



# National Heritage Academies Special Education Policy Manual



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## Section 1 - Introduction

### 1.1. The Purpose of the Special Education Policy Manual

The Individuals with Disabilities Education Act (IDEA) is a law that makes available a free appropriate public education to eligible children with disabilities throughout the nation and ensures special education and related services to those children.

The purpose of this Special Education Policy Manual is to provide guidance to school administration and special education staff consistent with Federal Regulations and National Heritage Academies' (NHA) policies and procedures. It is expected that NHA personnel will serve students with disabilities and their families in a manner consistent with these requirements and the guidance provided in this manual. Additionally, it is important to note that each state has special education policies which may expand upon the Federal IDEA Regulations. Please reference both this manual and your state's special education resources to ensure compliance with Federal, State, and NHA special education policies and procedures. For additional support regarding your state's policies or the content of this policy manual, contact your Special Education Supervisor.

NHA advocates the use of People First Language – language that puts the person before their disability. The simple concept behind the practice of People First Language is that people are not their disability, and when speaking or referring to such an individual, one uses a disability to describe what that person has, not who that person is.

State specific policy manuals and procedural safeguards can be found in the [Appendix](#) of this manual.

### 1.2. Special Education Department Vision



**We Exist** to support schools in ensuring a Free and Appropriate Public Education for students with disabilities.



**We Value** students, families, community, inclusion, equality, communication, collaboration, relationships, and service.



**We Are** champions of children, dedicated to ensuring equal access that will enable positive educational outcomes for students with disabilities.

## Section 2 - Overview & Purpose of IDEA

### 2.1. Overview of IDEA

There are three federal laws that govern the education of students with disabilities:

1. Americans with Disabilities Act (ADA).
2. Section 504 of the Rehabilitation Act of 1973 (Section 504).
3. Individuals with Disabilities Education Act (IDEA).

Congress reauthorized IDEA in 2004 and the United States Department Of Education (USDOE) implemented regulations in 2006. Under IDEA, all eligible students with disabilities, ages 3-21 have a right to receive a free appropriate public education (FAPE) in the least restrictive environment (LRE).

### 2.2. Definition of IDEA

The Individuals with Disabilities Education Act (IDEA) of 2004 is the federal law that governs how states and public agencies provide early intervention, special education, and related services to students with disabilities, ages 3-21. Each state has implementation regulations that are designed to carry out the requirements of IDEA. School districts within each state are mandated under state and federal law to implement the requirements of IDEA and each state's specific implementation regulations for special education. Each state's policies for special education can be located in the [Appendix](#) or by visiting each state's Department of Education website.

### 2.3. Purposes of IDEA

1. To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.
2. To ensure that the rights of children with disabilities and their parents are protected.
3. To assist States, Local Educational Agencies (LEAs), and Federal agencies in providing for the education of all children with disabilities; and
4. To assess and ensure the effectiveness of efforts to educate children with disabilities.

## 2.4. Key Principles

There are six key principles and requirements associated with IDEA:

Principle		Requirement
1	Child Find	Identify, locate, and evaluate all students with disabilities who are in need of special education and related services.
2	Free Appropriate Public Education (FAPE)	Special education services, that meet state standards, are provided at public expense and to meet the child's Individualized Education Program (IEP).
3	Individual Education Programs (IEPs)	Develop and deliver an individualized education program of special education services that confers meaningful educational benefit.
4	Least Restrictive Environment (LRE)	Educate students with disabilities with nondisabled students to the maximum extent appropriate.
5	Transition Services	Coordinated set of activities to facilitate the child's movement from school to post-school.
6	Parent Rights and Procedural Safeguards	Comply with the procedural requirements of the IDEA, including parent notice and consent requirements.

