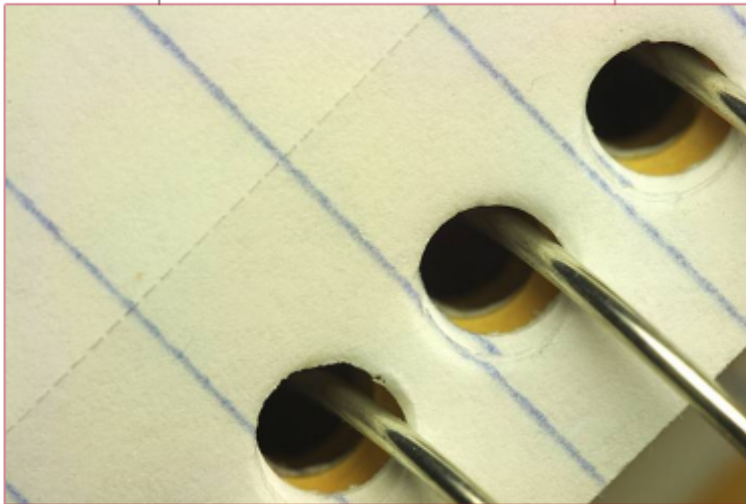
← *Click 1:*  
The list of IEP modules in Theme D's series appears.

**CLICK AGAIN** to advance to next slide.

This slide starts with a picture of rushing water, to indicate that there is so much information on the IEP, it would sweep you away if we tried to cover it all in one module.

So, to address the enormous topic of the IEP—a **CLICK** will bring up the next graphic—Theme D has five separate modules, as shown on the slide.

Use this slide to place the current module in its context—it's the third module in a 5-part series. Its focus will be on IEP Team meetings.

**Starting View****Everything You Wanted to Know About...****IEP Team Meetings**

← Slide loads with the title and a graphic.

**Click 1****Everything You Wanted to Know About...****IEP Team Meetings**

- Scheduling the meeting
- Developing the IEP
- Special factors IEP Team must consider
- Excusing a member from the meeting
- Implementing the IEP

← Click 1:  
The "agenda" of  
topics to be covered  
appears.

CLICK AGAIN to advance to next slide.

(discussion on next page) ➡





Slide 3 is an advance organizer for the audience as to what content they're going to hear and discuss in this module.

The slide loads with the top view, just the header "Everything You Wanted to Know About...IEP Team Meetings." This plain presentation, no agenda listed, gives you the opportunity to ask the audience, "What do you want to know about IEP meetings?" and to hear what they have to say. For trainees, such a beginning also sets up the "how's this relevant to me?" perspective that can increase involvement, learning, and later use of the information. You can either jot down, list-like, what they want to know about IEP meetings, or you can frame this quick intro as a group discussion kept quite informal.

Proceed with the presentation and take a quick look at the session's *actual* agenda. One Click will whisk away the picture of the spiral edge of a notebook, and the session's agenda will be visible. It reads:

- Scheduling the meeting
- Developing the IEP
- Special factors the IEP Team must consider
- Excusing a member from the meeting
- Implementing the IEP

To get a sense of prior knowledge of participants, you might ask for one audience contribution about each item on the agenda. Were any of these items mentioned in the information participants identified earlier as wanting to know? If so, point that out.

Not apparent is the additional content to be covered in this module—those other pieces of the agenda are itemized on the next slide, Slide 4. Indicate that there's more, and Click to advance the slide.

## This module also looks at:

- Reviewing and revising IEPs
- Circumstances where the IEP can be amended without an IEP Team meeting
- Special IEP situations



Slide loads with this view. No clicks are necessary except to advance to the next slide.

CLICK AGAIN to advance to next slide.

Slide 4 continues the list of content to be covered in this module, adding three more items to be explored.

Does the audience have any prior knowledge related to these agenda items? What do they already know about reviewing or revising the IEP? Has it been possible in the past for an IEP to be amended without a meeting of the IEP Team? (No, this is a new provision of IDEA 2004.) And what are “special IEP situations”—can anyone in the audience guess to what this item might be referring? Addressed at the very end of this module, this item refers to two specific sets of provisions in IDEA 2004:

- the provisions related to children with disabilities who are placed in private schools by public agencies (§300.325, see **Handout D-15**); and
- the provisions related to a child with disabilities who transfers to another school in the same school year, whether in the same State or in a different State [§300.323(e)-(g), see **Handout D-12**].

Spend only a brief time going over these agenda items, because the next several slides provide a quick review for the audience of what the IDEA 2004 requires in terms of: (a) membership on the IEP Team; and (b) content of the IEP itself.

## Slide 5

### Review: Who's on the IEP Team?

#### Who must a public agency include on the IEP Team?



*Name as many IEP Team members as you can.*

Slide loads with this view. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 5 sets up a quick review by running through the information presented in much greater detail in the module on the *IEP Team: Who Is a Member?*

The opportunity to summarize IEP Team membership is provided here either to refresh participants' knowledge or to present that material for the first time, in the event that your participants have not received that training. Both training scenarios are discussed below, with suggestions for how to proceed.

#### If This Is A Review

If your participants *have* completed the module on the IEP Team, then review the information with them. The slide frames the activity with the instruction:

*List as many IEP Team members as you can.*

You can either do this as a large group verbally or using a flip chart to make an audience-generated list, or have participants work individually or in pairs or a small group to generate their own list. Once the audience has created a working list of IEP Team members, have them turn to **Handout D-3** and compare their working list to the list of Team members listed in the regulations.

#### If This Is New Training for Participants

If your participants have *not* completed the module on the

IEP Team, then this wouldn't be called a "review" but, rather, a look at the IEP Team. You can make this look lengthy or brief depending on your audience's training needs and the time you have available. Refer to the background text in the separate module for a thorough discussion of each Team member, what the law specifically says about each, and what skills and expertise each member might bring to the IEP table and contribute. And be sure to refer participants to **Handout D-3**, which contains the IDEA 2004's regulations for "IEP Team."

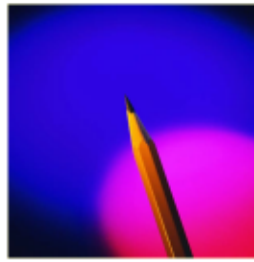
#### The IEP Team under IDEA

IDEA's provisions on the IEP Team appear at §300.321 and are provided on **Handout D-3**.

The provisions are also thoroughly discussed in the module on *The IEP Team: Who Is a Member?*, which may be helpful in enlarging (as necessary) the training on the Team conducted here.

## What's in the IEP?

Work with a  
partner



*List the  
information that  
must be in a  
child's IEP*

Slide loads with this view. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 6 is also intended as a quick review of information presented in much greater detail elsewhere—in this case, in the module on *Content of the IEP*.

As with Slide 5, the slide provides you with the opportunity either refresh participants' knowledge or present the material for the first time, in the event that your participants have not received that training. Both training scenarios are discussed below, with suggestions for how to proceed.

### If This Is A Review

If your participants *have* completed the module on *Content of the IEP*, then review the information with them. The slide begins with the instruction to work with a partner and:

*List the information that must be in a child's IEP.*

Of course, depending on how large your group is, having participants working with a partner may not be the most efficient approach for a review. You can also do this as a large group verbally or using a flip chart to make an audience-generated list. Once the audience has created a working list of IEP content, have them turn to

**Handout D-10** and match their list to what the regulations specify.

### Content of the IEP under IDEA

IDEA's provisions on content of the IEP appear at §300.320 and are provided on **Handout D-10**.

The provisions are also thoroughly discussed in the module on **Content of the IEP**, which may be helpful in enlarging (as necessary) the training on the IEP provided here.

## If This Is New Training for Participants

If your participants have *not* completed the module on the IEP content, then this wouldn't be called a "review" but, rather, a look at IEP content. However, if your participants have not received that training, you can use Slide 6 to present the material for the first time and lay an important foundation for the remainder of this session on the IEP Team Meeting. Be as lengthy or as brief as your audience's training needs require, given the time you have available. Refer to the background text in the separate module on *Content of the IEP* for a thorough discussion of each component of the IEP.

In concluding this slide's discussion, it is also important to point out to participants that the content of the IEP just discussed has immediate and direct bearing on the discussions that go on during IEP meetings, which is the central focus of this training session. Therefore, participants should keep that content in mind throughout the training session, for it is highly relevant.



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—Space for Notes—

*Coming together is a beginning;  
keeping together is progress;  
working together is success.*



--Henry Ford

Slide loads with this view. No clicks are necessary (except to advance to the next slide).

CLICK AGAIN to advance to next slide.

Use Slide 7 to mark the transition into the main content of this module on IEP Team meetings. This quote establishes a frame of reference for the concept of teams and the many benefits and challenges associated with them.

Give the audience a moment or two to read the quote, then quietly read it aloud yourself (it appears in the lower right hand box on this page). You might ask the audience one or two questions to stimulate discussion about teams and teamwork and set the stage for the next slide (where they will be asked to reflect upon their own skills and potential challenges when *they* work in a team). For example:

What word repeats here more than any other? (*Together.*)

Why would that word be significant in this training session?

How does this quote apply to what we're talking about today?

This quote implies that working together doesn't just happen. Do you agree?

If working together well doesn't "just happen," what makes it *ever* happen?

Think of the best team you've ever worked on. Why was that team successful?

### Research on Teams

What does research have to tell us about what makes an effective team? Time permitting, here are several insights from research you might wish to share with the audience.

*The value of different opinions held by team members.* Teams where members hold at least two separate points of view on a particular question tend to make better decisions (Gruenfeld & Preston, 2000). Because the minority viewpoint forces the majority to "think more complexly and consider diverse evidence" (Snyder, 2004).

*Conflict versus agreement on teams.* Teams report that their greatest concern is managing conflict on the team. Research indicates, however, that this concern over conflict can cause the team to reach agreement too quickly. When this happens, the team misses the benefits that analyzing different points of view brings to decision making. Conflicts need to be surfaced and addressed in the context of the team. (Neale & Northcraft, 2006)

*Different kinds of conflict and agreement.* Diversity on a team needs to encompass more than differences in gender, race, or ethnicity. In teams, it's the diversity in members' *knowledge base and expertise* that is so beneficial in decision making. Neale (2006) suggests encouraging a specific type of conflict—*information* disputes. Teams need to take advantage of members' varying skill sets and expertise in different disciplines. The question then becomes: "What does your expertise say about the solution to this problem?"

There is, however, one critical issue on which team members need to agree: the *goal* of the team. Sharing a common goal—expressed and articulated, consciously held and pursued—holds the team together, keeps them focused, and positively transforms how conflict is addressed inside the team (Neale & Northcraft, 2006).

## **IEP Teams as Diverse Groups**

By the very requirements of IDEA, IEP Teams are made up of individuals who bring different perspectives and expertise to the table. This diversity is intended to invest the team with the ability to craft an individualized response to a specific child's individual needs, taking into account that same child's individual strengths and talents. The law also makes clear that this is the goal of IEP meetings and the Team itself—developing an IEP that is appropriate for that individual child. Thus, by design, IEP Teams bring together two of the greatest assets research tells us that a team can have.

Coming together is a beginning;  
Keeping together is progress;  
Working together is success.

*Henry Ford*

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### **Note to Trainers**

All references for this module are provided on page 14-5 of the module.



## For Starters:



Within **30 days** of determination that the child needs special education and related services...

...an IEP Team meeting must be conducted to develop the child's IEP

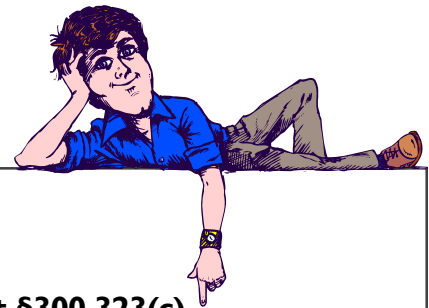
Slide loads with this view. No clicks are necessary (except to advance to the next slide).

CLICK AGAIN to advance to next slide.

Slide 8 focuses on the *first meeting* after the child is found to be eligible for special education and related services.

### 30-Day Period to Hold the First IEP Meeting

IDEA 2004 maintains the requirement of all previous versions of the law since 1977 that the meeting to develop the child's IEP must be held within 30 days of the determination that the child needs special education and related services. This provision of law appears at §300.323(c). It appears in the box at the right; participants may refer **Handout D-14**, where it also appears.



### IDEA's Timeline at §300.323(c)

(c) *Initial IEPs; provision of services.* Each public agency must ensure that—

(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.



Thus, once an eligibility determination is made that the child needs special education and related services, the first IEP meeting must occur within 30 days.

What is meant by “days”—business days, school days, calendar days? How are these 30 days supposed to be counted?

The answer lies in IDEA’s definition of “Day” at §300.11(a). This provision reads:

*Day* means calendar day unless otherwise indicated as business day or school day.

Since the provision at §300.323(c)(1) does not indicate either business day or school day, “day” here, means *calendar* day.

In the Analysis of Comments and Changes to the final Part B regulations, the Department explained:

The requirement to conduct a meeting to develop a child’s IEP within 30 days of the determination that a child needs special education and related services is longstanding, and has been included in the regulations since they were first issued in final form in 1977. Experience has shown that many public agencies choose to conduct the meeting to develop the child’s IEP well before the 30-day timeline. . . [and] that the 30-day timeline for conducting a meeting

to develop an IEP is a reasonable time to provide both public agencies and parents the opportunity to ensure that required participants can be present at the IEP Team meeting. (71 Fed. Reg. at 46680)

**Starting View****Scheduling the IEP Meeting**

Public agency must:

- schedule an IEP meeting at a mutually agreed-upon time and place; and

Slide loads with  
"Public agency  
must" and Bullet 1.

**Click 1****Scheduling the IEP Meeting**

Public agency must:

- schedule an IEP meeting at a mutually agreed-upon time and place; and
- provide parents with specific information about the meeting

Click 1:  
Bullet 2 appears.

CLICK AGAIN to advance to next slide.

(discussion on next page)





Slide 9, shown on the previous page, sets up the discussion of what IDEA 2004 requires of public agencies with respect to scheduling *any* IEP meeting. IDEA's provisions involve both common sense and courtesy, and are intended to ensure that parents have every opportunity to attend the meeting and contribute. The provisions are not new to this set of amendments, so if you're familiar with the law already, this will no doubt be familiar, too. In a nutshell, the school and parents have to agree when and where they are going to meet.

IDEA's provisions regarding parent participation state:

Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate...  
[§300.322(a)]

This provision appears on **Handout D-4** and, as can be seen in the box on the right, is accompanied by a much longer list of what the public agency must do. As the first view of the slide shows, steps the school must take to ensure parent participation include—

(1) Notifying the parents of the meeting early enough to ensure that they have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place  
[§300.322(a)(1)-(2)].

The regulations in the box also list the specific information that the notice must include. Go over these with participants, directing their attention to **Handout D-4** where they can see the verbatim language of the Part B regulations. As time allows, discuss their actual experiences with receiving such a notice from

the public agency. Did it include these various elements?

If parents cannot attend the meeting, then the public agency is required to use "other methods to ensure parent participation, including individual or conference telephone calls" [§300.322(c)] and other alterna-

### Key IDEA Provisions: Scheduling the IEP Meeting

(a) *Public agency responsibility—general.* Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b) *Information provided to parents.* (1) The notice required under paragraph (a)(1) of this section must—

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special

expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must—

(i) Indicate—

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and

(B) That the agency will invite the child; and

(ii) Identify any other agency that will be invited to send a representative.

