



A Primer on the IDEA 2004 Regulations

The new Individuals with Disabilities Education Act (IDEA) 2004 regulations contain changes in several important areas, including methods to identify students with learning disabilities, early intervening services, highly qualified teachers, discipline, and meeting accessibility standards.

CEC is pleased to report that many of its recommendations are in the final regulations. CEC worked with members, Board of Directors, Representative Assembly, and others to develop recommendations that would strengthen services for children with disabilities and support special educators. Through our work, the following CEC recommendations, among others, were included in the regulations:

- Strengthened provisions to reduce disproportionate representation of students from diverse cultures in special education.
- Stronger measurable IEP goals instead of short-term objectives and benchmarks.
- Paperwork reduction.
- Reduced number of times schools must notify parents of procedural safeguards.
- Rigorous standards for alternative routes to certification.
- Multiple-year IEP pilot program.

Following are highlights of the 2004 IDEA regulations. For complete information about the regulations, attend CEC's online workshop, *Understanding the IDEA 2004 Regulations* (see below for more information).

Identifying Students with Disabilities and Response-to-Intervention (RTI)

According to the *IDEA 2004* regulations, districts have more leeway in determining how they identify students with disabilities. While districts may continue to use the IQ-Discrepancy model, they may also use other identification procedures. The regulations further provide guidance on evaluating students who are referred for special education. Key points are:

Methods to Determine Learning Disabilities

- Districts are not required to use the IQ-Discrepancy model.
- Districts must allow a process for identifying students with learning disabilities that is based on the child's response to scientific, research-based interventions.
- Districts may use other research-based procedures to determine whether a child has a learning disability.

Comprehensive Evaluation for Identifying Learning Disabilities

- RTI does not replace a comprehensive evaluation.
- When evaluating students for learning disabilities, educators must use a variety of data-gathering tools and strategies, even if they are using RTI.
- Educators cannot rely on a single procedure as the sole criterion for determining eligibility for special education.
- Each state must develop criteria to determine whether a child has a disability.

Early Intervening Services (EIS)

Under *IDEA 2004*, districts can develop “early intervening services” for students in grades K-12. These services are provided for students who have not been identified as needing special education but who require academic or behavioral support to succeed in general education classes. The emphasis for these services is for students in K-3.

EIS reduces the need to determine that a child has a disability before providing support. Also, districts may use up to 15 percent of their special education monies to develop and implement EIS. The *IDEA 2004* regulations further specify that:

- EIS provides for educational and behavioral evaluations, services, supports, and scientifically-based literacy instruction, as well as professional development.
- Districts that experience substantial disproportionate representation must use the maximum amount of funds to provide EIS, particularly for groups that were significantly over-identified for special education.
- At any time, a child can be referred for evaluation and the right to a free, appropriate public education.
- Children previously identified as disabled can receive EIS.
- EIS may not be used to delay the evaluation of a child suspected of having a disability.
- School districts must report to the state annually the number of students who receive EIS and the number of students who receive special education after receiving EIS.

IEPs

The *IDEA 2004* regulations specify changes to IEPs that make them more relevant to student progress and reduce paperwork:

IEP Goals, Performance Levels, Progress Reports, and Assessments

- IEPs must include a statement of the child’s present levels of academic achievement and functional performance.
- Measurable goals statements must include academic and functional goals. (The 1997 regulations included benchmarks and short-term objectives.)
- States can continue to use benchmarks and short-term objectives for all students, but they must inform their districts and the U.S. Department of Education.
- Benchmarks and short-term objectives are required for children who take alternate assessments.
- IEPs must tell how the child’s progress will be measured and when periodic reports on the child’s progress will be provided. (The 1997 regulations said reports on the progress of children with disabilities must be offered as often as

parents were informed of the progress of non-disabled students.)

- If the IEP team decides the child will take an alternate assessment, it must include in the IEP a statement of why the child cannot participate in general education assessments and why the alternate assessment selected is appropriate for the child.
- An initial evaluation must be conducted within 60 days of receiving parental consent for evaluation or within the timeframe the state established (if the state established this timeframe).

Transition

- Transition services must be included in the IEP when a child is 16 or younger. (Previously, the mandatory age was 14.)
- When the IEP team meets to discuss the child's post-secondary goals and transition services, the child must be invited to the meeting. If he or she does not attend, the child's interests must be considered.
- Measurable post-secondary goals must be developed for each student based on age appropriate transition assessments related to his or her training, education, employment, and independent living skills.

IEP Meetings

- All team members are not required to attend an IEP team meeting if:
 1. The area discussed isn't being modified.
 2. The parents and school agree in writing.
 3. Written information is shared before the meeting.
- If the child's parents and school agree, changes can be made to an IEP without convening an IEP meeting.
- If changes are made to a child's IEP without a meeting, the IEP team must be informed of the changes.

Student Transfers

- When students transfer to another public school, whether in-state or out-of-state, schools must share the IEP to ensure it is implemented and the child receives FAPE.
- The schools must provide comparable services.
- The student's new school must have the opportunity to develop a new IEP.

Highly Qualified Teachers

Special education teachers must meet the highly qualified definition specified in *IDEA 2004*. The basic requirement for highly qualified status is that teachers must obtain full state certification as a special education teacher or pass the state's special education teacher licensing exam and hold a license to teach in the state. Further guidelines on highly qualified teachers are:

Public School Special Education Teachers

- Special education teachers who teach core academic subjects must hold a

special education certificate or license, hold a minimum of a bachelor's degree, and demonstrate subject-matter competency in each subject taught.