## Section 3 - Terms, Acronyms & Definitions

Term	Acronym (if applicable)	Definition
Accessible Instructional Materials	AIM	Specialized formats of fully accessible textbooks and other curricular materials that can be used by and with students who are struggling readers or otherwise unable to access printed text.
Accommodation		A change in the course material including: content standard, test preparation, location, timing, scheduling, expectations, student response and/or other attributes that provides access for a student with a disability to participate in a course, standard, or test but which does not fundamentally alter or lower the course, standard, or test.
Adapted Physical Education	APE	A modified general physical education program or a specially designed physical education program in a special class, or consultative services provided to students, parents, teachers, or other school personnel for the purpose of identifying supplementary aids and services or modifications necessary for participation in the general physical education program or specially designed physical education program.
Advocate		A special education advocate supports a parent in navigating the special education process, attending IEP meetings with the parent, and advising parents about services, programs, accommodations, and other areas of special education programming.
Alternate Curriculum  <i>Also known as:</i> Alternate State Standards or Essential Elements		<p>Standards identify specific content critical to the student's progress through curriculum and are defined by the grade level of the student.</p> <p>Alternate achievement standards set an expectation of performance that differs in complexity from a grade level achievement standard.</p> <p>Alternative Curriculum is a term used to describe a student's curriculum and assessment opportunities when based on alternate content standards.</p> <p>An alternate assessment is an assessment designed for a small number of students with disabilities who are unable</p>



		to participate in the regular grade level state assessment, even with appropriate accommodations.
American Sign Language	ASL	A natural language that serves as the predominant sign language of Deaf communities. ASL is a complete and organized visual language that is expressed by facial expression as well as movements and motions with the hands.
Americans with Disabilities Act	ADA	A Federal Statute that prohibits discrimination/harassment on the basis of disability in the areas of employment, public transportation, telecommunications, access to public services programs, and activities of state and local governments, as well as those of commercial facilities, private businesses, and nonprofit service providers.
Annual Goals	AG	A statement of measurable academic and functional skill development designed to meet the student's needs that result from their disability, to enable the student to be involved and make progress in the general education curriculum, and meet the student's other educational needs that result from their disability. Annual goals are developed based upon the student's present level of academic achievement and functional performance, and reasonably calculated to be accomplished within the duration of the IEP.
Applied Behavior Analysis	ABA	A scientific technique applying empirical approaches based upon the principles of respondent and operant conditioning to change behavior.
Assistive Technology Device/Assistive Technology Service	AT	Any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted or the replacement of such a device.  Any service that directly assists a child with a disability in the selection, or use of an assistive technology device.
Benchmarks (in alignment with annual goals)		Interim steps a student will take to reach an annual goal and serve as a measurement gauge to monitor a student's progress towards attaining the annual goal.

Change in Educational Placement		<p>For purposes of a removal of a child with a disability from the child's current educational placement, a change of placement occurs if:</p> <ul style="list-style-type: none"> <li>• The removal is for more than 10 consecutive school days; or</li> <li>• The child has been subjected to a series of removals that constitute a pattern because; <ul style="list-style-type: none"> <li>○ The child has been subjected to a series of removals that constitute a pattern because the series of removals total more than 10 school days in a year;</li> <li>○ The child's behavior is substantially similar to their behavior in previous incidents of removal, and</li> <li>○ Because of additional factors that include the length of each removal, the proximity of the removals to one another, and the total time the child has been removed.</li> </ul> </li> </ul>
Child Find		<p>The process of public awareness, screening, and assessment designed to locate, identify, and evaluate students with disabilities who are in need of special education services under the IDEA.</p>
Co-teaching		<p>A process by which the general education and special education teachers work together to teach students with/without disabilities in a shared classroom. Both are responsible for instructional planning and delivery, student achievement, assessment, and discipline. Students receive age-appropriate academics, support services, and possibly modified instruction.</p>
Community Based Instruction	CBI	<p>Providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities that require this instruction, to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively, safely, and as independently as possible, from place to place within that environment.</p>
Consent (parental)		<p>Parental approval of an activity once the parent has been fully informed of all information relevant to the activity for which consent is sought. Parent must be informed in his/her native language or other mode of communication; understand and agree in writing to the carrying out of the activity for which his/her consent is sought, and that consent describes that activity and list the records, if any, that will be released and to whom; and understands that the granting of consent is voluntary on the part of the parent and may be</p>

