

## Theme D: Individualized Education Programs (IEP)

### Theme D's Resources for Trainers

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*These resources are part of NICHCY's training curriculum on IDEA 2004  
and the final Part B regulations.  
See the next page for a description of the curriculum.*



*This training curriculum is a product of NICHCY  
the National Dissemination Center for Children with Disabilities.*

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# Snapshot of Training Curriculum

## Title of the Curriculum

*Building the Legacy: Individuals with Disabilities Education Act Amendments of 2004.*

## Purpose of the Curriculum

To provide authoritative information about, and training materials on, IDEA and its final Part B regulations.

## Source

The *Building the Legacy* training curriculum is a product of the National Dissemination Center for Children with Disabilities (NICHCY), produced at the request of the Office of Special Education Programs (OSEP) at the U.S. Department of Education.

## Table of Contents

A snapshot table of contents for the training curriculum is shown at the right. As of December 2007, *Building the Legacy* has the 19 training modules listed there. A title in gray text will be available in 2008. The **titles in bold**—and marked with an asterisk (\*)—are already available online. Come and get 'em at:

[www.nichcy.org/training/contents.asp](http://www.nichcy.org/training/contents.asp)

## Slide Shows, Details, Handouts!

Materials for each module include: a PowerPoint slide show for use in training, detailed background text and explanation for trainers, handouts for participants, and supplemental resources for trainers.

## Sign Up!

Individual modules will become available as they are finalized. Sign up, and NICHCY will let you know when a new module is ready for downloading for free. The Sign Up's on NICHCY's site, at:

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## What's Cooking

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\* Available online right now!

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*Please feel free to copy and share these handouts.*

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## Resource for Trainers D-1

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*Excerpted Discussion from the Analysis of Comments and Changes to the Final Regulations:*

### Exception to Related Services: Services That Apply to Children with Surgically Implanted Devices

The following text is drawn verbatim from pages 46569-46571 of the U.S. Department of Education's commentary in the Analysis of Comments and Changes accompanying the publication of IDEA 2004's final regulations on August 14, 2006. These are available online at: [www.nichcy.org/reauth/IDEA2004regulations.pdf](http://www.nichcy.org/reauth/IDEA2004regulations.pdf)

The text includes the *comments* received on the proposed regulations for IDEA, the discussion wherein the Department of Education responds to those comments, and changes made from the proposed regulations to the final regulations. The topic under focus is **the exception; services that apply to children with cochlear implants.**

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#### Exception; Services That Apply to Children With Cochlear Implants (§300.34(b))

*Comment:* Many commenters opposed the exclusion of surgically implanted devices from the definition of *related services*. Many commenters stated that the Act does not exclude the maintenance or programming of surgically implanted devices from the definition of related services, and that the regulations should specifically state that *related services* includes the provision of mapping services for a child with a cochlear implant. A few commenters stated that the issue of mapping cochlear implants needs to be clarified so that schools and parents understand who is responsible for providing this service. One commenter requested that the regulations clearly specify that optimization of a cochlear implant is a medical service and define mapping as an audiological service.

*Discussion:* The term "mapping" refers to the optimization of a cochlear implant and is not included in the definition of *related services*. Specifically, "mapping" and "optimization" refer to adjusting the electrical stimulation levels provided by the cochlear implant that is necessary for long-term post-surgical follow-up of a cochlear implant. Although the cochlear implant must be properly mapped in order for the child to hear well in school, the mapping does not have to be done in school or during the school day in order for it to be effective. The exclusion of mapping from the definition of *related services* reflects the language in Senate Report (S. Rpt.) No. 108-185, p. 8, which states that the Senate committee did not intend that mapping a cochlear implant, or even the costs associated with mapping, such as transportation costs and insurance copayments, be the responsibility of a school district. These services and costs are incidental to a particular course of treatment chosen by the child's parents to maximize the child's functioning, and are not necessary to ensure that the child is provided access to education, regardless of the child's disability, including maintaining health and safety while in school. We will add language in §300.34(b) to clarify that mapping a cochlear implant is an example of device optimization and is not a related service under the Act.

*Changes:* We have added "(e.g., mapping)" following "functioning" in §300.34(b) to clarify that mapping a surgically implanted device is not a related service under the Act.

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## Exception to Related Services: Surgically Implanted Devices

**Comment:** A significant number of commenters stated that children with cochlear implants need instruction in listening and language skills to process spoken language, just as children with hearing loss who use hearing aids, and requested that the regulations clarify that excluding the optimization of device functioning from the definition of *related services* does not impact a child's access to related services such as speech and language therapy, assistive listening devices, appropriate classroom acoustics, auditory training, educational interpreters, cued speech transliterators, and specialized instruction.

One commenter requested that the regulations explicitly state whether a public agency is required to provide more speech and language services or audiology services to a child with a cochlear implant. Another commenter requested that the regulations clarify that optimization only refers to access to assistive technology, such as assistive listening devices (e.g., personal frequency modulation (FM) systems) and monitoring and troubleshooting of the device function that is required under proper functioning of hearing aids.

**Discussion:** Optimization generally refers to the mapping necessary to make the cochlear implant work properly and involves adjusting the electrical stimulation levels provided by the cochlear implant. The exclusion of mapping as a related service is not intended to deny a child with a disability assistive technology (e.g., FM system); proper classroom acoustical modifications; educational support services (e.g., educational interpreters); or routine checking to determine if the external component of a surgically implanted device is turned on and working. Neither does the exclusion of mapping as a related service preclude a child with a cochlear implant from receiving the related services (e.g., speech and language services) that are necessary for the child to benefit from special education services. As the commenters point out, a child with a cochlear implant may still require related services, such as speech and language therapy, to process spoken language just as other children with hearing loss who use hearing aids may need those services and are entitled to them under the Act if they

are required for the child to benefit from special education. Each child's IEP Team, which includes the child's parent along with school officials, determines the related services, and the amount of services, that are required for the child to benefit from special education. It is important that the regulations clearly state that a child with a cochlear implant or other surgically implanted medical device is entitled to related services that are determined by the child's IEP Team to be necessary for the child to benefit from special education. Therefore, we will add language in §300.34(b) to clarify that a child with a cochlear implant or other surgically implanted medical device is entitled to those related services that are required for the child to benefit from special education, as determined by the child's IEP Team.

**Changes:** We have reformatted §300.34(b) and added a new paragraph (2) to clarify that a child with a cochlear implant or other surgically implanted device is entitled to the related services that are determined by the child's IEP Team to be required for the child to benefit from special education. We have also added the phrase "services that apply to children with surgically implanted devices, including cochlear implants" to the heading in §300.34(b).

**Comment:** One commenter expressed concern that excluding the optimization of device functioning and maintenance of the device as related services will establish different standards for serving children with cochlear implants versus children who use hearing aids and other external amplification devices, and recommended clarifying that routine monitoring of cochlear implants and other surgically implanted devices to ensure that they are functioning in a safe and effective manner is permitted under the Act.

A few commenters stated that some schools are interpreting the exclusion of device optimization, functioning, and maintenance to mean that they do not have to help the child change a battery in the externally worn speech processor connected with the

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## Exception to Related Services: Surgically Implanted Devices

surgically implanted device, make certain that it is turned on, or help the child to learn to listen with the cochlear implant. One commenter stated that children with cochlear implants should have the same services as children who use a hearing aid when the battery needs changing or equipment breaks down.

One commenter stated that §300.34(b) is confusing and should explicitly state that the exception of the optimization of device functioning, maintenance of the device, or replacement of the device is limited to surgically implanted devices. The commenter stated that the language could erroneously lead to an interpretation that this exception is applicable to all medical devices. One commenter expressed concern that this misinterpretation could put insulin pumps and other medical devices that are required for the health of the child in the same category as cochlear implants.

A few commenters stated that it is important to clarify that excluding the optimization of device functioning and the maintenance of the device should not be construed to exclude medical devices and services that children need to assist with breathing, nutrition, and other bodily functions while the child is involved with education and other school-related activities.

One commenter stated that a school nurse, aide, teacher's aide, or any other person who is qualified and trained should be allowed to monitor and maintain, as necessary, a surgically implanted device.

*Discussion:* A cochlear implant is an electronic device surgically implanted to stimulate nerve endings in the inner ear (cochlea) in order to receive and process sound and speech. The device has two parts, one that is surgically implanted and attached to the skull and, the second, an externally worn speech processor that attaches to a port in the implant. The internal device is intended to be permanent.

Optimization or "mapping" adjusts or fine tunes the electrical stimulation levels provided by the cochlear implant and is changed as a child learns to discriminate signals to a finer degree. Optimization services are generally provided at a specialized clinic.

As we discussed previously regarding §300.34, optimization services are not a covered service under the Act. However, a public agency still has a role in providing services and supports to help children with cochlear implants.

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

In many ways, there is no substantive difference between serving a child with a cochlear implant in a school setting and serving a child with a hearing aid. The externally worn speech processor connected with the surgically implanted device is similar to a hearing aid in that it must be turned on and properly functioning in order for the child to benefit from his or her education. Parents of children with cochlear implants and parents of children with hearing aids both frequently bring to school extra batteries, cords, and other parts for the hearing aids and externally worn speech processors connected with the surgically-implanted devices, especially for younger children. The child also may need to be positioned so that he or she can directly see the teacher at all times, or may need an FM amplification system such as an audio loop.