- Special education teachers who teach to alternate achievement standards must meet the No Child Left Behind Act (NCLB) standards for elementary, middle, or secondary school teachers or meet the NCLB requirements for elementary teachers and have subject matter knowledge appropriate to the level of instruction needed to teach to the alternative achievement standards.
- To establish subject matter competency, states can establish a separate HOUSSE for special education teachers and may provide single HOUSSE evaluations that cover multiple subjects. (HOUSSE stands for High, Objective, Uniform State Standard of Evaluation. HOUSSE is a system by which the state can determine that an experienced teacher has subject matter competency. For teachers to be deemed highly qualified, they may need to be licensed in the core subjects they teach, complete professional development, meet observation criteria, take a test(s), or comply with a combination of these methods. Some states have developed one test that covers multiple subjects.)

Alternative Routes to Certification

- Teachers seeking alternative routes to certification are deemed highly qualified if they:
 - Receive high quality professional development that is sustained, intensive, and classroom-focused.
 - Receive intensive supervision with structured guidance and regular ongoing support or a teacher mentor program.
 - Assume the functions of a teacher only for specified period of time that does not exceed three years.
 - Demonstrate satisfactory progress toward states' full certification.

Charter School Special Education Teachers

- Teachers must meet the certification and licensing requirements of the state's public charter school law.

Private School Special Education Teachers

- Highly qualified teacher requirements do not apply to teachers in private elementary and secondary schools.

Discipline

The *IDEA 2004* regulations expand the school's discretion as well as give additional guidance on disciplining students with disabilities. Some of the topics the regulations address include change of placement, the school's basis of knowledge of a disability, and manifestation determination.

Change of Placement

- School personnel have new authority to consider unique circumstances on a case-by-case basis when determining whether a placement change is appropriate for a child with a disability who violates a code of student conduct.
- The school's ability to move a child to an interim alternative educational

setting for up to 45 school days for inflicting serious bodily injury is expanded.

- If a child's removal from his or her present educational setting is a change of placement, the IEP team determines appropriate services for the child.
- The IEP team determines the child's interim alternative educational setting for services when
 - The change in placement is for more than 10 consecutive school days and the behavior is not a manifestation of the disability.
 - The removal is a change of placement.
 - The removal for special circumstances is related to drugs, weapons, or serious bodily injury.
- School personnel, including at least one of the child's teachers, determine the extent to which services are needed.
- The school district must notify parents if their child is removed from his or her current placement.

Manifestation Determination

- New standards for manifest determination state that the child's conduct is a manifestation of his or her disability if the
 - District, parent, and IEP team members determine the conduct was caused by or had a direct and substantial relationship to the disability or
- The conduct was the direct result of the district's failure to implement the IEP.

School's Knowledge of a Disability

- Protections for children for whom the "basis of knowledge" is insufficient to determine eligibility for special education are expanded: A child who has not been determined to be eligible for special education and has violated a code of student conduct has all the IDEA protections if the school knew the child had a disability before he or she committed the behavior. A school is deemed to know the child had a disability if:
 - The child's parent expressed concern in writing that the child needed special education to supervisory personnel or the child's teacher.
 - The child's parent requested an evaluation of the child.
 - The child's teacher or other district personnel expressed specific concerns about the child's behavior patterns to the director of special education or other supervisory personnel.
- Establishes exceptions to the school's "basis of knowledge:" A school would not have knowledge of the child's disability if
 - The child's parent has not allowed an evaluation of the child or has refused special education services or
 - The child has been evaluated and determined not to have a disability.

Accessible Instructional Materials for Children with Disabilities

Under IDEA, public schools must provide children with disabilities with timely access to appropriate and accessible instructional materials. This ensures children with disabilities receive FAPE and enables them to participate in the general education curriculum as specified in their IEPs. The *IDEA 2004* regulations state that:

- States must adopt the National Instructional Materials Accessibility Standards, which were published on July 19, 2006.

- States must establish a definition of “timely access” to accessible instructional materials.
- States must take all reasonable steps to provide these materials to children with disabilities at the same time non-disabled children receive instructional materials.
- School districts must ensure that all children with disabilities who need instructional materials in accessible formats receive them in a timely manner, regardless of whether or not the children receive special education services.

New Definitions

IDEA 2004 contains new and modified definitions affecting numerous aspects of the special education process. Some of these are:

- Core academic subjects: English, reading or language arts, mathematics, science, foreign language, civics and government, economics, arts, history, and geography.
- Surgically implanted devices are not assistive technology devices. However, schools are responsible for ensuring that the external aspect of any surgically implanted device is working properly.
- Tourette syndrome is listed as a chronic or acute health problem under Other Health Impairment.
- The definition of “parent” includes an adoptive or foster parent, guardian, or individual legally responsible for the child.
- The list of related services includes interpreting and school nurse services.
- Supplementary aids and services are to be provided in extracurricular and non-academic settings in addition to general education classes and other education-related settings.

CEC’s online workshop, *Understanding the 2004 IDEA Regulations*, gives you an in-depth understanding of the changes in the new regulations. You’ll find out exactly what you need to do in each area to comply with the law. Coming soon!

CEC will also offer several sessions on the IDEA regulations at the 2007 CEC Convention & Expo, to be held April 18-21 in Louisville, Ky. Find out more about these and other exciting sessions.

<http://2007conf.cec.networkats.com/ShowTopic.aspx?PrimaryTopic=IDEA>

Resources

[CEC: IDEA 2004 Regulations Side-by-Side](#)

[CEC: Read the IDEA 2004 Regulations](#)