§300.322(a)-(b)

tive means such as video conferences (§300.328). IDEA permits such alternatives if parents and the public agency agree to use alternative methods of meeting participation (§300.328).

IDEA includes provisions that permit the public agency to hold an IEP meeting without the parents in attendance (either in person or via alternative methods), but this may only occur if the public agency has been unable to convince the parents to attend and has documented all such attempts to do so [see §300.322(d), shown on **Handout D-4**].



## Notifying Parents of the Meeting

The public agency's notification to parents must tell parents:

- the purpose, time and location of the meeting
- who will be at the meeting
- that parents and public agencies have the right to invite other people with knowledge or special expertise about the child, including related services personnel as appropriate, and that the party inviting the individual makes the determination that that individual possesses the requisite knowledge or special expertise regarding the child

- that if the parents request it, the Part C service coordinator or other representatives of the Part C system must be invited to attend the initial IEP meeting for a child previously served under Part C of the Act in accordance with §300.321(f)

*Note:* Although the Part B regulations specify that this notice must be provided early enough to ensure parent participation, there is no explicit provision governing the format of this notice. There is no provision requiring that this notice be in writing.

Knowing each of these elements in advance of the meeting gives parents the opportunity to prepare and more fully participate in meeting discussions and decisions.

- *The purpose of an IEP meeting can vary*—What is the purpose of *this* meeting? Is the Team going to talk about transition services for a child approaching school exit? Or is the primary focus going to be services for next year, or the child's progress or lack of progress *this* year? These purposes are quite different from one another, and so would be the discussions arising from them.
- *Who will attend the meeting can also vary.* Although the LEA must ensure that specific *types* of individuals are represented on the IEP Team—including not less than one special education teacher of the child (or



where appropriate, not less than one special education provider of the child)—it is the public agency that determines who the

actual *individuals* attending will be. Will it be Mrs. Brown or Mr. Smith? Perhaps the school is planning to invite a specialist to the meeting or someone that the school has the right to include with knowledge or special expertise about the child, such as a related services provider. All such information must be included in the parent notification.

- *The parent's (or public agency's) right to invite individuals with knowledge or special expertise regarding the child is another item that must be included in the notification the public agency sends to parents to let them know of an upcoming IEP meeting.* As was discussed in the module on IEP Teams, parents may wish to invite someone who has special knowledge about the child or who has some expertise to contribute to shaping the IEP, and the IDEA provides them



the right to do so, if they so choose. If parents *do* invite such a person, he or she needs to have “knowledge or special expertise” about the child, and the party inviting the person—in this case, the parents—decides whether the individual meets that criterion. IDEA does not require that parents let the school know who they might be inviting to join the IEP Team, but it may be a matter of courtesy and good teamwork to do so.

The public agency also has the right to invite individuals with knowledge or special expertise regarding the child. If the agency does invite such an individual to join the IEP Team, it is the agency who determines whether the individual has the requisite “knowledge or special expertise” about the child. The public agency must inform parents that this person will be attending the IEP meeting.

---

**—Space for Notes—**

## Starting View

## Ensuring Parent Participation



§300.322(c)

The public agency must take **whatever action is necessary** to ensure that the parent understands the proceedings of the IEP Team meeting...

Slide loads with the pix and this top paragraph.

## Click 1

## Ensuring Parent Participation



§300.322(c)


The public agency must take **whatever action is necessary** to ensure that the parent understands the proceedings of the IEP Team meeting...

...including arranging for an **interpreter for parents**...

- with deafness, or
- whose native language is other than English

Click 1:  
Text about  
"interpreter for  
parents" and the 2  
bullets below appear.

CLICK AGAIN to advance to next slide.

(discussion on next page) 





Slide 10 addresses a longstanding provision in the Part B regulations—ensuring that public agencies take the necessary steps to give parents the opportunity to understand the proceedings at an IEP Team meeting. As the regulations state at §300.322(e):

The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

Although this requirement is not new, it is an important obligation for public agencies and of tremendous importance to parents who are deaf or whose native language is not English. According to the U.S. Census Bureau (Wang, 2005), an estimated 7.8 million people age 15 and older have difficulty hearing a normal conversation and approximately 1 million cannot hear (p. 3). How many of these are parents of school-aged children with disabilities is difficult to say (only limited statistics exist), but the impact of deafness on a parent's ability to

understand and participate in an IEP meeting needs no statistics to imagine. The impact of limited English proficiency on parental understanding of proceedings at IEP meetings is similarly easy to intuit. More data, however, are available to document the number of children whose parents have a native language other than English and might require an interpreter in an IEP meeting.

By far, the most prevalent non-English language spoken by children in our schools (K-12) is Spanish (77%), followed by Vietnamese, Hmong, Korean, Arabic, Haitian Creole, Cantonese, Tagalog, Russian, Navajo, and Khmer (Cambodian), none of which accounts for more than 3% of the limited English proficient (LEP) child population (Hopstock & Stevenson, 2003). More than 350,000 of LEP children receive special education services (Zehler, Fleischman, Hopstock, Stephenson, Pendzick, & Sapru, 2003).

What should parents do if they feel they require an interpreter to understand the proceedings of an IEP meeting? Rather than *assume* such an arrangement will be made by the public agency, it would be prudent for the parent to inform the school system that the parent will need an interpreter for the meeting. Parents who need an interpreter may wish to check with their school district to find out how much time is needed to arrange for an interpreter to be present at the IEP meeting. By letting the school system know before the meeting occurs, the school will be able to make arrangements to have an interpreter present.

## Starting View

## Developing the IEP

The IEP Team  
must consider...



Slide loads with the  
pix and the text "The  
IEP Team must  
consider..."

## Clicks 1-4

## Developing the IEP

The IEP Team  
must consider...



- Strengths of the child
- Concerns of parents for enhancing their child's education
- Results of the child's initial evaluation (*or most recent evaluation*)
- Academic, developmental, and functional needs of the child

Click 1—Click 4:  
With each click, the  
four bullet points  
appear one by one.

CLICK AGAIN to advance to next slide.

(discussion on next page)







Slide 11 moves on in the IEP sequence from “scheduling the meeting” to “developing the IEP.” Now the IEP Team members are holding the meeting, either by sitting at the table or via alternative means (e.g., a conference call), consistent with §300.328, if agreed to by the parents and the public agency. What must the Team take into consideration as they develop the child’s IEP? Slides 11-16 will answer this question.

When the slide loads, only the picture and a bit of text appears—the lead-in phrase “The IEP Team must consider...” You might ask your audience, “What? What must the IEP Team consider?” Participants should have a good idea already of many elements to be considered in developing an IEP. Training with the module on *Content of the IEP* may well have preceded this training on the IEP meeting; at a minimum, the content of the IEP was reviewed at the very beginning of this module. Each component of the IEP must be considered, then, as appropriate. Have the audience list them out. Add any that they neglect to mention.

Indicate that IDEA 2004 also mentions several additional issues that the IEP Team must consider when developing the child’s IEP. These are the bulleted items on this slide, which will one by one appear as you Click: the strengths of the child, the parents’ concerns, results of evaluation, and the academic, developmental, and functional needs of the child. They are the *general* factors to be considered

by the IEP Team in developing a child’s IEP and are listed at §300.324(a). The regulations’ verbatim language is provided below for your convenience.

These four elements, as contained in IDEA 2004, result in two significant changes in the regulations for the Act. These are:



- deleting the requirement from IDEA '97 that the Team consider the results of the child’s performance on any general State or districtwide assessment programs; and
- adding a new provision that the IEP Team must consider the child’s academic, developmental, and functional needs.

Each of these changes is discussed below.

### A Provision In IDEA '97 Removed from IDEA 2004

IDEA '97’s regulation at §300.346(a)(1)(iii) has been removed in IDEA 2004. That provision, which implemented a corresponding statutory requirement, required IEP Teams to consider, “as appropriate, the results of the child’s performance on any general State or districtwide assessment programs.” Why was this provision re-



#### §300.324 Development, review, and revision of IEP.

(a) *Development of IEP—*

(1) *General.* In developing each child’s IEP, the IEP Team must consider—

- (i) The strengths of the child;
- (ii) The concerns of the parents for enhancing the education of their child;
- (iii) The results of the initial or most recent evaluation of the child; and
- (iv) The academic, developmental, and functional needs of the child.

moved, and what does it mean for IEP Teams when they are developing a child's IEP?

In response to a comment asking why this provision was not retained, the U.S. Department of Education provided the following explanation in its Analysis of Comments and Changes published with the final Part B regulations:

The Department agrees that State and districtwide assessments provide important information the child's academic performance and success in the general education curriculum. However, [then] current §300.346(a)(1)(iii) was removed, consistent with section 614(d)(3)(A)(iv) of the Act. . . . We do not believe that an explicit regulation is needed, however, because §300.324(a)(1)(iv) requires the IEP Team, in developing each child's IEP, to consider the academic, developmental, and functional needs of the child. A child's performance on State or districtwide assessments logically would be included in the IEP Team's consideration of the child's academic needs. In addition, as a part of an initial evaluation or reevaluation, §300.305(a) requires the IEP Team to review existing evaluation data, including data from current classroom based, local, and State assessments. (71 Fed. Reg. at 46682-83)

Therefore, while the provision from prior law was not retained in IDEA 2004 or in the final Part B regulations, the consideration of a child's assessment results on general Statewide and districtwide assessment programs are still be necessary and relevant for IEP Teams to consider.

### **Considering the Range of a Child's Needs**

IDEA 2004 also adds a requirement to be considered by IEP Teams: "[t]he academic, developmental, and functional needs of the child" [§300.324(a)(iv)]. This new requirement dovetails nicely with the evaluation requirement that public agencies, use assessment tools and strategies" that provide relevant information that directly assists persons in determining the educational needs of the child" [§300.304(c)(7)]. It also corresponds with the requirement for a statement of *present levels* in the IEP, which was

discussed in the module on *Content of the IEP* and which, as noted there, now must include information about the child's present levels of academic achievement and *functional* performance. This new provision, then, draws together many separate requirements and makes explicit the requirements for the IEP Team to consider the range of the child's needs—academic, developmental, and functional—when developing his or her IEP.

**Starting View****Special Factors to Consider**

IEP Team must consider special factors associated with:



Slide loads with the pix and the text "IEP Team must consider special factors associated with..."

**Click 1****Special Factors to Consider**

IEP Team must consider special factors associated with:



- Children whose behavior impedes own learning or learning of others

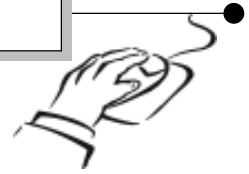


Click 1:  
The bullet appears with the picture of the young boy with his fingers in his ears.

CLICK AGAIN to advance to next slide.

(discussion on next page)





The law and its regulations list five special factors that the IEP Team must consider in the development, review, and revision of each child's IEP. Slide 12 begins a series of five slides looking at these special factors. IDEA 2004 retains these requirements without substantive change from IDEA '97 and the implementing regulations. The discussion below will highlight the importance of these special factors in the education of children with disabilities and the need for individualized consideration of these factors in the development, review and revision of each child's IEP. If participants are already familiar with the law, this will be review for them and a reaffirmation of these special considerations for IEP Teams.

The regulations for consideration of all special factors appear at §300.324(a)(2)(i)-(v) and on **Handout D-13**. Slide 12 focuses on the first special factor in IDEA's list, which appears in the box at the right.

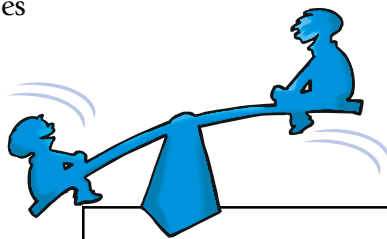
To address this special factor, the IEP Team needs to ask: Does this child's behavior interfere with his or her learning or the learning of others? If the answer is "yes," then the Team must talk about what the child needs and include this information in the IEP. As indicated by the provision, this will include consideration of the use of positive behavioral interventions and supports (PBIS) and other strategies to address the child's behavior.

### More About PBIS and IDEA

The behavior challenges that accompany many children to class these days is well known and of great concern to educational stakeholders from the classroom level up to Congress and back down again. Congress addressed how behavior problems can affect a child's learning, or the learning of others, in the 1997 reauthorization of IDEA, adding many new provisions of law, including new disciplinary requirements to guide how schools addressed behavior infractions of children with disabilities. IDEA '97 also explicitly involved the IEP Team in considering whether positive behavior supports or other strategies were necessary to address when a child's behavior was interfering with learning—either the child's own learning, or the learning of others in the class or school. *Functional behavioral assessments* became an important and required element in determining why a child was behaving in disruptive or chal-

lenging ways, and behavior intervention plans detailed how the problem was to be addressed. PBIS plays a role in the broader picture of addressing child behavior. It is intended to be used *before* problem behaviors become interfering behaviors, is based upon understanding why a child has problem behaviors and what strategies might be helpful, and seeks to stop or reduce the problem behaviors so that punishment is not necessary. Much research has been conducted into its effectiveness.

An excellent resource on this topic is the National Technical Assistance Center on Positive Behavioral Interventions and Supports (PBIS) that the Office of Special Education Programs (OSEP) funds. The Center strongly recommends adopting a *schoolwide* system of PBIS, which has been found to be more effective than individual responses to disciplinary infractions and child misbehavior. The position of the Center, as stated on its Web site is presented in the box on the next page.



### IDEA 2004 Provisions: Special Factor I

(2) *Consideration of special factors.* The IEP Team must—

- (i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
- (ii)...

§300.324(2)(i)

To support *individuals* with behavior challenges through PBIS, the Center's Web site states:

Research has demonstrated the effectiveness of PBS in addressing the challenges of behaviors that are dangerous, highly disruptive, and/or impede learning and result in social or educational exclusion. PBS has been used to support the behavioral adaptation of children (and other individuals) with a wide range of characteristics, including developmental disabilities, autism, emotional and behavioral disorders, and even children with no diagnostic label. (National Technical Assistance Center on PBIS, 2006)

If you're looking for resources on PBIS or would like to share several with your audience, we've listed three especially useful ones in the box at the right, including where to find them on the PBIS Web site.

### **Determining What Behavior Supports Are Needed**

How does the IEP Team determine what behavior supports might be appropriate and effective for a specific child? As pointed out in the IEP Team module, IDEA 2004 indicates that one of the roles of the regular education teacher on the Team may include determining what behavior supports and other strategies would be appropriate for the child [§300.324(a) (3), as shown in the box on the next page]. Additionally—and

*continued on the next page* —————▶

## **From the Web Site of OSEP's National Technical Assistance Center on Positive Behavioral Interventions and Supports (PBIS)**

### **Why is it so important to focus on teaching positive social behaviors?**

In the past, school-wide discipline has focused mainly on reacting to specific child misbehavior by implementing punishment-based strategies including reprimands, loss of privileges, office referrals, suspensions, and expulsions. Research has shown that the implementation of punishment, especially when it is used inconsistently and in the absence of other positive strategies, is ineffective. Introducing, modeling, and reinforcing positive social behavior is an important [part] of a child's educational experience. Teaching behavioral expectations and rewarding children for following them is a much more positive approach than waiting for misbehavior to occur before responding. The purpose of school-wide PBS is to establish a climate in which appropriate behavior is the norm.