For services that are not necessary to provide access to education by maintaining the health or safety of the child while in school, the distinguishing factor between those services that are not covered under the Act, such as mapping, and those that are covered, such as verifying that a cochlear implant is functioning



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properly, in large measure, is the level of expertise required. The maintenance and monitoring of surgically implanted devices require the expertise of a licensed physician or an individual with specialized technical expertise beyond that typically available from school personnel. On the other hand, trained lay persons or nurses can routinely check an externally worn processor connected with a surgically implanted device to determine if the batteries are charged and the external processor is operating. (As discussed below, the Act does require public agencies to provide those services that are otherwise related services and are necessary to maintain a child's health or safety in school even if those services require specialized training.) Teachers and related services providers can be taught to first check the externally worn speech processor to make sure it is turned on, the volume and sensitivity settings are correct, and the cable is connected, in much the same manner as they are taught to make sure a hearing aid is properly functioning. To allow a child to sit in a classroom when the child's hearing aid or cochlear implant is not functioning is to effectively exclude the child from receiving an appropriate education. Therefore, we believe it is important to clarify that a public agency is responsible for the routine checking of the external components of a surgically implanted device in much the same manner as a public agency is responsible for the proper functioning of hearing aids.

The public agency also is responsible for providing services necessary to maintain the health and safety of a child while the child is in school, with breathing, nutrition, and other bodily functions (e.g., nursing services, suctioning a tracheotomy, urinary catheterization) if these services can be provided by someone who has been trained to provide the service and are not the type of services that can only be provided by a licensed physician. (*Cedar Rapids Community School District v. Garret F.*, 526 U.S. 66 (1999)).

*Changes:* We have added new §300.113 to cover the routine checking of hearing aids and external components of surgically implanted devices. The requirement for the routine checking of hearing aids has been removed from proposed §300.105 and included in new §300.113(a). The requirement for routine checking of an external component of a surgically implanted medical device has been added as new §300.113(b). The requirements for assistive technology devices and services remain in §300.105 and the heading has been changed to reflect this change. We have also included a reference to new §300.113(b) in new §300.34(b)(2).

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*Comment:* A few commenters stated that specialized cochlear implant audiologists who are at implant centers or closely associated with them should program cochlear implants. One commenter stated that, typically, school audiologists and school personnel do not have the specialized experience to program cochlear implants.

*Discussion:* The personnel with the specific expertise or licensure required for the optimization (e.g., mapping) of surgically implanted devices are decisions to be made within each State based on applicable State statutes and licensing requirements. Since mapping is not covered under the Act, personnel standards for individuals who provide mapping services are beyond the scope of these regulations.

*Changes:* None.

## **A Resource for IEP Teams: Considering Behavior Concerns**

This checklist is adapted from the Nebraska Department of Education's Nebraska IEP Technical Assistance Guide (1998, September), available online at: [www.nde.state.ne.us/SPED/iepproj/factors/beh.html](http://www.nde.state.ne.us/SPED/iepproj/factors/beh.html)

### **What Are They?**

Sometimes students experience difficulty with behavior. A student may demonstrate inappropriate behavior in school to a point that it interferes with his or her learning or the learning of others.

### **Why Are They Important?**

The IEP Team needs to make specific considerations regarding behavioral issues for students. They must design appropriate interventions and designate needed supports for a student whose behavior impedes his or her learning or the learning of others.

There are primary procedures to follow during the development of the IEP for a student whose behavior is impeding his or her learning or the learning of others. In one instance, the general design of a behavioral program for a student is required to prevent interference with his or her learning and the learning of his or her peers. In more severe cases, a student's behavior creates a situation where he or she faces disciplinary actions requiring removal from the educational setting.

### **How Do We Address Them?**

A critical element in designing quality programming for a student is to realize systematic assessment and program planning are an ongoing process. They begin at the time a student is referred as possibly requiring special education programs and services and continue throughout

the completion of a follow-up process after special education programs and services have concluded. A concept such as *functional behavioral assessment* is introduced much earlier in assessing a student's needs and is periodically reviewed throughout his or her program rather than introduced only at the time a significant disciplinary action is pending. Other concepts inherent to solid assessment and programming for the social, emotional, and behavioral needs of students should be considered throughout the programming for students experiencing behavioral problems.

In order to implement the expectations of the behavioral and discipline requirements within the IEP process, the IEP Team should be able to:

- 1. Design, conduct, and document functional behavioral assessments.**

Functional behavioral assessment is assessment that enhances an understanding of the purpose and function of a student's behaviors and subsequently provides information leading to interventions and needed supports. For a student who becomes subject to disciplinary action, a functional behavioral assessment is useful in the development of a behavioral intervention plan within the context of the IEP process. A detailed description of the essential elements of a functional behavioral assessment is found in [Resource 2 in this training curriculum].

At the initial identification of a student requiring behavioral programming as part of their special education program, the IEP Team needs to describe the relationship between the social, emotional, and behavioral needs of the student and the behavioral expectations of the school environment. This description of the *discrepancy*

## A Resource for IEP Teams: Considering Behavior Concerns

between the student's current social, emotional, and behavioral skills and the behavioral expectations of the school setting provides significant direction for designing the content of the behavioral plan for the student. The primary goal is the reduction of this discrepancy.

### 2. Design, conduct, and document behavioral intervention plans.

A *behavioral intervention plan* is generally defined as a written, specific, purposeful, and organized plan which describes positive behavioral interventions and other strategies that will be implemented to address goals for a student's social, emotional, and behavioral development. In addition, for students whose behavior prompts disciplinary action by the school, the behavioral intervention plan addresses the behavior(s) of concern that led to conducting a functional behavioral assessment.

The behavioral intervention plan needs to be designed during the IEP meeting. Essential Elements of a Behavioral Intervention Plan are found in [Resource 2 in this training curriculum].

### 3. Review and determine adequacy of behavioral intervention plans.

As the student's progress is being evaluated on his or her goals throughout the school year, the behavior intervention plan should be monitored to ensure it continues to meet the needs of the student.

### 4. Additional considerations that become relevant with more serious behavioral concerns:

- Prepare a data collection system to substantiate dangerous behavioral situations.
- Generate possible sites and adequacy of alternative educational settings.
- Implement strategies to assess such areas as student's "understanding impact and consequences of behavior."
- Establish relationships with other agencies that are part of the student's plan.

## **Functional Behavior Assessments and Behavior Intervention Plans**

This information is adapted from the Nebraska Department of Education's Nebraska IEP Technical Assistance Guide (1998, September), available online at: [www.nde.state.ne.us/SPED/iepproj/appb/abindex.html](http://www.nde.state.ne.us/SPED/iepproj/appb/abindex.html)



### **Essential Elements of a Functional Behavioral Assessment**

#### **Behavior Definition**

- An objective and behaviorally specific definition/ description of the behavior(s) of concern is developed

#### **Data Collection**

- The scope and comprehensiveness of data collection is tailored to the particular behavior(s) of concern
- Existing data is reviewed, particularly prior measurable and goal-directed attempts to address the behavior(s) of concern
- Both qualitative and quantitative data are collected and considered
- Strengths or areas of competence are identified
- Data collection is individually tailored
- Data collection procedures are valid and reliable
- Information is collected and considered in a culturally competent manner
- Additional information is collected when needed
- When relevant, data is collected from multiple settings, i.e., school, home, and community
- When relevant, diagnostic/descriptive information is collected through collaboration with professionals/ agencies external to the school

#### **Analysis**

- Multiple sources of relevant information are considered including:
  - The setting(s) in which the behavior(s) occurs
  - The specific behaviors of the student
  - Student traits, including personal/affective characteristics
- Analysis focuses on:
  - Understanding the purpose and function of the behavior(s) of concern;
  - The individual's social, emotional and behavioral functioning in relationship to expectations;
  - The development of interventions; and
  - The identification of needed supports

Communication with parents throughout the functional behavioral assessment process is critical.

#### **Intervention Planning and Implementation**

- There is a clear link between the functional behavioral assessment data collected and the intervention(s) selected.

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## Functional Behavior Assessments and Behavior Intervention Plans

### Essential Elements of a Behavior Intervention Plan

- The intervention strategies are selected based on the nature of the defined problem, parent input, and professional judgments about the potential effectiveness of strategies.
- Measurable goals are written that clearly describe projected improvement or remediation of the problem.
- Measurable goals are directly related to the student's present levels of academic achievement and functional performance.
- Goals include strategies that will increase positive behavior and decrease undesirable behavior, including planned disciplinary procedures, if necessary.
- Strategies for generalizing and maintaining positive behavior outside of the training situation are included.
- The behavioral intervention plan is implemented with integrity, i.e., interventions are actually implemented in the manner in which they were designed, and consistent with established professional standards and practices.

### Monitoring of Intervention Effects

- Student performance data are collected and documented on a regular and frequent basis.
- Modification of the behavioral intervention plan is made as frequently as necessary, based on monitoring information.
- Progress monitoring information is summarized and documented in a way that communicates whether the intervention is accomplishing its intended effect.
- Progress monitoring information is used frequently and repeatedly to determine whether the anticipated outcomes for the individual are being met and whether the placement and services are appropriate to the individual's learning needs.

Communication with parents is critical throughout the development and implementation of a behavioral intervention plan.

## **A Checklist for IEP Teams: Considering Limited English Proficiency**

This information is adapted from the Nebraska Department of Education's Nebraska IEP Technical Assistance Guide (1998, September), available online at: [www.nde.state.ne.us/SPED/iepproj/factors/lep.html](http://www.nde.state.ne.us/SPED/iepproj/factors/lep.html)

### **Developing the IEP**

In developing an IEP for a student with limited English proficiency, the IEP Team must consider the student's level of English language proficiency. It's important to know that second language conversational skills are acquired in one to two years, but academic language proficiency is acquired over a longer period of time of five to seven years. Therefore, the IEP Team must consider the student's level of English language proficiency to support and strengthen implementation of the IEP goals.

The IEP Team may find it helpful to ask the following framing questions:

1. Has the dominant language in the home been considered?

Yes  No

2. Has the child's primary language of communication been considered?

Yes  No

3. Have the cultural values and beliefs of the parents been considered in planning for the child's education?

Yes  No

4. Does the instructional plan incorporate a variety of instructional strategies?

Yes  No

5. Is there a member of the IEP Team who has expertise regarding the student and understands how language develops as well as strategies that can be used when educating a student with English as a second language?