		revoked at any time and that revocation of consent is not retroactive.
Controlled Substance		A drug, or other substance, identified within the Controlled Substance Act (CSA)-Title II of the Drug Abuse Prevention and Control Act of 1970.
Council for Exceptional Children	CEC	An international professional organization dedicated to improving the success of children and youth with disabilities and/or gifts and talents.
Code of Federal Regulations	CFR	General and permanent special education regulations published in the Federal Register by the executive departments and agencies of the U.S. federal government.
Certified Occupational Therapy Assistant	COTA	Works directly with an occupational therapist in any number of settings such as hospitals, clinics, and schools.
Coordinated Early Intervening Services	CEIS	Services to help children not yet identified in special education who need additional academic or behavioral support to be successful in school. They can include professional development and educational and behavioral evaluations, services, and supports.
Day		<ol style="list-style-type: none"> <li>1. <b>Day</b> means calendar day unless otherwise indicated as business day or school day.</li> <li>2. <b>Business day</b> means Monday through Friday, except for Federal and State holidays.</li> <li>3. <b>School day</b> means any day, including a partial day, that students are in attendance at school for instructional purposes.</li> <li>4. <b>Cumulative day</b> means consecutive days in a row.</li> <li>5. <b>Calendar day</b> means all the days of the week.</li> </ol>
Due Process		A due process complaint is a dispute resolution option available under the IDEA. It is used to resolve a formal complaint regarding the identification, evaluation, educational placement, or provision of a FAPE to a child who needs or is suspected of needing special education and related services.
Early Childhood Special Education	ECSE	Services designed for young children (aged 3-5) with disabilities who need specially designed instruction or related services and whose disabilities causes the children to be unable to participate in developmentally appropriate typical preschool activities.
English Language Learner <i>Also known as:</i>	ELL	A person who is learning the English language in addition to their native language or any other languages they may speak.

English as a Second Language		
Extended School Year	ESY	Special education and related services that are provided to a child with a disability beyond the normal school year, in accordance with the child's IEP, and at no cost to the parents of the child. ESY is determined by the IEP team as necessary to ensure FAPE. The IEP team must consider whether the student regresses or may regress during breaks from instruction, and cannot relearn the skills within a reasonable time; if the student is demonstrating emerging and critical skill development; and the nature and severity of the disability.
Expulsion		Removal of a student from school, either permanently or for an indefinite time, i.e. through the end of the school year, per state specific policy.
Free Appropriate Public Education	FAPE	Special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet the requirements of the IDEA; include preschool, elementary or secondary education; and are provided in conformity with an Individualized Education Program (IEP).
Functional Behavioral Assessment	FBA	A systematic evaluation of a student, for whom an assessment is conducted to obtain a description of the targeted behavior(s) that includes baseline data and an analysis of the antecedents and consequences that maintain the targeted behavior, and a summary of the function of the behavior across all settings; for consideration by the IEP team in developing a behavioral intervention plan for the student.
Family Educational Rights and Privacy Act	FERPA	A Federal Statute giving parents the right to inspect and review their child's educational records, to amend errors or inaccuracies in those records, and to consent to disclosure of records. These rights transfer to the student at the age of 18.
Health Care Plan <i>Also known as:</i> Personal Care Plan		A document that records important information about the medical condition, symptoms, and the support a child needs to access their education.
Homebound and Hospitalized Services		Instruction delivered to students with disabilities, individually, in small groups, or by telecasts, whose educational and/or medical condition (such as those