Retrieved October 9, 2006 from [www.pbis.org/schoolwide.htm#PositiveSocialBehavior](http://www.pbis.org/schoolwide.htm#PositiveSocialBehavior)



### **Three Resources You'll Find at the PBIS Center**

- **State contact information**  
[www.pbis.org/map.htm](http://www.pbis.org/map.htm)
- **Implementer's blueprint and self-assessment for schoolwide behavior support**  
[www.pbis.org/files/Blueprint%20draft%20v3%209-13-04.doc](http://www.pbis.org/files/Blueprint%20draft%20v3%209-13-04.doc)
- **FACTS**, a two-page interview completed by people (teachers, family, clinicians) who know the child best, and used to either build behavior support plans, or guide more complete functional assessment efforts.  
[www.pbis.org/files/FACTS.doc](http://www.pbis.org/files/FACTS.doc)

importantly—the final Part B regulations do not address when a functional behavioral assessment must take place outside of disciplinary situations. However, in the Analysis of Comments and Changes published with the final Part B regulations, the Department states:

Section 300.324(a)(2)(i) follows the specific language in section 614(d)(3)(B)(i) of the Act and focuses on interventions and strategies, not assessments, to address the needs of a child whose behavior impedes the child's learning or that of others. Therefore, while conducting a functional behavioral assessment typically precedes developing positive behavioral intervention strategies, we do not believe that it is appropriate to include this language in §300.324(a)(2)(i). (71 Fed. Reg. at 46683).

But what is a functional behavioral assessment (FBA)? According to the Center for Effective Practice and Collaboration (2006):

Functional behavioral assessment is generally considered to be a problem-solving process for addressing child problem behavior. It relies on a variety of techniques and strategies to identify the purposes of specific behavior and to help IEP Teams select interventions to directly address the problem behavior.

### **IDEA 2004 Provisions: Contributions of the Regular Education Teacher to Determining a Child's PBIS**

(3) *Requirement with respect to regular education teacher.* A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).

§300.324(a)(3)

Within FBA, behavior is seen as serving a purpose, as communication, as performing some function for the child. FBA's goal is to identify what that purpose, function, or communication is for the child. Understanding *why* a child misbehaves is crucial to developing appropriate behavior supports.

IDEA 2004 contains explicit requirements regarding FBA and the development of behavioral intervention plans (BIPs), as part of IDEA's discipline provisions—see §300.530(d)(1)(ii) and (f)(1)(i). Although the Department acknowledged that an FBA will usually precede the development of a BIP, it declined to make this a requirement in the final Part B regulations. See 71 Fed. Reg. at 46575 (declining to modify definition of social work services to include this require-

ment) and 71 Fed. Reg. at 46883 (special factor discussion). For IEP Teams considering the special factor of “positive behavioral interventions and supports and other strategies,” the FBA may be a critical step in determining *why* the child is behaving in a way that impedes his or her learning or that of others. Fortunately, many resources exist to help IEP Teams address behavior issues in IEP development. We've already mentioned the OSEP-funded PBIS Center. *Resource D-2* and *Resource D-3* are provided as well to supplement the brief overview given here regarding consideration of behavior, including essentials of FBAs and BIPs. Have a look on the next page at the list of additional resources that Teams may find helpful. It's brief, yes, but oh, will it lead you to more!



## Want to Dig Deeper Into the Subject?

---

Need more info about PBIS, FBAs, or BIPs? Try...

### **3-part Series for IEP Teams**

Center for Effective Practice and Collaboration

Available at: <http://cecp.air.org/fba/default.asp>

**Part 1:** *An IEP Team's Introduction To Functional Behavioral Assessment And Behavior Intervention Plans*

**Part 2:** *Conducting a Functional Behavioral Assessment*

**Part 3:** *Creating Positive Behavioral Intervention Plans and Supports*

### **5-part Suite on Behavior**

National Dissemination Center for Children with Disabilities (NICHCY)

Available at: [www.nichcy.org/resources/behaviorexpertise.asp](http://www.nichcy.org/resources/behaviorexpertise.asp)

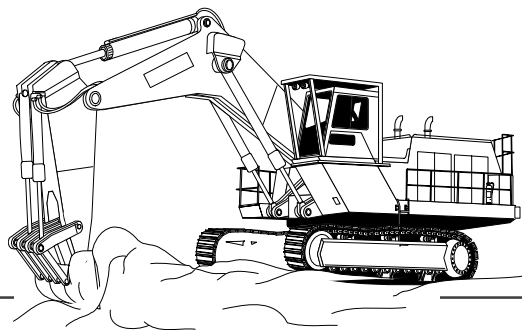
Behavior Expertise

Behavior Assessment, Plans, and Positive Supports

Behavior at Home

Behavior at School

Bullying





### Special Factors to Consider

- Language and communication needs of children with limited English proficiency



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CLICK AGAIN to advance to next slide.

Slide 13 is the second in the series of five slides on the “Special Factors” that the IEP Team must consider. This factor relates to children with limited English proficiency and the consideration of a child’s language needs as such needs relate to his or her IEP. The verbatim regulation appears in the box.

The definition of “limited English proficient” in the IDEA references the definition in the ESEA; both definitions are provided in the box on the next page.

A helpful checklist is provided in *Resource D-4* to help IEP Teams consider what language needs a child with limited English proficiency might have.

Those needs will certainly affect the child’s success in, for example, the general education classroom, where instruction is primarily, if not entirely, in English.

Why is this a special factor to be considered? There are a number of well-considered reasons readily apparent in the

law. Several of the most noteworthy are listed below.

- As the IDEA 2004 statute itself states, “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”

#### IDEA 2004 Provisions: Special Factor 2

(2) *Consideration of special factors.* The IEP Team must—

(i) ...

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child’s IEP;

§300.324(2)(ii)



(P.L. 108-446, Section 601(c)(10)(B), Findings). Have a look at the statistics on children with limited English proficiency in special education on page 14-34. These were discussed earlier (see Slide 10) but are worth repeating here.

- The population with limited English proficiency is the fastest growing in the country. Section 618(a) of IDEA provides that each State receiving assistance under IDEA and the Secretary of the Interior must provide data each year on the number and percentage of

children with disabilities by race, ethnicity, limited English proficiency status, gender, and disability category who are receiving a free appropriate public education. With respect to those with limited English proficiency, that's more than 350,000 children (Zehler, Fleischman, Hopstock, Stephenson, Pendzick, & Sapru, 2003).

- Congress specifically mentions that "[s]tudies have documented the apparent discrepancies in the levels of referral and placement of limited English proficient

children in special education" [Section 601(c)(11)(B)] and that "[g]reater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities" [Section 601(c)(12)(A), Findings].

- IDEA 2004 provides that a State educational agency (SEA) that receives assistance under the State Personnel Development Grants Program must use the grant funds to support professional development

### **§300.27 Limited English proficient.**

Limited English proficient has the meaning given the term in section 9101(25) of the ESEA.

#### **The definition in the ESEA**

"(25) LIMITED ENGLISH PROFICIENT.—The term 'limited English proficient' when used with respect to an individual, means an individual—

"(A) Who is aged 3 through 21;

"(B) Who is enrolled or preparing to enroll in an elementary school or secondary school;

"(C)(i) who was not born in the United States or whose native language is a language other than English;

"(ii)(I) who is a Native American or Alaska Native, or a native resident of the outlying areas; and

"(II) who comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

"(iii) who is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

"(D) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual—

"(i) the ability to meet the State's proficient level of achievement on State assessments described in section 1111(b)(3);

"(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

"(iii) the opportunity to participate fully in society."

activities in accordance with the State's plan, including:

Improve the knowledge of special education and regular education teachers and principals and, in appropriate cases, paraprofessionals, concerning effective instructional practices and that—

(i) provide training in how to teach and address the needs of children with different learning styles and children who are limited English proficient. [Section 654(a)(3)(B)(i)]

The SEA must also “provide training to enable personnel to work with and involve parents in their child’s education, including parents of low income and limited English proficient children with disabilities” [Section 654(a)(3)(B)(iv)].

- The Special Education Research Center is authorized in IDEA 2004’s statute to carry out research to “examine the special needs of limited English proficient children with disabilities” [P.L. 108-446, Section 177(a)(17)].

### **Assessing Children with Limited English Proficiency**

A publication from Project Forum at NASDSE, entitled *Synthesis Brief: English Language Learners with Disabilities*, speaks to the challenges educators face in assessing children when English is not their native language and presents research-based recommendations that school districts may find very helpful. While not discussed in any detail in this background section, those recommendations may be worthwhile sharing with

your audience. Accordingly, you may wish to access Project Forum’s publication online and either download it for participants or let them know where to find it themselves:

[www.nasdse.org/publications/ells.pdf](http://www.nasdse.org/publications/ells.pdf)

Given the obvious concern of Congress with the impact that limited English proficiency can have upon a child’s learning—and, ultimately, his or her success in, and graduation from, public school—it is easy to see why the IEP Team would need to consider the limited English proficiency of a child as a factor to be addressed when developing that child’s IEP.



### **Statistics on Children with Limited English Proficiency in Special Education**

*(as discussed on Slide 10 in this module)*

Most prevalent non-English language spoken in K-12

Spanish (77%)

10 next most commonly spoken non-English languages

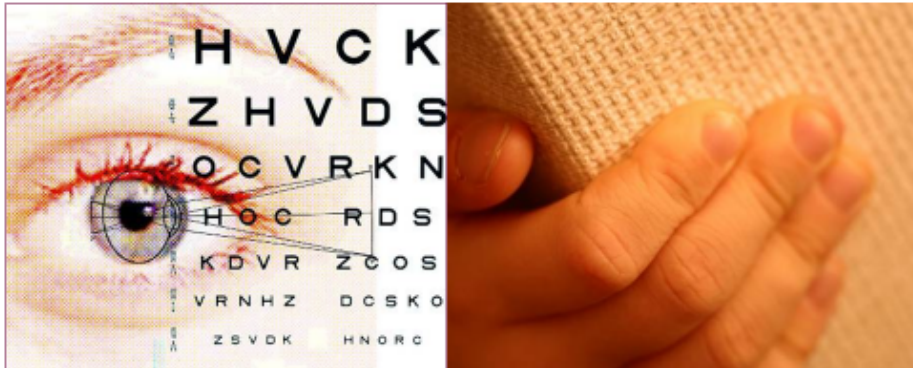
Vietnamese, Hmong, Korean, Arabic, Haitian Creole, Cantonese, Tagalog, Russian, Navajo, and Khmer (Cambodian)

# of children with limited English proficiency receiving special education

350,000

### Special Factors to Consider

- Children who are blind or visually impaired



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CLICK AGAIN to advance to next slide.

Slide 14 is the third in the series of five slides on the "Special Factors" that the IEP Team must consider. This factor relates to the needs of children who are blind or visually impaired, in accordance with §300.324(a)(2)(iii), which appears in the box at the right.

We will now analyze what type of consideration this special factor entails.

- ✓ The IEP Team will need to "provide for instruction in Braille and the use of Braille," unless...
- ✓ ...the Team determines that instruction in Braille or the use of Braille is not appropriate for the child. And the Team can only determine *that*...

- ✓ ...after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media.
- ✓ Such an evaluation also must include an evaluation of the child's future needs for in-

struction in Braille or the use of Braille.

Braille is just one area of specialized instruction that might be provided to a child who is blind or visually impaired as special education, related

### IDEA 2004 Provisions: Special Factor 3

(2) *Consideration of special factors.* The IEP Team must—

(i) ...

(ii) ...

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

§300.324(2)(iii)

services, or as a supplementary aid or service. There are other supports or services that might be needed by a child with visual impairment. Some examples include enlarged print materials, audiotaped materials, math manipulatives, or NIMAS-formatted materials, to name a few.

The specific focus of this special consideration is solely on a child's need for Braille instruction. Aside from consideration of the need for Braille instruction, the IEP Team must also

consider other appropriate supports and instruction to address a child's needs related to blindness or visual impairment. Obviously, considering this special factor involves doing so with great deliberation and after gathering the necessary data and evaluation information. Blindness and visual impairment can impact almost all areas related to a child's academic and non-academic participation in school and must be thoroughly understood by a child's IEP Team.

*Resource D-5* provides a checklist that IEP Teams may find useful in considering this special factor.

### Statistics on Children Who Are Blind or Visually Impaired

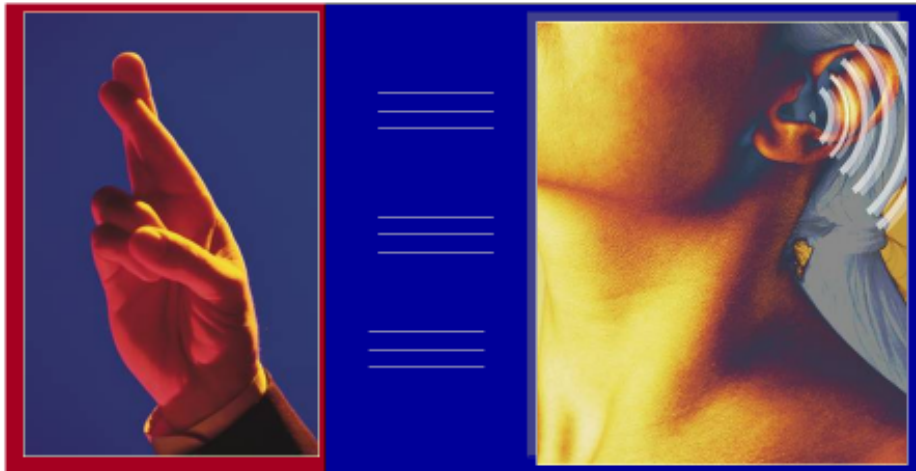
Children in U.S. who are legally blind	55,200 *
Children 6-21 in U.S. served under IDEA's category "Visual Impairments"	26,113 **
Children in U.S. using Braille as their primary reading medium	5,500 *

\* American Foundation for the Blind (2006). *Blind statistics*. Retrieved October 11, 2006, from <http://www.afb.org/Section.asp?SectionID=15>

\*\*Office of Special Education and Rehabilitative Services, U.S. Department of Education. (2006). *26th annual report to Congress on the implementation of IDEA: Vol. 2*. Washington, DC: Author. (Available online at: [www.ed.gov/about/reports/annual/osep/2004/index.html](http://www.ed.gov/about/reports/annual/osep/2004/index.html))

### Special Factors to Consider

- Communication needs of *all* children, with particular emphasis on children who are deaf or hard of hearing



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CLICK AGAIN to advance to next slide.

Slide 15 is the fourth of five slides on the “Special Factors” that the IEP Team must consider under IDEA 2004, in accordance with §300.324(2)(iv), shown in the box below.

Regardless of a child’s disability, IEP Teams must consider a child’s communication needs. In determining the child’s communication needs, the IEP Team might ask:

- What communicative demands and opportunities does the child have?
- Does the child have the skills and strategies necessary to meet those communicative demands and take advantage of communicative opportunities?

- Can the child fulfill his or her need to communicate in different settings?
- Does the child communicate appropriately and effectively, and if not, why not? How

would the deficit in communication be described?

#### Communication Needs

If the IEP Team determines that the child has communication needs, then the Team will

#### IDEA 2004 Provisions: Special Factor 4

(2) *Consideration of special factors.* The IEP Team must—  
 (i) ...  
 (ii) ...  
 (iii) ...  
 (iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child’s language and communication needs, opportunities for direct communications with peers and professional personnel in the child’s language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child’s language and communication mode...

§300.324(2)(iv)

need to address these in the IEP, including (as appropriate) through the statement of annual goals, provision of special education and related services, supplementary aids and services, which includes assistive technology, or other relevant instruction, services and supports.

Considering the many elements included in this special factor will no doubt engage the IEP Team in substantial discussion. The following may be helpful in framing and/or informing those discussions.

## Communication Modes

In the definition of "Native language" (§300.29), "mode of communication" is described:

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication) [§300.29(b)].