Yes  No

6. Does the IEP Team have access to assessment data that is accurate and unbiased?

Yes  No

7. Does the assessment information use a variety of methods and environments?

Yes  No

8. Does the "present levels" statement in the IEP address both how the student uses his or her native language and how the student uses English?

Yes  No

9. Do progress monitoring activities measure progress toward the mastery of English?

Yes  No

10. Do the goals delineate in which language they will be addressed and who will be responsible for measuring the outcomes?

Yes  No

(over) 

## A Checklist for IEP Teams: Considering Limited English Proficiency

11. Is there collaboration between general and special education as well as English as a Second Language and bilingual education if appropriate?  
 Yes    No
  
12. Is an interpreter for the parents and the student present at the IEP meeting?  
 Yes    No
  
13. Are the IEP Team members trained in how to use an interpreter?  
 Yes    No
  
14. Is the evaluation process that will be used carefully defined in the native language and in English during the reviews and reevaluations?  
 Yes    No
  
15. Are the behaviors that are being measured carefully defined in the native language and in English during the reviews and reevaluations?  
 Yes    No
  
16. Is the setting that the language is being measured in defined?  
 Yes    No
  
17. Is the type of language that is being measured defined?  
 Yes    No

## A Checklist for IEP Teams: Considering Blindness and Visual Impairment

This checklist is drawn from the Nebraska Department of Education's Nebraska IEP Technical Assistance Guide (1998, September), available online at: [www.nde.state.ne.us/SPED/iepproj/factors/bli.html](http://www.nde.state.ne.us/SPED/iepproj/factors/bli.html)

### How Do We Do It?

In order for a student with visual impairment to be educated in the most effective way possible, the IEP Team needs to address the following:

1. Has the student received a functional vision evaluation?
 

Yes  No

Student's vision is so limited a functional vision evaluation would not be appropriate
2. Has the student received a learning media assessment?
 

Yes  No
3. Has the student received a recent clinical low-vision assessment?
 

Yes  No

Student's vision is so limited low vision clinical examination is not appropriate
4. Does the student's visual condition indicate:
 

A progressive loss of vision?

Stability at the current level?

Unpredictability that will be followed by a possible decrease in vision?

A temporary condition that is expected to improve?

5. Is there a medically diagnosed expectation of visual deterioration in adolescence or early childhood?

Yes  No

6. Does the student qualify for instruction in a new primary reading and writing medium because a change to a new primary medium is needed before the individual can no longer effectively use the current medium?

Yes  No

7. Will the student receive instruction in Braille? (The IEP Team must provide for instruction in Braille unless the IEP Team determines, after evaluation of the child's reading and writing skills, that instruction in Braille is not appropriate.)

Yes  No

8. If instruction in Braille is not appropriate, which primary and secondary (if appropriate) learning media has been selected for this student?

|                                      | Primary                  | Secondary                |
|--------------------------------------|--------------------------|--------------------------|
| Large Print                          | <input type="checkbox"/> | <input type="checkbox"/> |
| Regular Print                        | <input type="checkbox"/> | <input type="checkbox"/> |
| Regular Print with an optical device | <input type="checkbox"/> | <input type="checkbox"/> |
| Closed circuit television            | <input type="checkbox"/> | <input type="checkbox"/> |
| Recorded                             | <input type="checkbox"/> | <input type="checkbox"/> |
| Individual is a non-reader           | <input type="checkbox"/> | <input type="checkbox"/> |

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## A Checklist for IEP Teams: Considering Blindness and Visual Impairment

9. Has a written explanation of why the individual is using the selected learning media been provided?

Yes  No

10. Will instruction in Braille reading and writing be provided by a teacher licensed at the appropriate grade level to teach students with visual impairment?

Yes  No  Not applicable

11. Has the student received an assessment in the following areas of need:

Orientation and Mobility (  
independent travel)  
instruction?  Yes  No

Skills for acquiring  
information, including  
appropriate use of technological  
devices and services  
(low and high tech)?  Yes  No

Social interaction skills?  Yes  No

Transition services needs?  Yes  No

Recreation needs?  Yes  No

Career Education?  Yes  No

Daily living (adaptive skills)?  Yes  No

Other skills necessary to  
enable the individual to  
learn effectively?  Yes  No

### How Do We Know We Are Doing It Right?

#### The IEP:

- Provides information regarding the student's visual condition.
- Addresses the student's Braille/tactile needs.
- Addresses the student's vision needs.
- Describes the student's reading and writing medium.
- Addresses assistive technology and accommodations.

## A Checklist for IEP Teams: Considering Deaf and Hard of Hearing

This checklist is drawn from the Nebraska Department of Education's Nebraska IEP Technical Assistance Guide (1998, September), available online at: [www.nde.state.ne.us/SPED/iepproj/factors/deaf.html](http://www.nde.state.ne.us/SPED/iepproj/factors/deaf.html)

### How Do We Do It?

One way the IEP Team can address the creation of a communication plan is to work through the following checklist during the IEP meeting. This communication plan, in checklist form, is designed to meet the letter of the law.

1. The child's communication mode, *receptively*, appears to be:

- Aural-Oral (listening, speech reading, and speaking)
- Total Communication (including sign language)
- Other (please explain)

The child's communication mode, *expressively*, appears to be:

- Aural-Oral (listening, speech reading, and speaking)
- Total Communication (including sign language)
- Other (please explain)

Is this mode of communication efficient and sufficient for this child?

- Yes
- No

2. What are the child's language needs? (*Check all that apply*)

- The child's written language is *on* grade level with hearing peers
- The child's written language is *below* grade level with hearing peers
- How far below?
- The child's spoken language appears to be *on* grade level with hearing peers (child does not utilize sign language)
- The child's spoken language appears to be *below* grade level with hearing peers (child does not utilize sign language)
- How far below?
- The child's signed language appears to be *on* grade level with hearing peers
- The child's signed language appears to be *below* grade level with hearing peers
- How far below?
- The child's comprehension (auditory or sign language) appears to be *on* grade level with hearing peers
- The child's comprehension (auditory or sign language) appears to be *below* grade level with hearing peers
- How far below?

What are some strategies that can be used to help the child attain language commensurate with his or her hearing peers?

## A Checklist for IEP Teams: Considering Deaf and Hard of Hearing

3. Does the child have opportunities for direct communication with peers in his or her language and communication mode?

Yes Please explain:

No Please explain:

4. Does the child have opportunities for direct communication with professional personnel in his or her language and communication mode?  
*(Professional personnel includes, but is not limited to: audiologist, educational interpreter, general education teacher, occupational therapist, psychologist, speech language pathologist, social worker, teacher aide, educator of deaf/hard of hearing, etc.)*

Yes, with the following personnel:

How have personnel demonstrated proficiency in the child's communication mode?

No, with the following personnel:

What is the plan to remediate this issue?

5. The child's academic level is:

- commensurate with hearing peers
- 1-2 years below hearing peers
- more than 2 years below hearing peers

(If academic level is below hearing peers, please explain. Also include strategies to remediate this situation.)

6. Has the IEP Team examined the child's full range of needs, including opportunities for direct instruction in his or her language and communication mode? Please explain:

7. Have all potential service options within the LEA, as well as those available by contract, been explained during the IEP meeting?

Yes

No

(If no, why not?)

### How Do We Know We Are Doing It Right?

The communication plan:

- Is addressed by all members of the IEP Team.
- Is completed during the IEP meeting.
- Provides information regarding the student's mode of communication.
- Addresses the student's language needs.
- Addresses the student's communication needs.
- Addresses the student's academic level.
- Addresses the student's full range of needs.
- Describes opportunities for direct communication with peers and professionals.
- Describes opportunities for direct instruction in the child's language and communication mode.
- Incorporates all of this information into the development of the IEP.

## FCTD's Fact Sheet: Assistive Technology 101

This fact sheet is a product of the Family Center on Technology and Disability (FCTD), available online in HTML and PDF formats, at [www.fctd.info/resources/index.php](http://www.fctd.info/resources/index.php) (English) and [www.fctd.info/resources/index\\_es.php](http://www.fctd.info/resources/index_es.php) (Spanish).

### What Is Assistive Technology?

Assistive technology is any kind of technology that can be used to enhance the functional independence of a person with a disability. Often, for people with disabilities, accomplishing daily tasks such as talking with friends, going to school and work, or participating in recreational activities is a challenge. Assistive Technology (AT) devices are tools to help to overcome those challenges and enable people living with disabilities to enhance their quality of life and lead more independent lives.

Assistive technology can be anything from a simple (low-tech) device such as a magnifying glass, to a complex (high-tech) device, such as a computerized communication system. It can be big—an automated van lift for a wheelchair—or small—a grip attached to a pen or fork by Velcro. Assistive technology can also be a substitute—such as an augmentative communication device that provides vocal output for a child who cannot communicate with her voice.

### Meeting Challenges with Assistive Technology

Assistive technology helps to level the playing field for individuals with disabilities by providing them a way to fully engage in life's activities. An individual may use assistive technology to travel about, participate in recreational and social activities, learn, work, communicate with others, and much more.

Here are several examples of AT that enable people with disabilities to enter into the community and interact with others.

- For greater independence of mobility and travel, people with physical disabilities may use mobility aids, such as wheelchairs, scooters, and walkers. Adapted car seats and vehicle wheelchair restraints promote safe travel.

- Hand-held GPS (global positioning system) devices help persons with visual impairments navigate busy city streets and use public transportation.
- Building modifications at work sites, such as ramps, automatic door openers, grab bars, and wider doorways mean fewer barriers to employment, businesses, and community spaces, such as libraries, churches, and shopping malls.
- Special computer software and hardware, such as voice recognition programs and screen enlargement programs, enable persons with mobility and sensory impairments to carry out educational or work-related tasks.
- Education and work aids such as automatic page turners, book holders, and adapted pencil grips enable children to participate in classroom activities.
- Bowling balls with hand-grips and one-handed fishing reels are a few examples of how technology can be adapted for sporting activities. Light-weight wheelchairs have been designed for organized sports, such as basketball, tennis, and racing.
- Adaptive switches make it possible for a child with limited motor skills to play with toys and games.
- Accessibly designed movie theaters provide closed captioning and audio description for moviegoers with hearing and visual difficulties.
- Devices to assist a person with daily living tasks, such as cooking, dressing, and grooming, are available for people with special needs. For example, a medication dispenser with an alarm can be set to remind a child to take daily medication. A person with use of only one hand can use a one-handed cutting board and a cabinet mounted can opener to cook meals with improved independence and safety.

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## FCTD's Fact Sheet: Assistive Technology 101

### Choosing the Right Assistive Technology Device(s) for Your Child

To determine the assistive technology needs of a child, an AT assessment should be conducted. The assessment can be conducted by the school, an independent agency, or an individual consultant. This assessment should take place in a child's customary environments—home, school, and community.

It is important that the assessment address the child's strengths as well as his/her weaknesses. It is key, when discussing how the child participates in his/her world, to hear the perspectives of teachers, parents and siblings, as well as that of the child. The discussion should not be limited merely to what skills the child possesses but should include the ways in which a child communicates, what he likes and dislikes, and what kind of strategies and interventions are helpful in interacting with the child. Consideration must be given to how a child's need for AT might change depending on the environment, for example on the playground, the classroom, a friend's house or in a public place like a mall or library. This type of input will provide clues as to what technology might work and how well your child will respond to it.

The end result of an assessment is a recommendation for specific devices and services. Once it is agreed that assistive technology would benefit a child, issues related to design and selection of the device, as well as maintenance, repair, and replacement of devices should be considered. Training (to use the device) and ongoing technical assistance is necessary not only for the child, but also for family members, teachers, service providers, and other people who are significantly involved in a student's life. It is also important to integrate and coordinate any assistive technology with therapies, interventions, or services provided by education and rehabilitation plans and programs.

Acquiring assistive technology does not just happen once in a lifetime. The type of devices your child needs may change depending on the child's age, abilities, physical status, and features of the immediate environment. Change in your child's life may require a re-assessment of his or her assistive technology needs.

Remember to specify AT assessments, devices and services in your child's IEP, so that the school is responsible for providing them.

### Learning More about Assistive Technology

Parents can help to identify potential AT for their child if they learn about the choices that are available. A good place to start is often with speech-language therapists, occupational therapists and school professionals. There are many organizations that provide AT information and training to consumers and families such as parent training and Information centers (PTI's), community technology centers, state assistive technology programs and rehabilitation centers. If possible you should visit an AT center with your child to see and try out various devices and equipment. Some AT centers offer lending programs that allow families to borrow devices for a trial period.

The Family Center on Technology and Disability (FCTD) offers a wide range of assistive technology resources for disability organizations, AT providers, educators and families of children with disabilities. Families are always welcome to visit the FCTD web site ([www.fctd.info](http://www.fctd.info)) to find other AT and disability organizations and to learn more about assistive technology.

The following list includes several organizations that offer various resources on AT.

*Alliance for Technology Access*—[www.ataccess.org](http://www.ataccess.org)

*Abledata*—[www.abledata.com](http://www.abledata.com)

*Assistivetech.net*—[www.assistivetech.net](http://www.assistivetech.net)

*AbilityHub*—[www.abilityhub.com](http://www.abilityhub.com)

*AT Training Online Project*—[www.atto.buffalo.edu](http://www.atto.buffalo.edu)

*Technical Assistance Alliance for Parent Centers*—  
[www.taalliance.org](http://www.taalliance.org)

*Association of State Technology Act Programs*—  
[www.ataporg.org/stateatprojects.asp](http://www.ataporg.org/stateatprojects.asp)

## FCTD's Fact Sheet: Assistive Technology and the IEP

This fact sheet is a product of the Family Center on Technology and Disability (FCTD), available online in HMTL and PDF formats, at [www.fctd.info/resources/index.php](http://www.fctd.info/resources/index.php) (English) and [www.fctd.info/resources/index\\_es.php](http://www.fctd.info/resources/index_es.php) (Spanish).

### Understanding the IEP

The Individuals with Disabilities Education Act (IDEA) requires public schools to make available to all eligible children with disabilities a free appropriate public education (FAPE) in the least restrictive environment appropriate to their individual needs.

The law requires that public schools develop appropriate Individualized Education Programs (IEPs) for each child. The IEP is a written plan for educating a child with a disability. The IEP describes the student's specific special education needs as well as any related services, including assistive technology.

### Where to Start

In order to determine if a child is eligible for special education services, an evaluation must be conducted. The school system is required to provide the evaluation at no cost to the family. The law requires that particular procedures be followed in the development of the IEP. Each student's IEP must be developed by a team of knowledgeable persons and must be reviewed at least once a year. The team usually includes the child's teacher, the parents, the child, if appropriate, a school system representative who is qualified to provide or supervise the provision of special education, and other individuals at the parents' or school's request.

As their child's strongest advocate, it is important that families insist that assistive technology devices and services be included in the written IEP. School districts are responsible for providing assistive technology devices and services if it is determined by an IEP team that the child needs them to benefit from his or her educational program. Lack of availability or cost cannot be used as an excuse for denying AT devices or services. In addition, a child is allowed to take a device home if it is needed to enable him or her to benefit from his educational program as determined by the IEP

team. Training of teachers' aides and the student may also be listed in the IEP as AT services.

The term "assistive technology" may never appear on the IEP forms used by your child's school. Instead the form may use terms such as "accommodations, supports, program modifications or supplementary aids and services." No matter what form is used by the IEP team in your child's school, the law requires that the assistive technology needs of the child must be considered.

### Determining Assistive Technology Needs

The IEP team determines the assistive technology needs of the child through an assessment process. It is important to consider the child's strengths as well as their weaknesses, their likes and dislikes, and what strategies are helpful in interacting with the child. A child's AT needs will change depending on their environment—at home, at school, or out in public at a library or at the mall—so the perspectives of family members and teachers, as well as the student, should all be taken into consideration.

### Questions to Consider

The following questions should be considered in determining what AT devices will best suit your child:

- *What does your child need to do but is unable to do because of his/her disability?* Make sure to consider these 5 areas of functioning: physical, communication, cognitive, social/emotional, academic.
- *What are your child's customary environments?* (Classroom, playground, bus, gym, school cafeteria)
- *What are your child's biggest educational challenges?* (Communication, mobility, reading, writing, behavior)
- *What assistive technology tools are available to help your child overcome these challenges?* Make sure to consider both high-tech and low-tech options.
- *What criteria will be used to later determine if the AT has been successful in helping your child in his/her educational program?*

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- *What are your child's preferences in areas such as color and style?* A child may resist using a piece of equipment that he/she thinks is "nerdy" and sets him apart from the rest of the class. A device that is less conspicuous may be preferred by the child in order to better "fit-in."

After listing possible AT tools that the team thinks might help your child, the team needs to decide which device to try first. Sometimes a number of tools will need to be tried before an appropriate one is decided upon. The IEP team should discuss the following:

- What are the specific features of the AT device that can help your child?
- How long will this device or program remain a suitable AT device for your child? —6 months, 1 year, 5 years? It is important to plan for important transitions in your child's life when considering AT options.
- What tools or devices are readily available from the school, the district, or a loan library?
- Who will need to be trained to ensure that your child gets the maximum benefit from the AT device?

Often AT devices go unused simply because the appropriate people are not trained on how to use the device. Find out who needs to be trained—teachers, aides, family members—and identify sources of training. Often the school system has people qualified to provide AT training. Other sources include AT vendors, parent training and information centers, and state Tech Act programs.

- Is the device compatible with other devices and/or programs?
- Can the device serve more than one purpose?

After deciding upon an appropriate AT device to try, the IEP team needs to acquire the device for the student to experiment with. During this trial period, the team—including the parents—should collect the following data:

- How often did the child use the device?
- Did it help the child do something he/she could not do before? Is it efficient?

- Is the child comfortable using the device?
- Is it convenient for use in the child's usual environments?
- How was the success of the device measured?

Sometimes a child may need to experiment with several devices before finding the right one. After trying different options the IEP team should come to a conclusion about what device is most appropriate for the child.

- Document in writing that the IEP team considered assistive technology.
- Document in the IEP what AT devices and services are most appropriate for the child.

Keep in mind that even if your child does not require assistive technology at the moment, he or she may benefit from using it in the future. Therefore, the law requires that your child's AT needs be considered continually as long as your child has an IEP.

### Obtaining a Formal AT Evaluation for Your Child

If the IEP team is unable to determine what AT devices and services are best for your child, then a formal AT evaluation may be needed. The evaluation should be performed by a qualified professional in a timely fashion. This may present a problem, as there is a shortage of qualified AT evaluators in many areas of the country. The school system may choose to use its own personnel to conduct the evaluation, but if parents disagree with the recommendations, they have the right to an independent evaluation at district expense. Be aware, however, that parents may have to assume the cost of an independent evaluation if the results do not differ from the one provided by the school system and if the system can show that the original evaluation was appropriate.

## A Checklist for IEP Teams: Considering Assistive Technology

This checklist is adapted from the Nebraska Department of Education's Nebraska IEP Technical Assistance Guide (1998, September), available online at: [www.nde.state.ne.us/SPED/iepproj/factors/assist.html](http://www.nde.state.ne.us/SPED/iepproj/factors/assist.html)

Assistive technology (AT) enables children with disabilities to participate more fully in all aspects of life (home, school, and community) and helps them access their right to a "free, appropriate, public education" in the "least restrictive environment."