Some children with disabilities may use one or more of the modes of communication mentioned above. Other children (those with more severe disabilities, such as deaf/blindness, severe cognitive or physical impairments, or more severe forms of autism) may not be able to communicate adequately in any of those ways. Without question, the communication needs of these children must be taken into consideration when developing the IEP. Understanding of how a child does (or does not) communicate is paramount to designing appropriate instruction and services. And while any significant impairment in a

## Statistics on Children who are Deaf or Hard of Hearing

Children in U.S. born with hearing loss every year	12,000*
Children under 18 with hearing loss	17 of every 1,000**
Children 6-21 in U.S. served under IDEA's category "Hearing Impairments"	71,964***

\* Alexander Graham Bell Association for the Deaf and Hard of Hearing. (2006). *Information and resources*. Retrieved October 11, 2006, from [www.agbell.org/DesktopDefault.aspx?p=HL\\_Information\\_and\\_Resources](http://www.agbell.org/DesktopDefault.aspx?p=HL_Information_and_Resources)

\*\* National Institute on Deafness and Other Communication Disorders. (2006). *Statistics about hearing disorders, ear infections, and deafness*. Bethesda, MD: Author. (Available online at: [www.nidcd.nih.gov/health/statistics/hearing.asp](http://www.nidcd.nih.gov/health/statistics/hearing.asp))

\*\*\* Office of Special Education and Rehabilitative Services, U.S. Department of Education. (2006). *26th annual report to Congress on the implementation of IDEA: Vol. 2*. Washington, DC: Author. (Available online at: [www.ed.gov/about/reports/annual/osep/2004/index.html](http://www.ed.gov/about/reports/annual/osep/2004/index.html))

child's ability to understand and use language undoubtedly plays an enormous role in a child's ability to learn and make progress in the general education curriculum, it does not, in and of itself, mean that a child cannot learn and make progress. Indeed, meeting and supporting a child's communication needs can be pivotal to the child's full participation and progress in the general education curriculum and nonacademic activities.

What are some of the alternative ways of communicating? In the box on the next page are some examples of different communication modes, from

very basic to highly sophisticated.

For children who are deaf or who have a hearing impairment, there are a variety of different modes for communicating, including:

- Auditory/Oral Method
- Auditory-Verbal Method
- Cued Speech Method
- American Sign Language (Bilingual/Bicultural)
- Total Communication Method (U.S. Department of Education, 2005)<sup>1</sup>

<sup>1</sup> U.S. Department of Education. (2005, April). *Opening doors: Technology and communication options for children with hearing loss*. Washington, DC: Government Printing Office. (Available online at: [www.ed.gov/about/offices/list/osep/products/opening\\_doors/gsihlad.html](http://www.ed.gov/about/offices/list/osep/products/opening_doors/gsihlad.html))

The first three of these—auditory/oral, auditory-verbal, and cued speech—all include a spoken language approach to communicating. More about all these approaches is available at:

- *Alexander Graham Bell Association*, [www.agbell.org](http://www.agbell.org)
- *American Society for Deaf Children*, [www.deafchildren.org/resources.aspx](http://www.deafchildren.org/resources.aspx)
- *Laurent Clerc National Deaf Education Center*, <http://clerccenter.gallaudet.edu/InfoToGo/index.html>
- *National Institute on Deafness and Other Communication Disorders Information Clearinghouse*, [www.nidcd.nih.gov/health/hearing/](http://www.nidcd.nih.gov/health/hearing/)

IEP Teams may find it useful to examine the definition of interpreting services to determine how the communication needs of children who are deaf or hearing impaired can be addressed. *Interpreting services* are listed in IDEA as a “related service” (see the module on IEP Teams for a brief discussion and list of related services) and, when used with respect to children who are deaf or hard of hearing, include:

Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind. [§300.34(c)(4)]

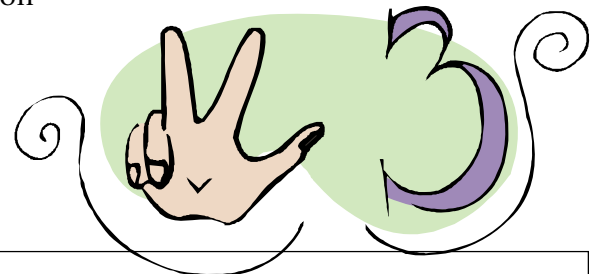
As a related service, then, these interpreting services may be made available to the child, if the IEP Team determines that he or she needs the service in order to benefit from special education.

*Supplementary aids and services* are also used to support a child with disabilities and must be specified by the IEP Team on the child’s IEP if the Team determines that the child needs such services. These often are relevant for children who are deaf or who have hearing loss. They are defined as:

...aids, services, and other supports that are provided in regular education classes, other education-

related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with §§300.114 through 300.116.

The IDEA 2004 has modified this definition from the one used previously—it now includes *extracurricular and nonacademic settings* within its scope. This addition is in keeping with this special factor’s emphasis upon the child’s opportunities to communicate with peers and professional personnel in his or her language or communication mode. Supplementary aids and services



### Examples of Alternative Modes of Communication

- Eye gaze/eye pointing
- Facial expression/body language/gestures
- Head nod yes/no
- Vocalizations/word approximations
- Object/picture/photo symbols
- Communication symbols
- Sign language
- Facilitated Communication via Assistive Technology
- AAC or Aug Comm device



provided in extracurricular and nonacademic settings will now enlarge the range of settings in which the child would have such communication opportunities.

### **Other Helpful Materials**

The checklist in *Resource D-6* is provided to help the IEP Team shape their discussion of this special factor and make appropriate determinations for a child who is deaf or hard of hearing. A

rich source of information on communication can be found in the *Communication Fact Sheets for Parents* series of the National Technical Assistance Consortium for Children and Young Adults Who Are Deaf-Blind (NTAC), a member of OSEP's TA&D Network. You'll find these online at:

[www.tr.wou.edu/ntac/  
documents/fact\\_sheets/  
commfull.htm](http://www.tr.wou.edu/ntac/documents/fact_sheets/commfull.htm)

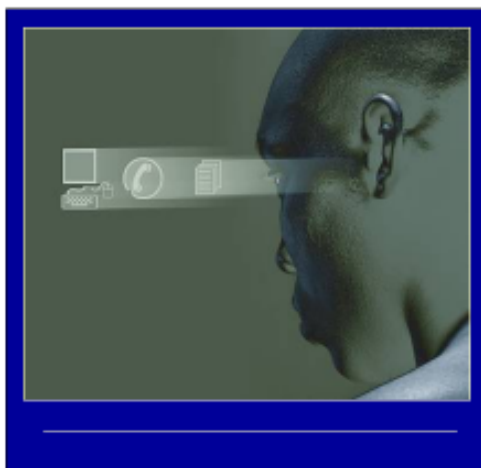
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**—Space for Notes—**

**Starting View****Special Factors to Consider**

Regardless of the child's disability, IEP Team must consider:

Slide loads with the pix and this text.

**Click 1****Special Factors to Consider**

Regardless of the child's disability, IEP Team must consider:

- Whether the child needs assistive technology devices and services

Click 1:  
Picture changes and this bulleted text appears.

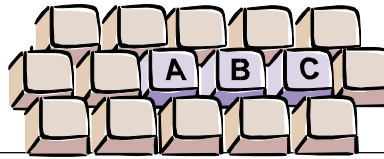
CLICK AGAIN to advance to next slide.

(discussion on next page)





Slide 16 is the fifth and last in the series of five slides on the “Special Factors” that the IEP Team must consider. It relates to whether the child needs assistive technology (AT) devices and services. The relevant provision—§300.324(a)(2)(v)—is shown at the top of the next page.



## IDEA 2004’s Definitions

The definitions of AT devices and AT services contained in IDEA 2004 appear on this page in the box as well as on **Hand-out D-13**.

## Considering AT

Slide 16 also brings into focus the very large topic of AT. Trainers will need to carefully consider the needs of the audience to determine how much time to devote to this one special factor. AT must be considered for all children with disabilities, regardless of disability, and as is true for other special factors, consideration must be individualized. Each child’s IEP Team must consider a child’s need for AT devices or AT services in the development, review, and revision of the child’s IEP, and the nature and extent of AT devices or services to be provided to a child must be reflected in the child’s IEP.

For many children, the first line of inquiry is whether the child’s IEP can be implemented satisfactorily in the regular educational environment with the use of supplementary aids and services. Since AT devices or services can be provided as supplementary aids or services, a child’s IEP Team may need to

### IDEA 2004 Definitions of AT Devices and AT Services

#### §300.5 Assistive technology device.

*Assistive technology device* means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device. (Authority: 20 U.S.C. 1401(1))

#### §300.6 Assistive technology service.

*Assistive technology service* means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child’s family; and
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child. (Authority: 20 U.S.C. 1401(2))

### IDEA 2004 Provisions: Special Factor 5

(2) *Consideration of special factors.* The IEP Team must—

(i) ...

(ii) ...

(iii) ...

(iv) ...

(v) Consider whether the child needs assistive technology devices and services.

§300.324(2)(v)

consider whether a particular child requires a particular AT device or service, or whether school personnel require aid or support to enable a child with a disability to be educated satisfactorily in the regular education environment. Section 300.320(a)(4) of the final Part B regulations requires the IEP Team to include a statement of the special education and related services and supplementary aids and services, based on peer-

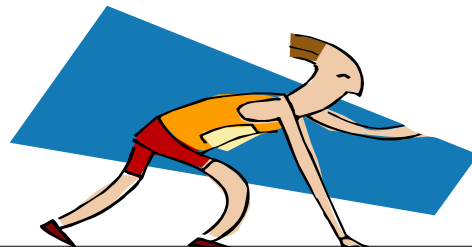
reviewed research to the extent practicable, to be provided to the child, or on behalf of the child. This would include any AT devices and services (determined by the IEP Team) that the child needs in order for the child to receive a free appropriate public education (FAPE). Another topic that an IEP Team may need to

consider on a case-by-case basis is whether a child with a disability may need to use a school-purchased AT device in settings other than school, such as the child's home or other parts of the community, in order for the child to receive FAPE.

Areas to emphasize might include:

- what AT is, what benefits it holds for many children with disabilities, and examples of AT devices and services;
- IDEA 2004's definition of AT devices and services;

continued on the next page →



### A Starter List of Additional Information

- *Assistive Technology: Strategies, Tools, Accommodations and Resources (ATSTAR)*, at: <http://www.atstar.org/index.html>  
A series of online teacher training modules with supporting CD-based videos, designed to help teachers learn to use assistive technology in the classroom.
- *National Assistive Technology Technical Assistance Partnership (NATTAP)*, at: [www.resna.org/taproject/index.html](http://www.resna.org/taproject/index.html)  
Technical assistance to the 56 State and territory AT programs authorized under the Assistive Technology Act of 1998, as amended.
- *Assistive Technology: A Primer for Educators*  
[www.rrfcnetwork.org/images/stories/MPPRR/Products/Generic/AssistiveTechnology/atguide2004.pdf](http://www.rrfcnetwork.org/images/stories/MPPRR/Products/Generic/AssistiveTechnology/atguide2004.pdf)
- *Family Information Guide to Assistive Technology*  
(in English and Spanish), at: [www.fctd.info/resources/fig\\_summary.php](http://www.fctd.info/resources/fig_summary.php)

- suggestions for how an IEP Team might go about considering a child's need for AT devices and services; and
- sources of additional information on this important subject.

## The ABCs of AT

According to the Family Center on Technology and Disability (FCTD), "Assistive technology is any kind of technology that can be used to enhance the functional independence of a person with a disability" (2006, p. 2). FCTD's fact sheet called *Assistive Technology 101* is reproduced as *Resource D-7*, to lay the foundation for this discussion of AT. Trainers may wish to share this resource with the audience, which is also available online (along with all of FCTD's fact sheets), at: [www.fctd.info/resources/index.php](http://www.fctd.info/resources/index.php)

## Questions the IEP Team Might Ask

FCTD also offers a fact sheet called *Assistive Technology and the IEP* that can be helpful to the IEP Team when it examines a child's needs for AT devices and/or services. It is provided as *Resource D-8* in this training package and includes an excellent list of questions to ask and answer. *Resource D-9* provides a more detailed look at questions the Team may wish to consider when addressing this important special factor.

## State AT Projects

State-level contacts and technical assistance centers exist to support capacity building with respect to AT and keep abreast of this rapidly developing field. The spectrum of available AT devices has grown remarkably just in the time span

since this special factor was introduced into the law as part of the 1997 amendments to IDEA. Put your participants in touch with the contacts and centers in their State, which they can identify through these two sources of information:

- NICHCY's State resource sheets, under the headings *Technology-Related Assistance; Special Format Books for Children and Youth* and *Regional ADA & IT Technical Assistance Center*, at: [www.nichcy.org/states.htm](http://www.nichcy.org/states.htm)
- FCTD's members page, at: [www.fctd.info/members/search.php](http://www.fctd.info/members/search.php)

## Excusing a Member from Attending the Meeting

Being “excused”—New provisions in IDEA 2004!



*Produced by NICHCY, 2007*

### Starting View

Slide loads with this view.

## Excusing a Member from Attending the Meeting

Being “excused”—New provisions in IDEA 2004!

When a member of the IEP Team’s area is **NOT** being modified or discussed, the member may be excused from attending the meeting, in whole or in part, under two conditions:



*Produced by NICHCY, 2007*

### Click 1

Click 1:  
“When a member’s area is NOT being modified” text appears.

(continued on next page) ➡

### Clicks 2-3

## Excusing a Member from Attending the Meeting

### Being “excused”—New provisions in IDEA 2004!

When a member of the IEP Team’s area is **NOT** being modified or discussed, the member may be excused from attending the meeting, in whole or in part, under two conditions:

Click 2:  
Bullet 1  
appears.

- Parents and LEA must agree that the member’s attendance is *not* necessary

Click 3:  
Bullet 2  
appears.

- Parents’ agreement (and the LEA’s) must be in writing



Produced by NICHCTF, 2007

CLICK AGAIN to advance to next slide.

## Slide 17: Background and Discussion

3 Clicks

Slide 17 begins a discussion of two important new provisions in IDEA 2004: the possibility that certain IEP Team members might be excused from attending the meeting, in whole or in part, IF:



- the area of expertise of the member is *not* going to be discussed or modified at the meeting, or
- the person’s area of expertise is going to be discussed or modified at the meeting.

Different conditions apply as to whether the member’s attendance at the IEP Team meeting can be excused under these

differing circumstances. Slide 17 focuses on the *first* situation—IDEA’s conditions for excusing a member if his or her area of expertise is *not* going to be discussed or modified at the meeting. (Slide 18 will focus on the second situation.)

The applicable regulation appears in **Handout D-3**. We’ve also reproduced this new provision in the box at the right.



### New Provision I in IDEA 2004: Excusing a Member from Attending the Meeting

(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.

*§300.321(e)(1)*



This new provision of IDEA 2004 merits in depth analysis if your audience is going to be involved in IEP development as a Team member. The provision itself generated considerable comment following publication of the notice of proposed rule making (NPRM), which will be woven into this slide's (and the next slide's) discussion. In response to comments regarding this provision, the Department explained in the Analysis of Comments and Changes published with the final Part B regulations:

Allowing IEP Team members to be excused from IEP meetings is intended to provide additional flexibility to parents in scheduling IEP Team meetings and to avoid delays in holding an IEP Team meeting when an IEP Team member cannot attend due to a scheduling conflict" (71 Fed. Reg. at 46673).