### Why is AT Important?

AT increases a student's opportunities for education, social interactions, and potential for meaningful employment. It also supports a student's participation in learning experiences in the least restrictive environment. AT is a tool to help the student benefit from the general education curriculum and access extracurricular activities in home, school, and work environments.

In addition:

- A child's need for assistive technology must be determined on a case-by-case basis and could be special education, related services, or supplementary aids and services for children with disabilities who are educated in regular classes.
- A district must provide a device for use at home if necessary for FAPE. Decisions regarding the use of the assistive technology device or service in other settings outside school must be made on an individual basis.
- A school may access alternative funding sources to defray costs of assistive technology devices and services. Schools may not compel parents to file an insurance claim and may not condition provision of equipment or services on filing or approval of a claim.

### How Do We Do It?

The following written process addresses primary questions related to assistive technology.

1. **What is it we want the student to be able to do within the educational program that he or she isn't able to do because of his or her disability?**

The question is: *"What daily educational tasks or activities is the student not able to do or participate in because of his or her disability?"*

IEP team members need to consider carefully what they want the student to be able to do within the educational program, that he or she isn't able to do because of the identified disability. Then ask the question, "Would assistive technology of some kind enable the student to meet the goal?"

The team should answer this question keeping short-term as well as long-term goals in mind. Areas to consider include, but are not necessarily limited to:

- |                          |                      |
|--------------------------|----------------------|
| • Handwriting            | • Spelling           |
| • Reading                | • Math               |
| • Written expression     | • Daily organization |
| • Communication          | • Mobility           |
| • Seating/positioning    | • Recreation         |
| • Seeing                 | • Selfcare           |
| • Levels of independence |                      |
| • Cognitive processing   |                      |

*Proceed to Step #2.*

### 2. What has been tried, to meet the student's special education needs?

Once the area of educational need(s) has been identified, the team needs to review what has been tried in the past to address the need(s) of the student. This may include a variety of interventions achieved through strategies or modifications not typically considered "assistive technology." These may be low-tech in nature, or there may be high-tech assistive technology devices in place.

Example: A student with a learning disability, unable to memorize multiplication facts, may use a multiplication table. The multiplication table could be identified as a supplementary aid in the general education environment. An AT device such as a calculator (identified as a low-tech device) could also be used to meet the student's need.

*Proceed to Step #3.*

### 3. Is it working?

After identifying the strategies, modifications, and devices necessary to meet the educational needs of the student, the IEP Team determines if they are effective. Is the strategy, modification or device meeting the student's specific need in the environments he or she needs to complete the task? Additionally, does the strategy, modification or device encourage the level of desired independence, allowing the student to remain in the least restrictive environment (LRE) where he or she is able to receive FAPE?

*Proceed to Step #4 and #5 (if yes) or #6 (if no).*

### 4 and 5. Yes, it's working. Provide documentation and evidence to support this conclusion.

If the team agrees the specified educational needs are being met within the LRE, and the student's programming is appropriate with the strategies, modifications, and/or devices in place, to the level of independence desired, there should be evidence to support the effectiveness and appropriateness of the interventions.

The evidence may be in the form of:

- Work samples
- Classroom tests
- Formal testing
- Video taping
- Recorded observations
- Any other form appropriate to the student and his or her needs

*Proceed to Step #13.*

### 6. No, it's not working.

If the team agrees a specific educational need is not being met with present interventions, the team should *proceed to Step #7.*

### 7. What was tried? How long was it tried? How was it tried? What were the results?

What was the strategy, device, or modification that was tried? If there was more than one, deal with each one separately.

Give the timeframe or time period the strategy, device, or modification was tried. Indicate if there were any "breaks" in service that may have affected the outcome or progress. Provide information and descriptions about how each strategy, modification, or device was used and indicate the initially anticipated outcome. If there were specific procedures, devices, or assigned responsibilities, these should be indicated.

Actual outcomes or results should be noted. Indicate what did work and what did not work. Are there implications regarding further strategies or modifications or devices that should be considered to achieve the student's goals?

Information and/or data collected from this step should be used in considering alternative interven-

(continued on next page) 

tions. It is helpful to be as specific as possible about what did and did not work and what may have been procedurally ineffective, device-specific ineffective, or individually ineffective.

*Proceed to Step #8.*

**8. Do we, as a collaborative team, have the necessary knowledge and resources to continue to try and meet the student's special education need(s)?**

After efforts have been made to attempt modifications, apply strategies, and/or use assistive services or devices, and it is apparent the IEP Team's efforts are not affecting the desired change, determine a course of action.

By asking this question, you can determine whether or not you can continue to brainstorm and come up with strategies on your own, whether there are more resources that can be tapped, or whether it is time to consider advice or assistance from an outside source. The next step is to either seek additional assistance or continue working as a team through the consideration process.

*Proceed to Step #9 (if yes) or Step #11 (if no).*

**9. No, we don't have the necessary knowledge and resources.**

*Proceed to Step #10.*

**10. Seek additional assistance.**

At this point, the IEP Team may consider a referral to another source for information.

There may be other resources within the school building or school district, or other agencies, local or otherwise, the IEP Team may want to use.

The IEP Team is not expected to know everything about every possible assistive technology service or device. Individual variables in the system as well as the background disciplines of the team members will impact the decision at this point. There are varying degrees of training, experience, and accessi-

bility to devices which may limit the capabilities of an IEP Team in relation to the needs of a specific child.

As a result of information provided by your source of additional assistance, *proceed to Step #12.*

**11. Yes, we have the necessary knowledge and resources.**

If the team agrees they have not exhausted their own knowledge base and resources, they need to develop a plan of action to meet the specific need(s) of the student. Based on what has been tried, they need to decide on alternative intervention strategies, service or devices, or modifications to interventions already in place.

*Proceed to Step #12.*

**12. What will be tried?**

Given the specific educational needs of the child, the team needs to address the following questions regarding the assistive technology device:

- Under what conditions will it be tried?
- In what environment(s) will it be tried?
- How long will it be tried?
- What is the criteria for determining whether or not the need is being met?

Based on the discussion of previous outcomes, develop an action plan and incorporate it into the IEP as documentation of consideration for assistive technology that will be acted upon to meet the appropriate educational needs of the student in the LRE.

The documentation of assistive technology may be incorporated anywhere within the IEP, however there are three places in the IEP where assistive technology commonly appears:

- In the measurable annual goals (and/or, for children with disabilities who take alternate

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assessments aligned to alternate achievement standards, in the description of benchmarks or short-term objectives).

- In the list of supplementary aids and services necessary to maintain the student in the LRE.

*NOTE: Assistive technology is necessary as a supplementary aid if its presence (along with other necessary aids) supports the student sufficiently to maintain the placement, and its absence requires the student's removal to a more restrictive setting. For example—If a student with multiple physical disabilities can make independent, educational progress on his or her IEP goals in the regular classroom with the use of a computer and an augmentative communication device and cannot make such progress in that setting without the devices, then those devices are necessary supplementary aids.*

- In the list of related services necessary for the student to benefit from his or her education.

Assistive technology needs for each student will vary. The criteria will also be unique to each student, depending on the desired goal. The goal for each student should consider:

- Increased independence
- Task mastery
- Rate at which a task is accomplished
- Stamina to accomplish task(s)
- Increased interactions
- Other child-specific criteria
- Accuracy
- Attentiveness

As with any IEP consideration, goals related to AT depend on the individual needs of the student and must be determined on a case-by-case basis. It is the student's *need*, not service or device limitation, that drives the decisions.

*Proceed to Step #13.*

### 13. Consideration is an ONGOING PROCESS.

**Change in environment, change in student skill level or needs, and new technology may influence the process.**

It is important to remember that considering AT and evaluating its role in the educational program of a student is an ongoing process.

While there may be a beginning, there could quite possibly be no end. As the student's environments change, as the tasks required of the student change, and as abilities change, the student's needs will likely change as well.

The process of consideration is required to be a part of every annual IEP review, at minimum.

In best practice, the evaluation process will be ongoing, with those around the student continuing to ask, "Are the needs being met?"

### How Do We Do It?

The IEP Team:

- Considers what they want the student to be able to do within the educational program, that he or she isn't able to do because of his or her disability.
- Documents on the IEP what will be tried and what has been tried to meet the student's special education needs, how long it was tried, and the results.
- Documents on the IEP what is working for the student.
- Considers whether they have the necessary knowledge and resources to continue to try and meet the student's special education needs.
- Seeks additional assistance if they determine they do not have the necessary knowledge.
- Considers the student's assistive technology needs in an ongoing manner.

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*Discussion from the Analysis of Comments and Changes to the Final Regulations:*

### Department's Comments Regarding IEP Team Attendance (§300.321(e))

The following text is drawn verbatim from pages 46673-46677 of the U.S. Department of Education's commentary in the Analysis of Comments and Changes accompanying the publication of IDEA 2004's final regulations on August 14, 2006. These are available online at: [www.nichcy.org/reauth/IDEA2004regulations.pdf](http://www.nichcy.org/reauth/IDEA2004regulations.pdf)

The text includes the *comments* received on the proposed regulations for IDEA, the *discussion* wherein the Department of Education responds to those comments, and *changes* made from the proposed regulations to the final regulations. The topic under focus is **IEP Team Attendance**—specifically, how IDEA's provisions relate to excusing a member from attending the IEP Team meeting.

**1-**

#### IEP Team Attendance (§300.321(e))

*Comment:* We received many comments from individuals expressing concern about allowing IEP Team members to be excused from attending an IEP Team meeting. A few commenters recommended that the regulations require all IEP Team members to attend all IEP Team meetings without exception. One commenter stated that excusing members from attending IEP Team meetings interrupts the flow of the meeting and takes away time from discussing the child's needs. Another commenter expressed concern that the integrity of the IEP Team meeting process depends on a discussion to determine the services that are necessary to meet the child's unique needs, and that the richness of this discussion may be diminished if IEP Team members are allowed to be excused too frequently and the IEP Team must rely on written input.