Although we've woven selected public comments and Department responses into the discussion below, we've also provided the entirety of the Analysis of Comments and Changes on this subject as a *Resource for Trainers* (see *Resource D-10*). These appeared on pages 46674 through 46679 of the Analysis of Comments and Changes published with the final Part B regulations and are clearly quite extensive.

### What Does the Provision Require?

The provision allows for certain members of the IEP Team to be excused from attending the IEP meeting, in whole or in part, subject to certain conditions, if

their area of expertise (in the curriculum or related services) is not going to be discussed or modified. Two aspects are noteworthy:

- The parent and the public agency must agree to excuse the member, and
- This provision refers to the IEP Team members described in §300.321(a)(2) through (5). These are the individuals whose attendance may be excused, as discussed on the next page.

### Agreeing to Excusal



If a member's area of the curriculum or related services is not being modified or discussed, then the member may be excused from the meeting, in whole or in part, if the parent and LEA agree in writing that the member's attendance is not necessary [§300.321(e)(1)]. Note that both must agree *in writing*.

It is also important to note that *agreement* is not the same as *consent*. 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 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 that is presented in the box on the next 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. (Such consent *will* be necessary, however, under the circumstance described under the *next* slide in this module.)

If not this precise measure of "consent," then, what does *agreement* entail? As the Department explained in the Analysis of Comments and Changes:

When an IEP Team member's area is not being modified or discussed, 300.321(e)(1), consistent with section 614(d)(1)(C) of the Act, provides that the member may be excused from the meeting if the parent and LEA agree in writing that the

members attendance is not necessary.

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 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)

### **Members for Whom Agreement is Needed Before Excusal**

To which members does this provision apply? Specifically, the 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; and
- an individual who can interpret the instructional implications of evaluation results.

In the Analysis of Comments and Changes, the Department clarified why a written agreement or parent consent is not required to excuse an IEP Team member who has knowledge or special expertise regarding the child and attends the meeting at the discretion of the parents or the public agency:

We do not believe it is necessary to require consent or a written agreement between the parent and the public agency to excuse individuals who are invited to attend IEP Team meetings at the discretion of the parent or the public agency because such individuals are not required members of an IEP Team. (71 Fed. Reg. at 46675)

### **What Happens if the Member's Absence Inhibits the Development of the IEP?**

Among the comments received on the proposed regulations was a recommendation that the parents retain the right to change their mind to excuse an IEP Team member, if it becomes apparent during the meeting that that member's absence inhibits the development of the IEP. The Department declined to incorporate the recommendation explicitly into the regulations, but offered this perspective on such a situation:



### **IDEA 2004's Definition of "Consent"**

#### **§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

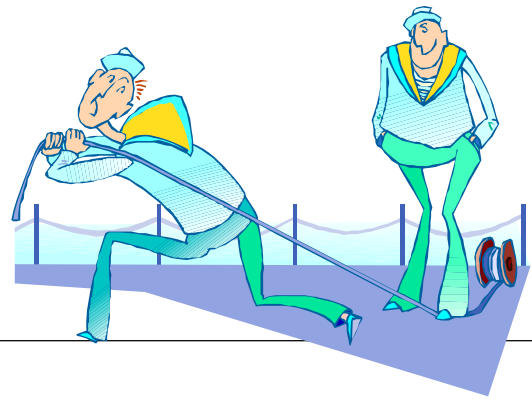
(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.

(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).

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. Several are excerpted in the box on this page.

In conclusion, this provision 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. The underlying premise is that, if their area of responsibility is not being discussed or modified at a particular meeting, it's best not to waste their time and commitment by requiring them to be there.



### **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.

- 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. (71 Fed. Reg. at 46674)
- 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. (*Id.*)
- 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****Excusing a Member from Attending the Meeting**

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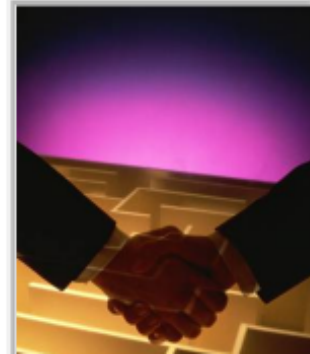
May a certain member of the IEP Team be excused if his or her subject area *is* going to be discussed?

**Click I****Excusing a Member from Attending the Meeting**

May a certain member of the IEP Team be excused if his or her subject area *is* going to be discussed?

Yes, **if:**

- Parents and LEA consent to excuse the member



Click 1:  
"Yes, if:" appears,  
then Bullet 1.

**Click 2****Excusing a Member from Attending the Meeting**

May a certain member of the IEP Team be excused if his or her subject area *is* going to be discussed?

Yes, **if:**

- Parents and LEA consent to excuse the member
- Member submits, in writing to the parent and the IEP Team, input into the development of the IEP before the meeting



Click 2:  
Bullet 2 appears.  
Picture changes.

(continued on next page)



### Click 3

### Excusing a Member from Attending the Meeting

May a certain member of the IEP Team be excused if his or her subject area *is* going to be discussed?

Yes, *if*:

- Parents and LEA consent to excuse the member
- Member submits, in writing to the parent and the IEP Team, input into the development of the IEP before the meeting

Parent consent to excuse any member must be in writing



Click 3:  
Box about parent  
consent appears.

CLICK AGAIN to advance to next slide.

## Slide 18: Background and Discussion

3 Clicks

Slide 18 continues the discussion of IDEA 2004's new provisions allowing certain members of the IEP Team to be excused from attending an IEP meeting under specific circumstances. This slide focuses on excusal procedures when:



- the person's area of expertise *is* going to be discussed or modified at the meeting.

The applicable regulation appears in **Handout D-3**. We've also reproduced this new provision in the box at the right.

The explanatory discussion provided with the last slide is relevant here, with certain noteworthy exceptions that will be discussed here and in the next slide.

### New Provision 2 in IDEA 2004: Excusing a Member from Attending 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.

§300.321(e)(2)





The intention behind this slide's design is to allow you to present the provision and contrast it with what's required to excuse a member whose area of expertise is not going to be discussed or modified. A deeper analysis may either be postponed until the *next* slide, which purposefully contrasts these two provisions, or presented here and reviewed in the next.

## What Does the Provision Require?

The provision allows for certain members of the IEP Team to be excused from attending the IEP meeting when their area of expertise (curriculum or related services) is going to be discussed or modified. Conditions apply, as follows:

- This provision refers to the same *four* specific members of the Team as the provision discussed in the last slide.
- 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.

Let's look at these conditions.

## Members for Whom Consent is Needed Before Excusal

This excusal provision applies to the same four members listed in the last slide—members of the IEP Team “described in paragraphs (a)(2) through (a)(5) of this section....” These are:

- 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, and
- the individual who can interpret the instructional implications of evaluation results.

## What “Consent” Involves

In the last slide's discussion, IDEA 2004's definition of “consent” was provided to highlight the important differences between a parent's or LEA's *agreement in writing* to excuse a member whose area is *not* going to be discussed and what's involved when both of these parties must *consent in writing* to an excusal (when a member's area is going to be discussed). Agreement is less formalized than consent in that it does not trigger 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*, but it is important to mention them here, because IDEA's definition of “consent” in §300.9 (see box on page 14-48) is applicable when parents are asked to consent to excuse IEP Team members from attending an IEP Team when the member's area of expertise is going to be discussed



or modified at the meeting. The Department explained these in this way in the Analysis of Comments and Changes published with the final Part B regulations:

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 that “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.*)

One commenter questioned 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 in order to obtain consent from parents to excuse a member? 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.

- 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 member-to-be-excused 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 fol-

lowing 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 members 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 members 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 of Education provided the following relevant explanation in the Analysis of Comments and Changes published with the final Part B regulations:

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).

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**—Space for Notes—**

**Excusing a Member from Attending the Meeting****Starting View**

A Closer Look At These New Provisions



Slide loads with this view.

**Excusing a Member from Attending the Meeting****Clicks 1-5**

A Closer Look At These New Provisions

- Parent *consent* vs. parent *agreement*
- What parent's **written informed consent** means
- Members where excusal provisions apply
- Excused member's "written input"
- Sharing the IEP with excused members

Click 1 - Click 5:  
Bullets 1-5 appear,  
click by click.

CLICK AGAIN to advance to next slide.

(discussion on next page)



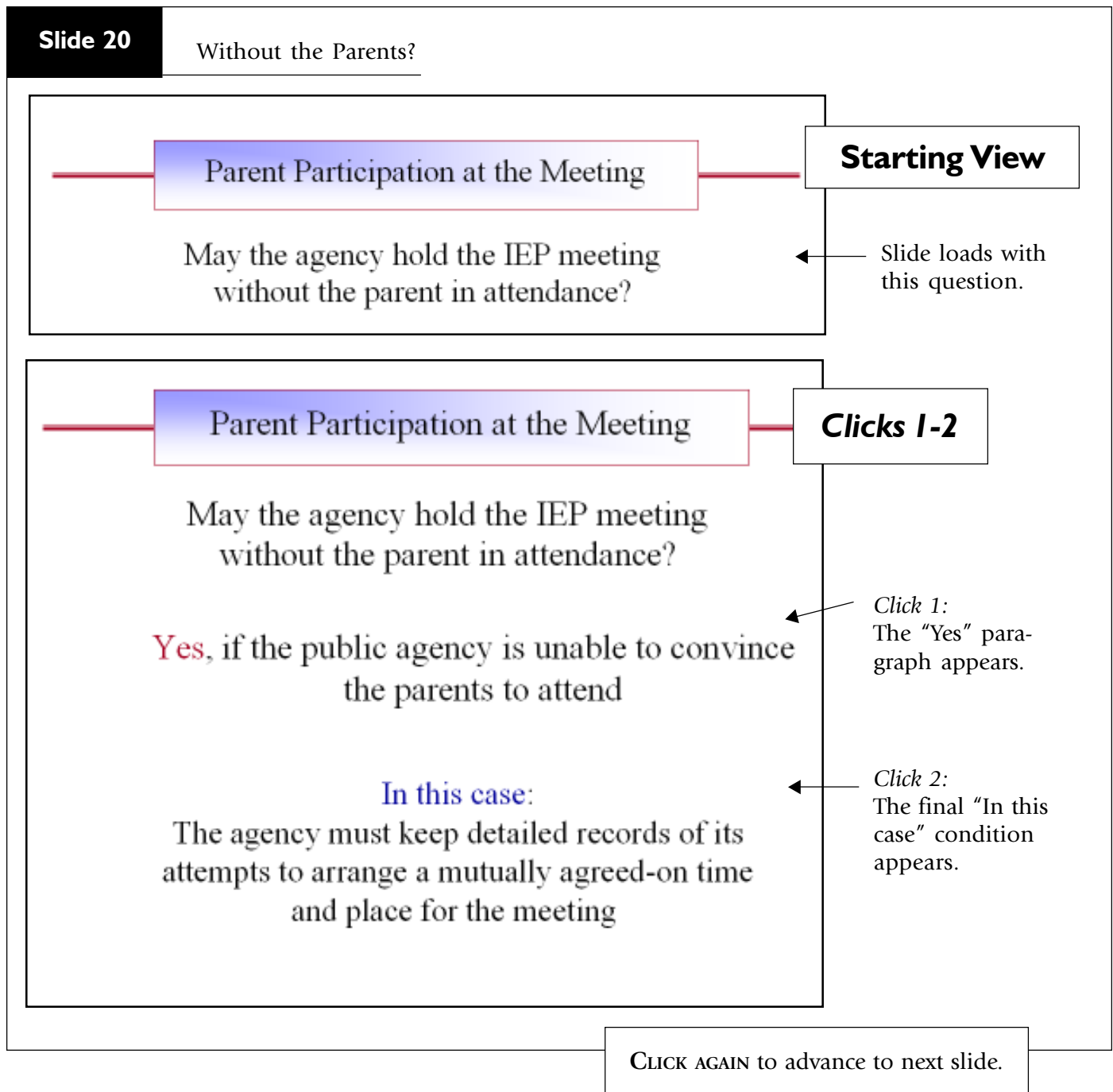


Slide 19 is a “summary” slide of the two provisions for excusing an IEP Team member from attending the IEP Team meeting. The elements discussed in the last pages are itemized as bullets on the slide to give you an opportunity to either recap (if you delved into any of these when you presented the previous two slides) or to talk about the elements now, highlighting what’s relevant to your audience. The elements are:

- Parent consent vs. parent agreement
- What parent’s written informed consent means
- Members where excusal provisions apply
- Excused member’s “written input”
- Sharing the IEP with excused members.



Draw from the discussion provided for the previous two slides in order to shape the discussion here. If you preferred instead to talk about these issues as you went along, then use this slide as an opportunity to recap (or have participants recap) the information.



### Slide 20: Background and Discussion

2 Clicks



Slide 20 raises (and answers) the question of whether or not the public agency may hold an IEP meeting without the parents in attendance. The answer is: Yes, the agency may hold the meeting without the parents in attendance if it has been unable to convince the parents to attend. If

this is the case, the agency must keep detailed records of its attempts to arrange the meeting at a mutually agreed-on time and place, as can be seen in the regulations in the box on the next page. These regulations also appear on **Handout D-4, Parent Participation**.

continued on the next page →

## The Chief Condition

The public agency has been unable to convince the parents that they should attend.

## Secondary Condition: What the Public Agency Must Do

If the public agency has not been able to convince the parents to attend, then the agency must keep a record of its attempts to arrange a mutually agreed-on time and place, such as—

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parents and any responses received; and
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

In other words, the public agency may conduct an IEP meeting without a parent in attendance if it makes attempts and documents the attempts it has made to convince the parent to attend the meeting.

## Inviting and Informing the Parents

Early slides in this module detailed the public agency's obligation to take steps to ensure that one or both of the child's parents have the opportunity to participate at the IEP meeting. You'll recall that this includes notifying them of the meeting early enough to ensure that they have an opportunity to participate, scheduling the meeting at a mutually agreed on time and place, providing them

## IDEA's Provisions: Can an IEP Meeting Be Held Without the Parent Attending?

(d) *Conducting an IEP Team meeting without a parent in attendance.* A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as—

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

§300.322(d)

other information about what would be involved—for example, who would attend and what the purpose of the meeting would be, as well as their right and the public agency's right to invite individuals with knowledge or special expertise about the child, including related services personnel as appropriate. Other information must also be provided, as discussed earlier (see the discussion under Slides 9 and 10). The point here is not to reiterate all that information but, instead, to highlight that the public agency is required to take a number of specific affirmative actions to ensure parent participation in the meeting. To conduct the meeting without the parent in attendance is not a decision that can be made lightly, as can be intuited by looking again at the actions that the public agency must take to inform and involve the parents.



## Offering Other Ways That Parents May Participate

IDEA 2004 includes additional provisions intended to facilitate parent participation in IEP meetings and IEP development. If neither parent can attend the IEP meeting, the public agency must use other methods and alternatives to secure parent participation, including:

- individual telephone calls,
- conference telephone calls,

- video conferences, consistent with §§300.322(c) and 300.328, and
- acknowledging that parents are free to provide input into their child's IEP through a written report if they so choose. [71 Fed Reg. at 46678, and §300.328].



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### **Nonparticipation of Parents**

If, with all this, the parents choose not to attend, that is their right and their choice. In these circumstances, the public agency may proceed to hold the meeting without the parents in attendance or otherwise participating, but must make attempts to convince the parent to attend the meeting, and must document all attempts made to involve the parents and the results of those attempts.

## Slide 21

For Children 3 Through 5: IEP or IFSP?

### Starting View

For Children With Disabilities Aged 3\* Through 5

An **IEP** or an **IFSP**?



Slide loads with the pix and the question, "An IEP or an IFSP?"

### Click 1

For Children With Disabilities Aged 3\* Through 5

An **IEP** or an **IFSP**?



§300.323(b)

Click 1:  
In answer to the question, reference §300.323(b).

(continued on next page) 




Click 2

For Children With Disabilities Aged 3\* Through 5

Click 2:  
"At State's discretion"  
paragraph appears.

An IEP or an IFSP?



§300.323(b)

\* At the State's discretion, §300.323(b) also can apply to children with disabilities who *will turn 3* during the school year

CLICK AGAIN to advance to next slide.

## Slide 21: Background and Discussion

2 Clicks



This slide examines §300.323(b) and the possibility that an IFSP may serve as an IEP for a child with a disability aged 3 through 5 under certain specific circumstances. (At the discretion of the SEA, an IFSP may also serve as an IEP for a two-year-old child with a disability who will turn three during the school year.) Refer participants to **Handout D-14**, where the regulations at §300.323(b) are provided. They also appear in the box on the next page.

### Background on the IFSP and Part C Services

An infant or toddler with a disability who is receiving early intervention services under Part

C of IDEA has an individualized family service plan (IFSP), which is similar in intent to an IEP in that, like the IEP, it is a written document describing (among other things enumerated in section 636(d) of the Act):

- the child's present levels of development (physical, cognitive, communication, social or emotional, and adaptive);
- measurable results or outcomes to be achieved by the child and the family; and
- the specific early intervention services necessary to meet the needs of the child and the family.

There's a great deal more in an IFSP, of course. For your reference, section 636(d) of the Act, where the IFSP is described, is provided at the end of this slide's discussion, so you can see the breadth of content an IFSP requires and how, in many respects, it has clear parallels with the required content of an IEP. There are differences, however; these will be discussed further below and are very relevant to the provisions under the microscope on this slide—§300.323(b).

The responsibility for developing and implementing the IFSP of an infant or toddler with a disability resides with the Part C lead agency in the State. This will change when the child reaches his or her third birthday. At this point, responsibility for providing appropriate services to the child shifts from the Part C lead agency in the State to the Part B agency, the SEA. (Note: In some States, the SEA is also the Part C lead agency.) IDEA contains numerous provisions designed to ensure that the child's transition from Part C to Part B services is a smooth and effective one—most pointedly,

the provisions at §300.124, but also those we're looking at on this slide, at §300.323(b). As you can see in the box below, these provisions come into play when the child is making the transition between Part C (early intervention services) and Part B services (special education and related services). They raise the possibility that, rather than develop and implement an IEP for a child by his or her third birthday, the LEA and the child's parents can agree to consider an IFSP that contains the IFSP content described in section 636(d) of the Act (see the box on the next page for *those* provisions). This possibility

is contingent upon meeting specific conditions, as discussed below.

## Applicable Conditions

Certain conditions must be met in order for an IFSP to serve as the IEP of a child at this transition point under IDEA. The Department, in its Analysis of Comments and Changes, provides an excellent summary of what those conditions are, as follows:

Section 300.323(b), consistent with section 614(d)(2)(B) of the Act, allows an IFSP to serve as an IEP for a child with a disability aged three through five (or at the discretion of the SEA, a two-year old child with a disability, who will turn age three during the school year), under the following conditions: (a) using the IFSP as the IEP is consistent with State policy and agreed to by the agency and the child's parents; (b) the child's parents are provided with a detailed explanation of the differences between an IFSP and an IEP; (c) written informed consent is obtained from the parent if the parent chooses an IFSP; (d) the IFSP contains the IFSP content, including the natural environments statement; (e) the IFSP includes an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills for children with IFSPs who are at least three years of age; and (f) the IFSP is developed in accordance with the IEP procedures under Part B of

### §300.323 When IEPs must be in effect.

(a) *General.* At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

(b) *IEP or IFSP for children aged three through five.* (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is—

- (i) Consistent with State policy; and
- (ii) Agreed to by the agency and the child's parents.

(2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must—

- (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
- (ii) If the parents choose an IFSP, obtain written informed consent from the parents.

### **Does the IFSP Also Have to Have All the Required IEP Content?**

No. In response to a commenter raising this question, the Department states, “There is no requirement for the IFSP to include all the required elements in an IEP” (71 Fed. Reg at 46680). However, the IFSP does have to be developed in accordance with the IEP procedures specified under Part B of IDEA.

### **The Detailed Explanation to Parents**

Why do the regulations require that the public agency provide a detailed explanation to parents of the differences between an IEP and an IFSP? Why is informed written consent of parents required in order to use an IFSP in lieu of an IEP? One commenter pointed out that there is no statutory basis to require either the detailed explanation to parents or their written consent. The Department’s response is both interesting and incisive:

We believe it is important to retain these requirements in §300.323(b)(2) because of the importance of the IEP as the statutory vehicle for ensuring FAPE to a child with a disability. Although the Act does not specifically require a public agency to provide detailed explanations to the parent of the differences between an IEP and an IFSP, we

*continued on the next page*



### **Required Content of the IFSP as Specified in Section 636(d) of the Act**

The individualized family service plan shall be in writing and contain—

- (1) a statement of the infant’s or toddler’s present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;
- (2) a statement of the family’s resources, priorities, and concerns relating to enhancing the development of the family’s infant or toddler with a disability;
- (3) a statement of the measurable results or outcomes expected to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;
- (4) a statement of specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;
- (5) a statement of the natural environments in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;
- (6) the projected dates for initiation of services and the anticipated length, duration, and frequency of the services;
- (7) the identification of the service coordinator from the profession most immediately relevant to the infant’s or toddler’s or family’s needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and
- (8) the steps to be taken to support the transition of the toddler with a disability to preschool or other appropriate services.

believe parents need this information to make an informed choice regarding whether to continue to use an IFSP in lieu of an IEP. Parents, for example, should understand that it is through the IEP that the child is entitled to the special education and related services that the child's IEP Team determines are necessary to enable the child to be involved in and make progress in the general education curriculum and to receive FAPE. If a parent

decides to use an IFSP in lieu of an IEP, the parent must understand that the child will not necessarily receive the same services and supports that are afforded under an IEP. For a parent to waive the right to an IEP, informed parental consent is necessary.

### **A Final Word**

The option to use an IFSP in lieu of an IEP under the above described conditions does not

affect the obligation of the public agency to have one or the other document in effect no later than the child's third birthday [§300.101(b)]. If the child's 3<sup>rd</sup> birthday occurs after the start of the school year, the State may, at its discretion, provide special education and related services to the child when that child is still two, but must ensure "that an IEP is developed and in effect at the start of the school year in which the child turns three" (71 Fed. Reg. at 46679).

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### When the IEP Is Completed...

The public agency must give the parent  
a copy of the child's IEP  
at no cost to the parent

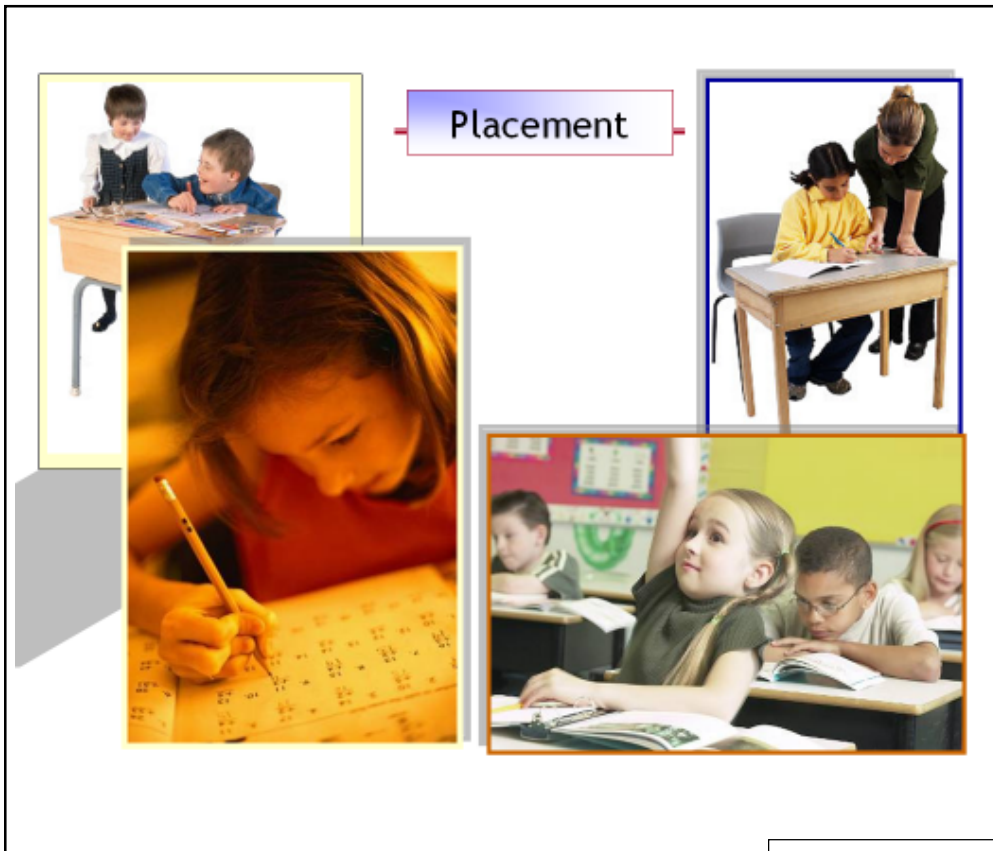


Slide loads completely with this view. No clicks are necessary except to advance to the next slide.

CLICK AGAIN to advance to next slide.

Slide 22 looks at a longstanding provision of IDEA requiring that the public agency provide a copy of the child's IEP to the parent at no cost to that parent. The regulation is found at §300.322(f)—refer participants to the last provision on **Handout D-4**—and reads:

*(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.



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

CLICK AGAIN to advance to next slide.

Slide 23 wraps up the first half of the module on IEP meetings by ending with the topic of "Placement."

Placement is a complicated issue to explain and is the subject of an entire module: *LRE Decision Making*. We would not recommend delving into it at this time beyond a few summary remarks to establish placement within its proper context:

*Placement is directly connected to the child's IEP, is based on the child's IEP, must be decided by a knowledgeable group of persons, including the child's parents, but is not necessarily decided by the IEP Team.*

The slide's design gives you the opportunity to lay the foundation for upcoming training on how placement decisions are made, and by whom. The slide is a self-loading series of pictures of children in different settings and the single word "Placement." Take the opportunity to say briefly that:

- The IEP forms the basis for the placement decision, which is made by a group of persons, including the child's parents, and other persons knowledgeable about the child, the meaning of evaluation data, and placement options.

- The placement group may or may not be the IEP Team, but in all cases, the parents are members of that group and participate in making the determination of placement for their child. (§300.327)
- Placement can be in a range of settings (see §§300.114 through 300.120), as can be seen in the slide—in the regular classroom, a special education class, a pull-out program, a separate school, as IDEA 2004 has specific requirements that will be examined closely in the module devoted entirely to the subject of LRE decision making, which is about placement and much more.



Nuh-huh.

**Starting View**

Slide loads with this view.




*THIS.*

**Click I**

*Click 1:*  
Baby sleeping disappears, and we now see an energized person reaching for the sky.

CLICK AGAIN to advance to next slide.

(discussion on next page) 





Slide 24 is all about—taking a break! But taking a *meaningful* break, a break that stimulates the mind and muscles, stirs the blood, and reactivates attention.

Have the audience get to their feet. Raise their hands above their heads, reaching for the sky (or ceiling). Lower their arms, place their hands on their hips. Twist left, twist right. Let their arms hang loose. Touch their left shoulder with their right hand, reverse. Lift one shoulder earward, then the other. Roll their shoulders, then their head, loosening up those neck muscles. Reach for the sky again...

Devote at least 2 minutes to this break. Nothing potentially vigorous enough to strain muscles or cause accidents, but movement nonetheless, accompanied by deep breaths. Depending on the amount of space available and the dignity and capabilities of the audience, you might have participants:

- walk around the room
- touch their toes
- swing their arms, especially crossing the midline of the body (left arm to the right, right arm to the left)
- gentle twists at the waist
- more reaching for the sky and shoulder rolls.

Interesting research exists to suggest the benefits that physical movement can bring to learning. In particular, a break that involves physical movement refreshes the brain, gets the blood flowing, loosens the kinks that develop from sitting in class or training, and releases stress even as it reactivates attention.



## Implementing the IEP



### Starting View

Slide loads with this view.

## Implementing the IEP



As soon as possible following development of the IEP...

Special education and related services must be made available to the child in accordance with the child's IEP

### Click 1

Click 1:  
New picture and text appear.

(continued on next page) 

## Clicks 2-5

Click 2-5:  
Lead-in changes.  
Then, click by click,  
Bullets 1-3 appear.

## Implementing the IEP

### All Service Providers Who Will Be Implementing the IEP...

- Must have access to the IEP
- Must be informed of their specific responsibilities
- Must be informed of specific accommodations, modifications, and supports to be provided to the child, given the IEP



CLICK AGAIN to advance to next slide.

## Slide 25: Background and Discussion

5 Clicks



Slide 25 reengages the training after the mini-break by taking up the topic of *implementing* the IEP.

Once the IEP is written, it is time to carry it out—in other words, to provide the child with the special education and related services as listed in the IEP. This includes all supplementary aids and services and program modifications that the IEP Team identified as necessary. Unfortunately, it is beyond the scope of this module to discuss in detail the many issues involved in implementing a child's IEP, but several points are worth noting, as captured on this slide. These are:

*Point 1:* IDEA states that, as soon as possible following development of the IEP, special education and related services

are made available to the child in accordance with the child's IEP. [§300.323(c)(2)]

*Points 2-4:* IDEA also requires that the public agency ensure that all service providers who will be implementing the IEP:

- Must have access to the IEP.
- Are informed of their specific responsibilities.
- Are informed of specific accommodations, modifications, and supports to be provided to the child, in accordance with the IEP. [§300.323(d)]

### Beginning Services

IDEA 2004 does not stipulate a specific amount of time be-

tween finishing development of the IEP and beginning the services described in the IEP. The regulations do require "as soon as possible following development of the IEP. ..." Generally, OSEP has said that each child's IEP must be implemented without undue delay. Although State and local educational authorities have some discretion in this regard, the public agency must ensure that a child's IEP is implemented in a time frame that is consistent with the child's right to FAPE. This provision is cited in the box on the next page and in **Handout D-14**.

## Accessibility of the IEP To Those Implementing It

The final Part B regulations related to ensuring that all service providers responsible for implementing the child's IEP have access to the child's IEP and are informed of their specific responsibilities are unchanged from those implementing IDEA '97. This includes being informed of the "specific accommodations, modifications, and supports that must be provided for the child" as determined by the IEP Team and as specified within the IEP. The verbatim text of IDEA 2004's regulations is provided in the box at the right and on **Handout D-14**. The Department's Analysis of Comments and Changes published with the final Part B regulations contained the following pertinent explanation of this provision:

Section 300.323(d) requires that the child's IEP be accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation.

The purpose of this requirement is to ensure that teachers and providers understand their specific responsibilities for implementing an IEP, including any accommodations or supports that may be needed. We...believe [that retaining the provision] is necessary to ensure proper implementation of the child's IEP and the provision of FAPE to the child. However, the mechanism that the public

agency uses to inform each teacher or provider of his or her responsibilities is best left to the discretion of the public agency. (71 Fed. Reg. at 46681)

The last sentence—leaving to the discretion of the public agency how it will keep teachers and others informed of their responsibilities—has direct relevance to the discussion on Slides 18 and 19 related to sharing the updated IEP with an IEP Team member who was excused from an IEP meeting. The public agency has an affirmative obligation to inform

teachers and providers of their responsibilities to implement the IEP-, but *how* it does so is a matter left up to the discretion of the State and the public agency.