Several commenters recommended that the regulations acknowledge that, in most circumstances, interactive discussion in IEP Team meetings is

preferable to written input. Many commenters requested that the multidisciplinary scope of the IEP Team meeting be maintained. One commenter stated that written input from an excused IEP Team member is not sufficient and will be burdensome for both the writer and the readers.

*Discussion:* Section 614(d)(1)(C) of the Act allows a parent of a child with a disability and the LEA to agree that the attendance of an IEP Team member at an IEP Team meeting, in whole or in part, is not necessary under certain conditions. Allowing IEP Team members to be excused from attending an IEP Team meeting 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.

*Changes:* None.

**2-**

*Comment:* Many commenters stated that the excusal provisions in §300.321 should be optional for States and that States should be allowed to require that all IEP Team members attend each IEP Team meeting. Several commenters recommended allowing States to determine the circumstances or conditions under which attendance at the IEP Team meeting is not required. A few commenters recommended clarifying whether a State must have policies and procedures to excuse IEP Team members.

*Discussion:* Under section 614(d)(1)(C) of the Act, a State must allow a parent and an LEA to agree to excuse a member of the IEP Team. Section 300.321(e) reflects this requirement and we do not have the authority to make this optional for States. We also do not have the authority to allow a State to restrict, or otherwise

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determine, when an IEP Team member can be excused from attending a meeting, or to prohibit the excusal of an IEP Team member when the LEA and parent agree to the excusal. Whether a State must have policies and procedures to excuse IEP Team members from attending an IEP Team meeting will depend on whether such policies and procedures are required by a State to implement this statutory requirement. However, every State must allow a parent and an LEA to agree to excuse an IEP Team member from attending an IEP Team meeting.

*Changes:* None.

**3-**

*Comment:* Several commenters recommended that the regulations clarify whether the excusal agreement must meet the standard for informed consent. Some commenters stated that Congress intended excusal agreements to mean informed written consent. Other commenters stated that parents, not the public agency, can provide consent and therefore, only parents should be allowed to provide consent for excusing IEP Team members from IEP Team meetings. A few commenters recommended simplifying §300.321(e) by eliminating the different procedures for different types of excusals.

*Discussion:* Whether a parent must provide consent to excuse a member of the IEP Team from attending an IEP Team meeting depends on whether the member's area of the curriculum or related services is being modified or discussed at the IEP Team meeting. We cannot eliminate the different procedures for different types of excusals because section 614(d)(1)(C) of the Act clearly differentiates between circumstances in which parental consent is required and when an agreement is required to excuse an IEP member from attending an IEP Team meeting.

If the 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 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.

*Changes:* None.

**4-**

*Comment:* One commenter asked whether parents must be provided any information when asked to excuse IEP Team members. A few commenters recommended that the request for an excusal include the reason for the request to excuse a member of the IEP Team, that it be written in the chosen language of the parent, and accompanied by written evaluations and recommendations of the excused IEP Team member.

A few commenters recommended that no IEP Team member should be excused from attending an IEP Team meeting until the parent is informed about the purpose of the meeting for which the public agency proposes to excuse the IEP Team member; the IEP Team member's name and position; the reason(s) the public agency wants to excuse the IEP Team member; the parent's right to have the IEP Team member present; and the parent's right to discuss with the IEP Team member any issues in advance of the meeting so the parent is adequately informed. The commenters stated that this notice should be included in any statement of parent's rights that is distributed.

Numerous commenters recommended that the regulations include specific language to clarify that, before agreeing to excuse an IEP Team member, serious consideration must be given to determining if written input will be sufficient to thoroughly examine what services are needed and whether changes to the current IEP are necessary. A few commenters recommended that parents be informed of the roles and

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responsibilities of the excused member prior to giving consent for the excusal. Some commenters stated that parents must understand that they have the right to disagree and not excuse a member of the IEP Team who the parents believe may be essential to developing or revising an IEP. One commenter recommended that the written agreement be required to include information that the parent was informed of the parent's right to have all IEP Team members present.

One commenter recommended permitting States to establish additional procedural safeguards that guarantee that parents who consent to excuse an IEP member from a meeting do so freely and are aware of the implications of their decisions. Some commenters expressed concern that a parent could be pressured to agree to excuse an IEP Team member for what, in reality, are economic or staffing reasons. One commenter stated that parents should have the right to consent to excusal only after conferring with the individual to be excused. Some commenters recommended that parents be informed that they have a legal right to require an IEP Team member to participate in the meeting.

A few commenters expressed concern that the permission to excuse IEP Team members from attending IEP Team meetings will be abused, particularly with language-minority parents who are often misinformed or misled by school districts. Some commenters stated that parents do not understand the roles of the various members and could easily be pressured into excusing vital members of the IEP Team.

A few commenters recommended that the regulations include requirements to guard against excessive excusals. Some commenters stated that an LEA that routinely prevents general or special education teachers, or related services providers, from attending IEP Team meetings using the excusal provisions should be subject to monitoring and review.

*Discussion:* 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

member's 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.

When an IEP Team 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. 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.

We believe that these requirements are sufficient to ensure that the parent is fully informed before providing consent to excuse an IEP Team member from attending an IEP Team meeting in which the member's area of the curriculum will be modified or discussed, and do not believe that it is necessary to include in the regulations the more specific information that commenters recommended be provided to parents.

We also do not believe it is necessary to add a regulation permitting States to establish additional procedural safeguards for parents who consent to excuse an IEP Team member, as recommended by one commenter, because we believe the safeguard of requiring consent will be sufficient to prevent parents from feeling pressured to excuse an IEP Team member.

(over) 

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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, but it would be inappropriate to add a regulation that limited parent rights by requiring a conference before the parent could agree or consent to the excusal of an IEP Team member.

With regard to the recommendation that the notice state that the parent has a legal right to require an IEP Team member to participate in an IEP Team meeting, it is important to emphasize that it is the public agency that determines the specific personnel to fill the roles for the public agency's required participants at the IEP Team meeting. A parent does not have a legal right to require other members of the IEP Team to attend an IEP Team meeting. Therefore, if a parent invites other public agency personnel who are not designated by the LEA to be on the IEP Team, they are not required to attend.

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. However, we do not believe that additional regulations on this subject are warranted.

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.

*Changes:* None.

**5 –**

*Comment:* A few commenters requested clarification on whether excusals from IEP Team meetings apply to only regular education teachers, special education teachers, and related services providers, or to all individuals whose curriculum areas may be discussed at an IEP Team meeting. One commenter recommended clarifying that all IEP Team members, as defined in §300.321, must be represented at the IEP Team meeting unless excused by the parents and the LEA.

One commenter stated that §300.321(e) can be read to require that each individual invited to the IEP Team meeting by the parent or the public agency (who has knowledge or special expertise) must attend the meeting unless the parent and the agency agree in writing that they need not attend. The commenter recommended that the regulations clarify that the attendance of the other individuals invited to attend the IEP Team meeting by the parent and public agency is discretionary and that no waiver is needed to hold the IEP Team meeting without them. The commenter recommended revising §300.321(e)(1) to refer to "mandatory" members of the IEP Team. Another commenter expressed concern that it is not possible to pre-determine the areas of the curriculum that may be addressed at an IEP Team meeting, and recommended that excusals be permitted only for the IEP Team members identified by the public agency in §300.321(a).

One commenter recommended that the regulations allow teachers with classroom responsibilities to attend an IEP Team meeting for 15 to 20 minutes and leave the meeting when necessary. Some commenters requested clarification regarding situations in which there is more than one regular education teacher at an IEP Team meeting and whether one or both teachers must have a written excusal to leave before the end of an IEP Team meeting.

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One commenter stated that it is unclear whether consent must be obtained if a speech pathologist or occupational therapist cannot attend a meeting because speech pathologists and occupational therapists are not required members of an IEP Team.

*Discussion:* We believe that the excusals from IEP Team meetings apply to the members of the IEP Team in paragraphs (a)(2) through (5) in §300.321, that is, to the regular education teacher of the child (if the child is, or may be participating in the regular education environment); not less than one special education teacher of the child (or where appropriate, not less than one special education provider of the child); a representative of the public agency who meets the requirements in §300.321(a)(4); and an individual who can interpret the instructional implications of evaluation results. 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. We will add new language to §300.321(e) to clarify the IEP Team members for whom the requirements regarding excusals apply.

With regard to situations in which there is more than one regular education teacher, the IEP Team need not include more than one regular education teacher. The regular education teacher who serves as a member of a child's IEP Team should be a teacher who is, or may be, responsible for implementing a portion of the IEP so that the teacher can participate in discussions about how best to instruct the child. If the child has more than one regular education teacher responsible for carrying out a portion of the IEP, the LEA may designate which teacher or teachers will serve as the IEP member(s), taking into account the best interest of the child. An LEA could also agree that each teacher attend only the part of the meeting that involves modification to, or discussion of, the teacher's area of the curriculum.

Section 300.321(a)(3) requires the IEP Team to include not less than one special education teacher or where appropriate, not less than one special education provider of the child. As explained earlier, a special education provider is a person who is, or will be, responsible for implementing the IEP. Therefore, if a speech pathologist, occupational therapist, or other special education provider, other than the child's special education teacher is on the IEP Team, written consent from the parent would be required for the speech pathologist, occupational therapist, or other special education provider to be excused from attending an IEP Team meeting, in whole or in part, when the IEP Team meeting involves a modification to, or discussion of, the IEP Team member's related service or area of the curriculum.

*Changes:* We have added language in §300.321(e)(1) to refer to paragraphs (a)(2) through (a)(5), and a reference to paragraph (e)(1) in §300.321(e)(2) to clarify the IEP Team members for whom a parent and public agency must consent or agree in writing to excuse from an IEP Team meeting.

## 6 –

*Comment:* A few commenters stated that excusal of the regular education teacher is already built into the requirements and questioned the circumstances under which a State might exceed these requirements.

*Discussion:* Section 300.321(a)(2) does not require a regular education teacher to be part of the IEP Team for a child who is not participating in the regular education environment or is not anticipated to participate in the regular education environment. The excusals from IEP Team meetings in §300.321(e) apply to a regular education teacher who is part of the IEP Team by virtue of the fact that the child with a disability is participating, or may be participating, in the regular education environment.

*Changes:* None.

(over) 

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**7-**

*Comment:* Some commenters recommended setting a limit as to how often teachers can be excused from IEP Team meetings. A few commenters recommended prohibiting the excusal of IEP Team members for initial IEP Team meetings. One commenter recommended allowing an IEP Team meeting to occur only if there is one person who cannot attend the meeting. Many commenters opposed the excusal of teachers, therapists, speech providers, and other experts who work with a child on an ongoing basis. A few commenters stated that regular education teachers should not be excused from IEP Team meetings because they have the content expertise that is critical to the IEP process. One commenter stated that the excusal of an LEA representative should not be allowed.

A few commenters requested guidance to make it more difficult for IEP Team members to be excused from IEP Team meetings. Some commenters stated that excusing IEP Team members should only be done in limited circumstances and only when absolutely necessary.

Some commenters recommended that the regulations provide an opportunity for the parents to challenge a public agency's attempt to exclude staff members who believe their attendance is necessary at an IEP Team meeting. A few commenters suggested that the regulations prohibit excusal of personnel based on the cost of providing coverage in the classroom for a teacher to attend the IEP Team meeting, disagreements over appropriate services among staff, or scheduling problems. One commenter recommended that the regulations clearly state that teachers cannot be barred from attending an IEP Team meeting.

*Discussion:* We decline to make the changes requested by the commenters because it would be inconsistent with section 614(d)(1)(C) of the Act to set a limit on the number of times an IEP Team member could be excused; prohibit excusals for initial IEP Team meetings; restrict the number of excusals per meeting; prohibit certain IEP Team members from being excused from attending an IEP Team meeting; or otherwise restrict or limit parents and LEAs from agreeing to

excuse IEP Team members from attending an IEP Team meeting. Likewise, it would be inconsistent with section 614(d)(1)(C) of the Act for an LEA to unilaterally excuse an IEP Team member from attending an IEP Team meeting. The public agency determines the specific personnel to fill the roles for the public agency's required participants at the IEP Team meeting. Whether other teachers or service providers who are not the public agency's required participants at the IEP Team meeting can attend an IEP Team meeting is best addressed by State and local officials.

*Changes:* None.

**8-**

*Comment:* A few commenters asked whether the regular teacher, the special education teacher, principal, or the LEA makes the decision with the parent to excuse an IEP member. Some commenters recommended that the regulations require the excused IEP Team member to agree to be excused from an IEP Team meeting. Other commenters stated that a teacher should be included as one of the parties that decide whether a teacher should be excused from attending the IEP Team meeting.

Numerous commenters recommended that, before an IEP Team member is excused from attending an IEP Team meeting, sufficient notice must be given so that other IEP Team members can consider the request. Some commenters requested that the regulations clarify whether the entire IEP Team must meet and then agree on whether a member's attendance at the IEP Team meeting is needed.

*Discussion:* It would not be appropriate to make the changes recommended by the commenters. There is no requirement that the excused IEP Team member agree to be excused from the IEP Team meeting, that a teacher be included as one of the parties that decides whether a teacher should be excused from attending the IEP Team meeting, or that other IEP Team members agree to excuse a member's attendance. It is up to each public agency to determine the individual in the LEA with the authority to make the agreement (or provide

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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.

*Changes:* None.

**9-**

*Comment:* A few commenters recommended that the regulations specifically state that parents retain the right to change their mind to excuse an IEP Team member and have full IEP Team member participation, if it becomes apparent during the IEP Team meeting that the absence of an excused IEP Team member inhibits the development of the IEP. One commenter expressed concern that parents will be informed of excusals at the beginning of a meeting or be given a note, report, or letter from the absent IEP Team member.

*Discussion:* 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, consistent with the requirements of the Act and these regulations. 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.

*Changes:* None.

**10-**

*Comment:* Several commenters recommended that the regulations specify the amount of time prior to an IEP Team meeting by which notice must be received by the parent about the LEA's desire to excuse an IEP Team member from attending an IEP Team meeting. A few

commenters recommended that an LEA's request for excusal of an IEP Team member be provided to the parent 10 business days prior to the date of the IEP Team meeting and other commenters recommended five business days before an IEP Team meeting.

One commenter recommended that the regulations specify when the parent's written consent to excuse IEP Team members from the meeting must be received by the agency. Many commenters recommended that the regulations include language requiring that any agreement to excuse an IEP Team member from attending the IEP Team meeting be done in advance of the meeting. Some commenters stated that requiring an agreement in advance of an IEP Team meeting would allow the parent to review the IEP Team member's written input prior to the IEP Team meeting and ensure that parental consent is informed. A few commenters recommended that the Act prohibit a written agreement from being signed before the meeting occurs.

*Discussion:* 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. 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. However, this might not always be possible, for example, when a member has an emergency or an unavoidable scheduling conflict. 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



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has the right not to agree or consent to the excusal of the IEP Team member. We, therefore, decline to regulate on these matters.

*Changes:* None.

### **11-**

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*Comment:* One commenter requested that the regulations clarify the timeframe in which the written input must be provided to the parent and the IEP Team. Another commenter expressed concern that without knowing whether the information submitted is sufficient to answer any of the parent's questions, the parent could not agree, in any informed way, to excuse an IEP Team member from attending the IEP Team meeting.

Several commenters recommended that written input be provided to parents a reasonable amount of time prior to the meeting and not at the beginning of the meeting. One commenter recommended requiring that parents receive written evaluations and recommendations from the excused member at least 10 business days before the IEP Team meeting. Another commenter recommended that written input be provided at least 10 school days in advance of the meeting; another commenter suggested no later than seven days before the meeting; a few commenters recommended at least five days in advance of the meeting; and some commenters recommended at least three business days before the meeting.

A few commenters recommended requiring public agencies to send parents the written input of excused IEP Team members as soon as they receive it so that parents have sufficient time to consider the input. One commenter recommended that the regulations require the written input to be provided to IEP Team members and parents at the same time.

*Discussion:* Section 614(d)(1)(C)(ii)(II) of the Act requires that input into the development of the IEP by the IEP Team member excused from the meeting be provided prior to the IEP Team meeting that involves a modification to, or discussion of the member's area of the curriculum or related services. The Act does not

specify how far in advance of the IEP Team meeting that the written input must be provided to the parent and IEP Team members. For the reasons stated earlier, we do not believe it is appropriate to impose a specific timeframe for matters relating to the excusal of IEP Team members. Parents can always reschedule an IEP Team meeting or request that an IEP Team meeting be reconvened if additional time is needed to consider the written information.

*Changes:* None.

### **12-**

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*Comment:* A few commenters recommended language clarifying that IEP Team members who submit input prior to an IEP Team meeting may still attend the meeting. Other commenters requested that the regulations specify that failure to provide prior written input, due to inadequate notice or unreasonable workloads, does not prohibit the excused member from attending the meeting in person.

*Discussion:* The Act does not address circumstances in which an IEP Team member is excused from an IEP Team meeting, but desires to attend the meeting. We believe such circumstances are best addressed by local officials and are not appropriate to include in these regulations.

*Changes:* None.

### **13-**

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*Comment:* A few commenters recommended that the format of the written input required in §300.321(e) be flexible and not unduly burdensome. One commenter stated that no new form should be created for the written input.

A few commenters recommended that the regulations clarify that the written input must be sufficient to allow the IEP Team to thoroughly examine the services needed and decide whether changes to the current IEP are needed. Other commenters recommended that the written input provide information about a child's level

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**14-**

of academic achievement and functional performance; recommendations for services, supports, and accommodations to improve academic and functional performance; revisions to the current annual goals; and other appropriate guidance.

Other commenters recommended that the written input include the IEP Team member's opinions regarding the child's eligibility and services needed; the basis for the opinions, including any evaluations or other documents that formed the basis for the IEP Team member's opinion; and whether the evaluations were conducted by the IEP Team member or another person. These commenters also recommended that the regulations require the excused IEP Team member to include a telephone number where the IEP Team member can be reached prior to the meeting if the parent wants to contact the member, and a telephone number where the member can be reached during the meeting in case immediate input during the meeting is required.

A few commenters recommended prohibiting public agencies from giving the child the written input at school to take home to his or her parents. One commenter recommended that the written input be provided with the meeting notice required in §300.322. Another commenter recommended that the regulations allow the written input to be provided to parents and other IEP Team members by electronic mail or other less formal methods.

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

*Changes:* None.

*Comment:* One commenter recommended requiring any IEP Team member who is excused from an IEP Team meeting to be trained in the updated IEP within one calendar week of the IEP Team meeting. A few commenters recommended that the excused IEP Team members be provided a copy of the new or amended IEP after the meeting. One commenter recommended that one person be designated to be responsible for sharing the information from the meeting with the excused IEP Team member and for communicating between the parent and the excused IEP Team member after the meeting.

*Discussion:* 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.

*Changes:* None.

**15-**

*Comment:* A few commenters recommended that the regulations require the LEA to inform a parent when the absent IEP Team member will address the parent's questions and concerns. Another commenter recommended that the regulations require the LEA to inform the parent of procedures for obtaining the requested information.