### IDEA 2004's Provisions: Provision of Services and Accessibility of IEP

(c) *Initial IEPs; provision of services.* Each public agency must ensure that—

(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

(d) *Accessibility of child's IEP to teachers and others.* Each public agency must ensure that—

(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

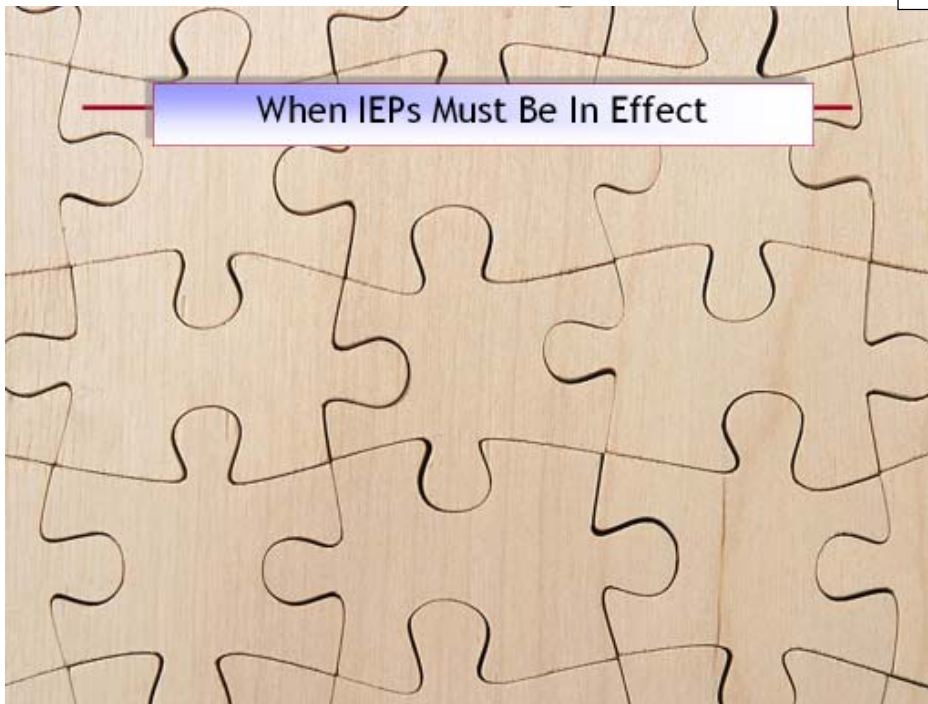
(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of—

(i) His or her specific responsibilities related to implementing the child's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

*§300.323(c) and (d)*

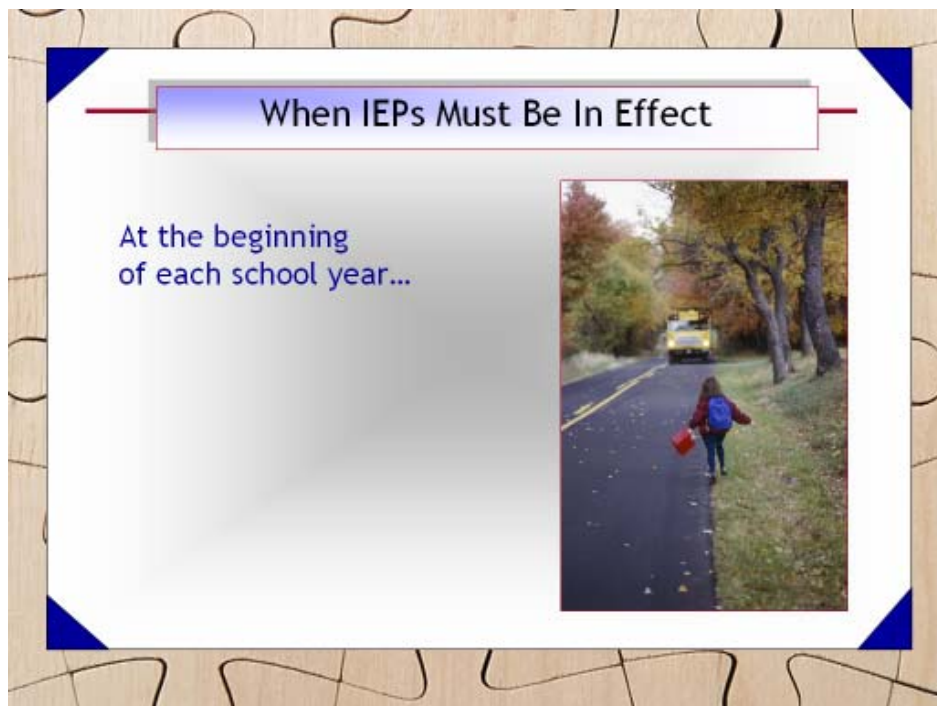
**Starting View**



Slide loads with this view.

**Click 1**

*Click 1:*  
The picture loads, along with the lead-in phrase: "At the beginning of each school year..."



(continued on next page) 



Click 2

When IEPs Must Be In Effect

At the beginning  
of each school year...

...each public agency must have an IEP  
 (as defined in §300.320)  
 in effect for **each child**  
 with a disability within its jurisdiction

Click 2:  
 IDEA's requirement  
 loads.

CLICK AGAIN to advance to next slide.

## Slide 26: Background and Discussion

2 Clicks



IDEA is very clear with respect to when IEPs must be in effect, as can be seen in the regulation in the box below and on **Handout D-14** (the very first paragraph). This was mentioned in association with Slide 21's discussion of IFSPs versus IEPs, but is emphasized here through a stand-alone slide.

### **§300.323 When IEPs must be in effect.**

(a) *General.* At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in §300.320.

**Starting View****Reviewing & Revising the IEP**

Slide loads with  
Bullet 1.

- Review periodically but  
**not less** than annually

**Click 1****Reviewing & Revising the IEP**

Click 1:  
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and Bullet 2  
appears.

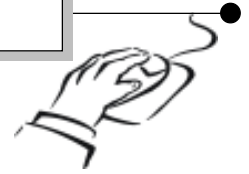
- Review periodically but  
**not less** than annually
- Revise as appropriate in  
accordance with  
§300.324(b)(1) and (2)



CLICK AGAIN to advance to next slide.

(discussion on next page) ➡





Slide 27 begins a discussion of IDEA provisions with respect to reviewing and revising a child's IEP. It is not a static document. The IEP can be changed to reflect the child's learning and growth—or, as the case may be, his or her lack of expected progress. The IEP Team is responsible for determining how and when the IEP needs to be changed to appropriately address the child's needs.

### Annual Review

In any event, the law requires that the IEP Team review the child's IEP "periodically" but not less than once a year. One purpose of this review is to see whether the child is achieving his or her annual goals. The Team must revise the child's IEP, if necessary, to address:

- Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
- The results of any reevaluation of the child;
- Information about the child that the parents share;
- Information about the child that the school shares;
- The child's anticipated needs; or
- Other matters.

The text of the regulations is provided on **Handout D-13** and in the box at the right.

As the cited regulations indicate, any IEP review must include a *renewed consideration of*

*the special factors* discussed earlier in this module (see Slides 12-16). If a child has one or more of those special factors (we've listed these on the next page, in the "reminder" box), his or her learning and academic achievement may be greatly impacted. Recognizing that, the IEP Team must keep close watch on how the special factor is affecting the child's performance and whether or not the child needs assistive technology.

Added to IDEA 2004's regulations is a separate statement requiring the participation of the regular education teacher in the

review and revision of a child's IEP. [§300.324(b)(3)] This participation is to be consistent with paragraph (a)(3) (see **Handout D-13**), which states:

(3) *Requirement with respect to regular education teacher.* A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the

### IDEA 2004's Provisions on Reviewing and Revising the IEP

(b) *Review and revision of IEPs*—(1) *General.* Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team—

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address—

(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under §300.303;

(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

(2) *Consideration of special factors.* In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(3) *Requirement with respect to regular education teacher.* A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

IEP of the child, including the determination of—

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).

[§300.324(a)(3)]

While IDEA 2004 adds a separate requirement that the regular education teacher participate in the review and revision of a child's IEP (consistent with what is required of the teacher when the IEP is initially developed), IDEA '97, the prior law, also required that teacher's participation. IDEA '97 stated this differently, rolling the responsibilities for participation into one distinct regulatory requirement. Under IDEA '97, this requirement was stated as the teacher "must, to the extent appropriate, participate in the development, review, and revision of the IEP" [IDEA '97, at §300.346(d)]. The *separateness* of IDEA 2004's requirement makes requirement more prominent.

### **Additional Reviews, as Appropriate**

Although the IDEA requires that each child's IEP be reviewed at least once a year, the Team may find it necessary to review and revise the IEP more often. Either the parents or the school can ask to hold an IEP meeting to revise the child's IEP. For example, the child may not be making progress toward his or her IEP goals, and his or her teacher or parents may become

### **The List of Special Factors That Must Be Considered**

- Use of positive behavioral interventions and supports if the child's behavior impedes the child's learning or that of others
- Language needs related to limited English proficiency
- Instruction in Braille and the use of Braille for children with blindness/visual impairment
- Communication needs, and the language and communication needs of children with deafness/hearing impairment,
- Need for assistive technology devices or services.

concerned. On the other hand, the child may have met most or all of the goals in the IEP, and new ones need to be written. In either case, the IEP Team would need to discuss how to revise the IEP to address the child's current progress or lack of progress.

A new provision has been added to the law regarding amending the IEP without an IEP meeting (covered in the next slide). So be careful *not* to say that an IEP can only be revised based on a meeting of the IEP Team.

### **Final Note**

Previously discussed requirements of law for IEP meetings apply during the phase of review and revision of the IEP as well. This includes provisions related to:


- Scheduling the meeting at a mutually agreed on time and place (Slide 9);
- Notice requirements (Slide 9);
- Arranging for parents who are deaf or have limited English proficiency with an interpreter to ensure they can understand

the proceedings at the IEP meeting (Slide 10);

- Parent's right to a copy of an IEP at no cost (Slide 22);
- Excusing certain IEP Team members from attending a meeting under specified conditions (see Slides 17-19);
- Holding an IEP meeting without the parents in attendance (Slide 20);
- Agreeing to alternative ways for parents to participate at IEP meetings, such as through videoconferencing and conference telephone calls (Slide 20); and
- Ensuring that the IEP is accessible to all service providers of the child and that those providers know their responsibilities for implementing the IEP (Slide 25).

Meeting w/out Meeting (*Part A*)

**Starting View  
and Click 1**



If parents or LEA want to amend or modify the IEP, does the team have to actually, physically, meet?

No, not necessarily,  
subject to certain conditions

Slide loads with this question.

Click 1:  
Answer appears.

CLICK AGAIN to advance to next slide.

## Slide 28: Background and Discussion

1 Click

Slide 28 introduces an 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. Those conditions will be explored in Slide 29 (the next slide).



by IDEA? What benefits or consequences do they see coming out of this new provision?

When you've introduced this possibility for amending the IEP in a whole new way, move on to Slide 29 and see what conditions apply.

To set up that discussion, talk with participants about the possibility that a IEP Team could amend the IEP without having to meet in person. Can they guess what conditions must be met in order for this to be permissible? What conditions do they believe *should* be imposed



## Meeting w/out Meeting (Part B)

## Starting View

When may this occur?



Slide loads with the question, "When may this occur?"

## Meeting w/out Meeting (Part B)

## Clicks 1-3

When may this occur?

- Only for changes being made to the child's IEP *after* the annual IEP Team meeting for a school year
- Only if parents and LEA agree *not* to convene the meeting
- Only if parents and LEA instead develop a *written* document to amend or modify the child's current IEP

Click 1:  
Picture disappears  
and Bullet 1 loads.

Click 2:  
Bullet 2 loads.

Click 3:  
Bullet 3 loads.

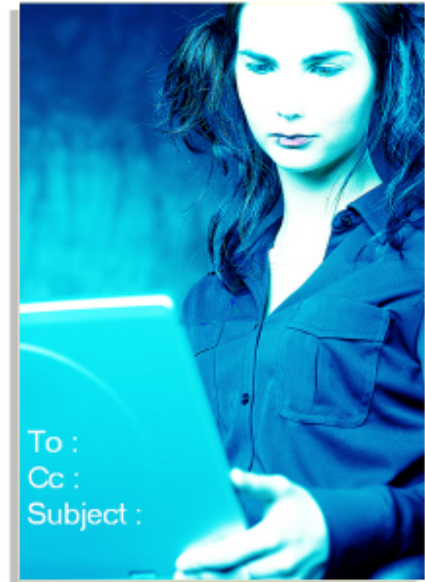
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**Click 4**

## Meeting w/out Meeting (*Part B*)

*Click 4:*  
Last aspect of this  
new provision  
loads.

Child's IEP team must be  
informed of changes made  
to child's IEP through this  
approach



CLICK AGAIN to advance to next slide.

### Slide 29: Background and Discussion

4 Clicks



Slide 29 picks up where Slide 28 left off and explains what specific conditions apply in order for the IEP Team to be permitted to amend the IEP without actually physically meeting.

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 D-13** and in the box at the right).

#### **New Provisions in IDEA 2004: Amending the IEP Without Meeting**



(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) *Consolidation of IEP Team meetings.* To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(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.

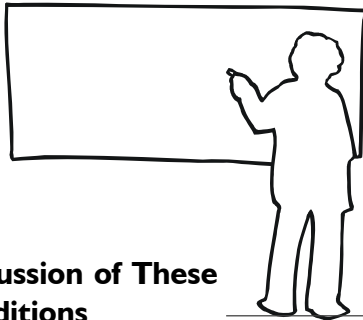
§300.324(a)(4)-(6)

## Main Conditions

Three primary conditions must be met (and are listed on the slide):

- 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 in person.
- Parents and LEA must agree to *not* meet but to take this approach instead.
- The amendment or modification to the IEP must be in writing.

As also pointed out on the final CLICK for the slide, if this option is used, the public agency must ensure that the child's IEP Team is informed of those changes.



## 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 con-

tained 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... the 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 Slides 17 and 18) to amend the IEP without an IEP meeting. (*Id.*)

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. The trainer should 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.

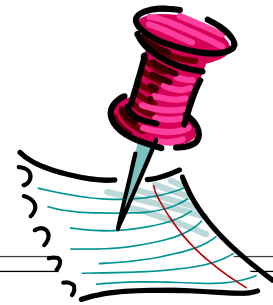
*Informing the IEP Team.* In keeping with IDEA's requirements that all service providers of the child must have access to the child's IEP and must be informed of their responsibilities for implementing it, the Department included an explicit regulatory provision at §300.324(a)(4)(ii) requiring the public 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 deter-

mine, 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. In keeping with §300.322(f) (cited in the box below and discussed on Slide 22) and §300.324(a)(6), the public agency may not charge the parent for providing this requested copy of the amended IEP.



### A Relevant IDEA Provision

(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.



## Special IEP Situations, under IDEA 2004

**1** Children placed in private schools by the public agency

**2** Children with an IEP transferring between schools

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

CLICK AGAIN to advance to next slide.