*Discussion:* We do not believe it is appropriate to regulate on these matters. The manner in which the parent's questions and concerns are addressed, and how the information is shared with the parent, are best left for State and local officials to determine.

*Changes:* None.

(over) 

# 16-

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*Comment:* One commenter requested clarification on how the provisions in §300.321(e), which allow IEP Team members to be excused from IEP Team meetings, relate to revising an IEP without convening an IEP Team meeting.

*Discussion:* The two provisions referred to by the commenter are independent provisions. Section 300.321(e), consistent with section 614(d)(1)(C) of the Act, describes the circumstances under which an IEP Team member may be excused from an IEP Team meeting. Section 300.324(a)(4), consistent with section 614(d)(3)(D) of the Act, permits the parent and the public agency to agree not to convene an IEP Team meeting to make changes to a child's IEP after the annual IEP Team meeting has been held.

*Changes:* None.

## **FERPA Provisions at §99.31(a)(2), Referenced in IDEA 2004\***

\*IDEA 2004's provisions for transferring the records of a student with a disability from one public agency to another in the same state or in different states are found at §300.323(g). They include a direct reference to provisions of the Family Educational Rights and Privacy Act (FERPA) provisions at §99.31(a)(2), saying that the requirements at §300.323(g) are pursuant to FERPA's provisions at §99.31(a)(2). This *Resource for Trainers* presents FERPA's applicable provisions, with §99.31(a)(2) specifically spotlighted within a box.

### **§99.31 Under what conditions is prior consent not required to disclose information?**

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by §99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of §99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

*Editor's Note: The provision in the box above refers to §99.34, the provisions of which are provided in Column 2 of this resource sheet.*

### **§99.34 What conditions apply to disclosure of information to other educational agencies or institutions?**

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

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless:

(i) The disclosure is initiated by the parent or eligible student; or

(ii) 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 student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if:

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

[53 FR 11943, Apr. 11, 1988, as amended at 61 FR 59297, Nov. 21, 1996]



## Characteristics of Alternate Assessments

On July 20, 2007, the U.S. Department of Education released a non-regulatory guidance on alternate assessment based on *modified* academic achievement standards. This 53-page document is available online at: <http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc>. It includes the chart reproduced below (pp. 52-53).

| Alternate Assessment based on... |   |   |   |
|----------------------------------|---|---|---|
|                                  | Alternate Academic Achievement Standards (1%)   | Modified Academic Achievement Standards (2%)  | Grade-Level Academic Achievement Standards  |
| <b>Achievement standard</b>      | <ul style="list-style-type: none"> <li>• An alternate academic achievement standard is an expectation of performance that differs in complexity from a grade-level achievement standard, usually based on a very limited sample of content that is linked to but does not fully represent grade-level content.</li> <li>• May be defined for grade clusters, e.g., 3-5.</li> </ul>  | <ul style="list-style-type: none"> <li>• A modified academic achievement standard is aligned to grade-level content standards for the grade in which a student is enrolled and challenging for eligible students, but may be less difficult than grade-level achievement standards.</li> <li>• Achievement standards must include 3 levels of performance, cut scores that distinguish one level from another, and descriptions of the content-based competencies associated with each level.</li> <li>• Must be defined grade-by-grade.</li> </ul> | <ul style="list-style-type: none"> <li>• A grade-level academic achievement standard defines a level of "proficient" performance equivalent to grade-level achievement on the State's regular assessment.</li> <li>• Achievement standards must include 3 levels of performance, cut scores that distinguish one level from another, and descriptions of the content-based competencies associated with each level.</li> <li>• Must be defined grade-by-grade.</li> </ul> |
| <b>Setting standard</b>          | <p>Requires a "documented and validated standard setting process." A detailed description of the procedures used, the qualifications of panelists (which must include persons knowledgeable about the State's content standards and experienced in standards setting and special educators who are most knowledgeable about students with disabilities), the final cut scores, and performance level descriptors must be submitted for peer review.</p> | <p>Requires a "documented and validated standard setting process." A detailed description of the procedures used, the qualifications of panelists (which must include persons knowledgeable about the State's content standards and experienced in standards setting and special educators who are most knowledgeable about students with disabilities), the final cut scores, and performance level descriptors must be submitted for peer review.</p>   | <p>Requires a "documented and validated standard setting process." A detailed description of the procedures used, the qualifications of panelists (which must include persons knowledgeable about the State's content standards and experienced in standards setting and special educators who are most knowledgeable about students with disabilities), the final cut scores, and performance level descriptors must be submitted for peer review.</p>                   |

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### Alternate Assessment based on...

|   | <b>Alternate Academic Achievement Standards (1%)</b>  | <b>Modified Academic Achievement Standards (2%)</b>   | <b>Grade-Level Academic Achievement Standards</b>  |
|---|---|---|--|
| <b>Content standards on which the test is based</b> | "Extended" standards may include substantially simplified content, including pre-requisite skills.  | Grade-level.  | Grade-level.   |
| <b>Assessment</b>                                   | May include reduced coverage and/or simplification of grade-level content, based on "extended" standards. Format may permit variation in test content for individual students if results can be aggregated. | Built on grade-level content but with easier items.   | Grade-level content.   |
| <b>Cap</b>  | SEA and LEA.  | SEA and LEA.  | N/A  |
| <b>Out-of-level assessments</b>                     | Permitted only if consistent with the regulation, i.e., documented and validated standards-setting process employed.  | Not permitted because out-of-level assessments do not assess grade-level content.   | Not permitted because out-of-level assessments do not assess grade-level content.  |
| <b>IEP</b>  | Must include annual measurable IEP goals and benchmarks or short-term objectives.   | Must include annual measurable IEP goals that are based on grade-level content standards.   | Must include annual measurable IEP goals.  |
| <b>State guidelines define who is eligible</b>      | <ul style="list-style-type: none"> <li>• Student with the most significant cognitive disabilities.</li> <li>• IEP Team makes the decision regarding the appropriate assessment.</li> </ul>                  | <ul style="list-style-type: none"> <li>• Student whose disability has precluded the student from achieving proficiency, as demonstrated by objective evidence of the student's performance and whose progress is such that, even if significant growth occurs, the student's IEP team is reasonably certain that the student will not achieve grade-level proficiency within the year covered by the IEP.</li> <li>• IEP Team makes the decision regarding the appropriate assessment.</li> </ul> | <ul style="list-style-type: none"> <li>• Student with a disability who cannot take the regular assessment with accommodations.</li> <li>• IEP Team makes the decision regarding the appropriate assessment.</li> </ul> |

*Source:* U.S. Department of Education. (2007, July 20). *Modified academic achievement standards: Non-regulatory guidance*. Washington, DC: Author. (Available online at: <http://www.ed.gov/policy/speced/guid/nclb/twopercent.doc>)

## Appendix B to Part 300: Proportionate Share Calculation

As discussed in Module 16, *Children with Disabilities Enrolled by Their Parents in Private Schools*, a local educational agency (LEA) must ensure that it spends a proportionate share of its federal (Part B) flow-through funds on parentally-placed private school children with disabilities. Appendix B to Part 300 (IDEA's final Part B regulations) provides an example of how to calculate this proportionate share. Appendix B appears below in its entirety.

### Appendix B to Part 300—Proportionate Share Calculation

Each LEA must expend, during the grant period, on the provision of special education and related services for the parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA an amount that is equal to—

(1) A proportionate share of the LEA's subgrant under section 611(f) of the Act for children with disabilities aged 3 through 21. This is an amount that is the same proportion of the LEA's total subgrant under section 611(f) of the Act as the number of parentally-placed private school children with disabilities aged 3 through 21 enrolled in private elementary schools and secondary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools and secondary schools located in the LEA aged 3 through 21; and

(2) A proportionate share of the LEA's subgrant under section 619(g) of the Act for children with disabilities aged 3 through 5. This is an amount that is the same proportion of the LEA's total subgrant under section 619(g) of the Act as the total number of parentally-placed private school children with disabilities aged 3 through 5 enrolled in private elementary schools located in the LEA is to the total number of children with disabilities enrolled in public and private elementary schools located in the LEA aged 3 through 5.



The following is an example of how the proportionate share is calculated:

There are 300 eligible children with disabilities enrolled in the Flintstone School District and 20 eligible parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA for a total of 320 eligible public and private school children with disabilities (note: proportionate share for parentally-placed private school children is based on total children eligible, not children served). The number of eligible parentally-placed private school children with disabilities (20) divided by the total number of eligible public and private school children with disabilities (320) indicates that 6.25 percent of the LEA's subgrant must be spent for the group of eligible parentally-placed children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. Flintstone School District receives \$152,500 in Federal flow through funds. Therefore, the LEA must spend \$9,531.25 on special education or related services to the group of parentally-placed private school children with disabilities enrolled in private elementary schools and secondary schools located in the LEA. (Note: The LEA must calculate the proportionate share of IDEA funds before earmarking funds for any early intervening activities in § 300.226).

The following outlines the calculations for the example of how the proportionate share is calculated.

(over)

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### Proportionate Share Calculation for Parentally-Placed Private School Children with Disabilities For Flintstone School District:

Number of eligible children with  
disabilities in public schools  
in the LEA ..... 300

Number of parentally-placed eligible  
children with disabilities  
in private elementary schools  
and secondary schools located  
in the LEA ..... 20

Total number of eligible  
children ..... 320

### FEDERAL FLOW-THROUGH FUNDS TO FLINTSTONE SCHOOL DISTRICT

Total allocation to  
Flintstone ..... \$152,500



### Calculating Proportionate Share:

Total allocation to Flintstone ..... 152,500

Divided by total number of eligible  
children ..... 320

Average allocation per eligible  
child ..... 476.5625

Multiplied by the number of  
parentally-placed children with  
disabilities ..... 20

Amount to be expended for  
parentally-placed children  
with disabilities ..... 9,531.25