Slide 30 sets up the next extensive discussion of topics within IDEA 2004. As framed by the title of the slide—Special IEP Situations, Under IDEA 2004—two IEP topics will be addressed:

- Children placed in a private school by a public agency, and
- Children with an IEP transferring between schools.

Both topics are relevant in this module focused on developing, reviewing, and revising IEPs in Team meetings.

Present the slide as a way of offering participants an advanced organizer of the upcoming content. You might ask them to generate a small list of IEP-related questions they'd like to see answered on these two topics, or frame the IEP-related questions yourself as a preview of what's to come. Some ques-

tions to pose on these topics (rhetorically, at this point) might include those below.

### I—Children Placed in Private Schools by Public Agencies

- Before a public agency places a child with a disability in a private school, name 1 IEP-related action the agency must take.
- How are each of the two (public agency and private school) involved in developing the child's IEP?
- In reviewing it? In revising it?
- May the private school initiate or conduct an IEP meeting?

### 2—Children Transferring Between Schools

- If a child transfers to a new school under a different public agency in the same State, does the new public agency have to develop a new IEP for that child?
- What are the new agency's obligations? The prior agency's?
- 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?

Without answering these questions, proceed to the next slide.

1

## Children placed in private schools by the public agency



- What the **public** agency must do *before*

### Starting View

Slide loads with Bullet 1: What the public agency must do *before* it places a child in a private school.

1

## Children placed in private schools by the public agency



- What the **public** agency must do *before*
- What the **public** agency must do *after*

### Click 1

Click 1:  
Bullet 2 loads:  
What the public agency must do *after*.

(continued on next page)

## Clicks 2-3

1

### Children placed in private schools by the public agency

- What the **public** agency must do *before*
- What the **public** agency must do *after*

#### Other Provisions

Click 2:  
Picture disappears,  
and Bullet 1 of "Other  
Provisions" appear.

Click 3:  
Bullet 2 appears.

- Private school may initiate and conduct IEP meetings to review and revise the IEP, *at discretion of public agency*
- Even though the private school implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA

CLICK AGAIN to advance to next slide.

## Slide 31: Background and Discussion

Slide 31 addresses the responsibilities of both the public agency and the private school for IEP development, review, and revision (as appropriate) of a child's IEP when that child is placed in or referred to the private school (or facility) by the public agency. IDEA 2004's provisions in this regard are presented on **Handout D-15** and in the box on the next page, for your convenience.

These provisions are long-standing. They are based on section 612(a)(10)(B) of the Act, which requires that children with disabilities placed by public agencies in private schools and facilities be provided special education and related services, in accordance with an individualized education program. Further,

"children so served have all the rights the children would have" if served by a public agency. (See also 34 CFR §300.146 and 71 Fed. Reg. at 46687.)

### **Before the Child is Placed**

The slide begins with a look at "what the public agency must do before" it places or refers the child in the private school or facility—namely:

- Initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324.
- Ensure that a representative of the private school or facility attends the meeting.

3 Clicks



- Use other methods to ensure participation by the private school or facility (including individual or conference telephone calls), if the representative cannot attend the meeting.

To adhere to these provisions, of course, the public agency has many mini-steps it would also have to take, such as inviting the parents to the IEP meeting, providing parents with required notice with respect to the meeting (including informing parents that the representative of the private school or facility has been invited to the meeting),

and inviting the representative of the private school or facility. Many of these mini-steps will be detailed in:

- §300.320 (Contents of the IEP, see **Handout D-10**), and
- §300.324 (Development, Review, and Revision of IEP, see **Handout D-13**).

### After the Child is Placed

The second bullet in this slide (brought up by the first **CLICK** you make) sets up the discussion of “what the public agency must do after” the child is placed in (or referred to) the private school or facility—namely:

- Decide whether or not to allow the private school or facility to initiate and conduct any meeting to review and revise the child’s IEP.
- Ensure (for such meetings initiated and conducted by the private school or facility at the discretion of the public agency) that the *parents and an agency representative* are involved in any decision about the child’s IEP and agree to any proposed changes in the IEP *before* those changes are implemented.
- Oversee compliance with Part B of IDEA [§300.325(c)]. Even if the private school implements the child’s IEP, the responsibility for compliance with Part B’s requirements remains with the public agency and the SEA.

### §300.325 Private school placements by public agencies.

(a) *Developing IEPs.* (1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§300.320 and 300.324.

(2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) *Reviewing and revising IEPs.* (1) After a child with a disability enters a private school or facility, any meetings to review and revise the child’s IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative—

(i) Are involved in any decision about the child’s IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) *Responsibility.* Even if a private school or facility implements a child’s IEP, responsibility for compliance with this part remains with the public agency and the SEA.

### “Other Provisions” on the Slide

The bottom part of the slide is brought forth a **CLICK** at a time:

- “Other Provisions” (header) and Bullet 1: “Private school/facility may initiate and conduct IEP meetings to review and revise the IEP, *at discretion of public agency.*”
- Bullet 2: Even if private school or facility implements the child’s IEP, “Responsibility for compliance with Part B of

IDEA remains with the public agency and the SEA.

Both bullets clearly derive from and related to what the public agency must do after it places the child in a private school or facility. Both come directly from IDEA’s provisions, as shown on **Handout D-15** and the box above. Bullet 2 is fully supported by IDEA’s provision at §300.2(c)(1), which reads:

(c) *Private schools and facilities.* Each public agency in the State is responsible for ensuring that the rights

and protections under Part B of the Act are given to children with disabilities—

(1) Referred to or placed in private schools and facilities by that public agency.

IDEA's provisions at §300.146 dovetail and reinforce the above provisions regarding the rights of a child with a disability placed in a private school or facility by a public agency, as well as that public agency's affirmative obligations for such children. Section 300.146 is entitled "Responsibility of SEA" and reads as follows:

Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency—

(a) Is provided special education and related services—

(1) In conformance with an IEP that meets the requirements of §§300.320 through 300.325; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including

the requirements of this part, except for §300.18 and §300.156(c); and

(c) Has all of the rights of a child with a disability who is served by a public agency.

### **Final Note**

These private school provisions should not be confused with those related to children placed in private schools by their *parents*. Those provisions are found at §300.130 through 300.144. They are also the subject of a separate module in this training curriculum—Module 16, *Parentally-Placed Private School Children with Disabilities*.

**Starting View**

2

**Children with an IEP transferring between schools***In the same state, but in different public agencies*

Slide loads with this view.

2

**Children with an IEP transferring between schools***In the same state, but in different public agencies*

The new public agency must, in consultation with parents, provide FAPE to the child (including services comparable to those in the child's existing IEP), *until* it either—

**Click 1**

Click 1:  
This paragraph loads.

2

**Children with an IEP transferring between schools***In the same state, but in different public agencies*

The new public agency must, in consultation with parents, provide FAPE to the child (including services comparable to those in the child's existing IEP), *until* it either—

**Click 2**

- adopts the IEP from the last public agency, or
- develops, adopts, and implements a new IEP (that meets requirements in §§ 300.320 – 300.324)

Click 2:  
Bullets 1 and 2 appear.

(continued on next page)





### Click 3

2

## Children with an IEP transferring between schools

*In the same state, but in different public agencies*

The new public agency must, in consultation with parents, provide FAPE to the child (including services comparable to those in the child's existing IEP), **until** it either—

**Necessary circumstance:**  
Child must have had an IEP that was in effect and must enroll in new school in the same school year

- adopts the IEP from the last public agency, or
- develops, adopts, and implements a new IEP  
(that meets requirements in §§ 300.320 – 300.324)

Click 3:  
The box appears,  
listing the “Necessary  
circumstance.”

CLICK AGAIN to advance to next slide.

### Slide 32: Background and Discussion

Slide 32 introduces important new provisions of IDEA around a circumstance that is quite common—children moving from one school to another. There are different scenarios with such moves. 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!).

Scenario A is the subject of this slide's discussion—when the

new school is in the same State but under the authority of a *different* public agency. Questions naturally arise in this situation:

- 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?

Scenario B will be the focus of the *next* slide—when the child transfers schools, and the schools are in different States.

Let's look at what IDEA requires for Scenario A now—same State, different school, different public agency.

3 Clicks



### Scenario A: Same State, Different Public Agency

The regulatory provision from IDEA is presented in the box at the right and on **Handout D-14**.

IDEA 2004 adds a new provision incorporating the longstanding policy clarification of the Department regarding public agency responsibility 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. This 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.

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 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).

Another element that is important to recognize is that IDEA 2004’s provision regarding IEPs for children who transfer

public agencies in the same State applies when the child who has an IEP that was in effect in a previous public agency transfers to a new public agency and enrolls in a new school *in the same school year*. This is the “necessary circumstance” that appears in the box that drops into view on the third Click of this slide. The statute itself said “academic year,” but this was changed in the regulations for clarity’s sake to “school year,” because “school year” is “the term most commonly understood by parents and school officials” (71 Fed. Reg. at 46681).

This last element raises yet another question: *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



### IDEA 2004’s Provisions: 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.

§300.323(e)

agency must have an IEP in effect for each child with a disability in its jurisdiction [§300.323(a)]. (This was discussed on Slide 26.)

“Consistent with this responsibility, the Analysis of Comments and Changes provided 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 FR 46682)

Note that the discussion excerpted above was taken from comments on the provision regarding when children move from one State to another State during the summer. It is presented here as a generalized requirement, but that is taking it out of context from the comments, which concern when a family makes an interstate move.

---

**—Space for Notes—**

## 2

Children with an IEP transferring between schools*In different states*

New public agency must, in consultation with parents, provide FAPE to the child (including services comparable to those in the child's existing IEP), *until* it—

**Necessary circumstance:**  
Child must have had an IEP that was in effect in the previous public agency and must enroll in new school in the same school year

**Starting View**

Slide loads with this view.

Note the same "necessary circumstance" as on the last slide.

## 2

Children with an IEP transferring between schools*In different states*

New public agency must, in consultation with parents, provide FAPE to the child (including services comparable to those in the child's existing IEP), *until* it—

**Necessary circumstance:**  
Child must have had an IEP that was in effect in the previous public agency and must enroll in new school in the same school year

- conducts an evaluation\* (if new agency determines this is necessary), *and*
- develops, adopts, and implements a new IEP\*\*, if appropriate

**Clicks 1-2**

Click 1:  
Bullet 1 appears.

Click 2:  
Bullet 2 appears.

(continued on next page) ➡

### Click 3

## 2

### Children with an IEP transferring between schools

*In different states*

New public agency must, in consultation with parents, provide FAPE to the child (including services comparable to those in the child's existing IEP), *until* it—

- conducts an evaluation\* (if new agency determines this is necessary), and
- develops, adopts, and implements a new IEP\*\*, if appropriate

Click 3:  
The text in the box changes to indicate what the asterisks on the slide mean.

\* Evaluation pursuant to §§ 300.304 through 300.306

\*\* IEP must meet requirements in §§ 300.320 – 300.324

CLICK AGAIN to advance to next slide.

### Slide 33: Background and Discussion

3 Clicks

Slide 33 continues the special IEP circumstances brought on by children with IEPs transferring from one State to another (what was described on Slide 32 as Scenario B). As with Scenario B on the last slide, the same “necessary circumstance” exists—that the child must have an IEP in effect in a previous public agency and this transfer must take place during the same school year. IDEA's provisions for this scenario appear on **Handout D-14** 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 noted below. As with children who transfer public agencies in the



same State, 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 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 (as indicated by the asterisk marking “evaluation” on the slide; see handouts in the modules on evaluation). Such an evaluation would be 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. Such an 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.

A factor to be considered when children with IEPs move from one jurisdiction in one State to a jurisdiction in a different State is whether or not the two jurisdictions have differing eligibility criteria for special education and related services. But IDEA 2004 addresses this matter by specifying that the evaluation is conducted if determined necessary by the new public agency. The Analysis of Comments and Changes published with the final Part B regulations provided the following pertinent clarification in response to a public comment:

Under §300.323(f)(1), if the new public agency determines that an evaluation of the child is necessary to determine whether the child is a child with a disability under the new public agency's criteria, the new public agency must conduct the evaluation. Until the evaluation is conducted, §300.323(f) requires the new public agency, in consultation with the parent, to provide the child with FAPE, including services comparable to those described in the IEP from the previous public agency. The specific manner in which this is accomplished is best left to State and local officials and the parents to determine. (71 Fed Reg. at 46681)

### **IDEA 2004's Provisions: 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(f)*

#### **Parental Consent for Evaluation**

If the new public agency decides that an evaluation is necessary, evaluation is considered an initial evaluation, which would require parental consent (71 Fed. Reg. at 46682).

The Analysis of Comments and Changes published with the final Part B regulations provided the following pertinent explanation as to why the evaluation is considered an initial evaluation:

The evaluation conducted by the new public agency would be to determine if the child is a child with a disability and to determine the educational needs of the child. Therefore, the evaluation would not be a reevaluation, but would be an initial evaluation by the new public agency. . . (71 Fed. Reg. at 46682).

#### **Children Who Move in the Summer**

The same answer given in the last slide applies here. For children who move in the summer, a different provision within IDEA applies: §300.323(a). This 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. It is up to the public agency in question to utilize that means 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.

## Transferring the child's records

1  
&  
2



### Starting View

Slide loads with this view.

## Transferring the child's records

1  
&  
2

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 [§300.323(g)]

*\*Pursuant to 34 CFR 99.31(a)(2)*

### Clicks 1-2

Click 1:  
Top paragraph appears. So does the asterisked text "Pursuant to..." at the very bottom.

Click 2:  
Bottom paragraph appears.

(discussed on next page) ➡

CLICK AGAIN to advance to next slide.



Slide 34 addresses the topic of transferring the records of a child who moves as described in Slides 31 and 32—in other words, from one school to another in the same State (but with a different public agency), or from one school to another in different States (and, in both cases, within the same school year). That “1” and “2” on the left of the slide are intended to indicate that what will be discussed applies to both of these situations.

These new provisions of IDEA 2004 are presented in **Handout D-14** and in the box below. These 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. We have included

FERPA’s applicable provisions on *Resource D-11*, to clarify this IDEA provision.

FERPA’s cited 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.”

Provisions can sometimes seem endlessly intertwined, can’t they? What are the requirements of §99.34, then? These, too, are presented on *Resource D-11*.

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, we urge you to read the precise language of the regulation, as provided on *Resource 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—

### IDEA 2004’s Provisions: 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.

§300.323(f)



...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.

## **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.



**Enough! Talk about paperwork burden!  
We're running away!**

Slide loads with  
this view.

CLICK to advance to the last slide.

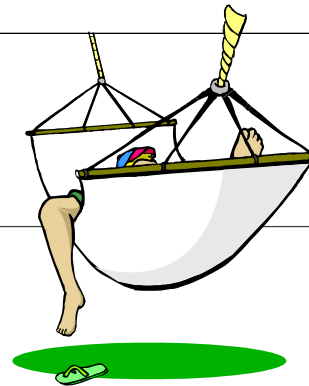
And that's it for this module on the IEP meeting, which looked in detail at IDEA's provisions regarding IEP Team meetings and what goes on at an IEP meeting. This slide is intended to signal that the "end is near" for this module and the round-up is next.



**Gotcha! Time for review.**

Slide loads with this view. No clicks are needed except to END the slide show.

CLICK to END the slide show.



Use this slide for a review and recap of your own devising, or open the floor up for a question and answer period. Depending on how much time you have available for this training session, you can have participants work in small groups on an IEP-related objective or to make a quick list of what information they've gleaned from this session, what's different in IDEA 2004, what's the same, or what aspects of Team meeting information are most pertinent to them. Emphasize the local or personal application of the information presented here.