		related to surgery, accidents, short term illness or medical treatment for a chronic illness) prevents the student from attending school on the school campus.
Inclusion		The practice of educating <i>all</i> students in the same location/classroom/activity, including children with physical, mental, and developmental disabilities.
Interim Alternative Educational Setting	IAES	An educational setting and program other than the student's current placement that enables the student to continue to receive educational services according to their IEP when the student has been removed from the current placement as a result of disciplinary infractions defined below under Special Circumstances.
Intervention Assistance Team  <i>Also known as:</i> Child Study Team, Student Support Team	IAT	A problem solving school team whose purpose is to review current and relevant educational data of students who are identified at risk academically and/or behaviorally/socially/emotionally, and offer recommendations for educational interventions to the general education teachers. The IAT reviews the results of the implementation of interventions in determining any next steps to include consideration of a referral for a comprehensive evaluation under the IDEA.
Individuals with Disabilities Education Act	IDEA	A Federal statute setting substantive and procedural standards for the provision of special education and early intervention to children with disabilities. The IDEA funding is provided to State and local education agencies. It also supports personnel preparation, research, technical assistance and model programs.
Independent Educational Evaluation	IEE	An evaluation conducted by an outside entity, at parent request, when a parent disagrees with the results of an evaluation conducted by the public agency.
Individualized Education Program (IDEA <i>Part B</i> )	IEP	A written statement for each child with a disability that is developed, reviewed, and revised in a meeting that must include a statement of the child's present levels of academic achievement and functional performance, a statement of measurable annual goals, including academic and functional goals, objectives and benchmarks, supplemental supports and services, related services, accommodations, modifications, least restrictive environment, and state/district wide assessment, as determined appropriate to provide FAPE.
Individualized Educational Program Team	IEPT	The Team required to develop the IEP. Required members include the parent of the child, a regular education teacher of

		the child, a special education teacher of the child, a representative of the LEA, an individual who can interpret the educational implications of the IEP, and at the discretion of the parent or the LEA, other individuals who have knowledge and special expertise regarding the child, including related services personnel as appropriate, and whenever appropriate, the child with a disability.
Individualized Family Service Plan (IDEA Part C)	IFSP	The IFSP is developed for students aged three through five, which includes the natural environments statement, contains an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills. The IFSP may serve as the IEP of the child, consistent with state policies.
Local Education Agency <i>Also known as:</i> Local School District	LEA	The school district refers to the county of residence, intermediate school district, or stand-alone Charter school.
Limited English Proficient	LEP	A student who was not born in the United States or whose native language is a language other than English: or is Native American, Alaska Native or a native resident of an outlying area; and who comes from an environment where a language other than English is dominant; and whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the State's proficiency level of achievement on state assessments, the ability to successfully achieve in classrooms where the language of instruction is English, or the opportunity to participate fully in society.
Least Restrictive Environment	LRE	That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
Manifestation Determination Review	MDR	The MDR is a process whereby the LEA, parent, and any relevant members of the IEP team, determined by the LEA and parent, conduct a review of relevant data to determine if the conduct in question was caused by, or had a direct relationship to the child's disability; or if the conduct was the direct result of the LEA's failure to implement the IEP.

Mediation		A voluntary process where a neutral third-party mediator assists the parent and public agency to reach a mutually acceptable resolution of a dispute.
Modification		A change in the course, content standard, or test preparation, location, timing, scheduling, expectations, student response, and/or other attribute which provides access for a student with a disability to participate in a course, standard or test, but which does fundamentally alter or lower the standard or expectation of the course, standard, or test.
Multi-tiered Systems of Support	MTSS	<p>The term is an umbrella term often used to describe groups of individuals that meet to analyze data and determine solutions to problems. In an MTSS, there can be multiple problem-solving teams. Professional Learning Communities, Intervention Teams, and Student Support Teams are all examples of teams that generally meet to discuss school-wide areas of concern related to the environment, instruction and curriculum for all students or groups of students.</p> <p>Specialized teams, such as the IEP Team, are also problem-solving teams; however, its purpose is initiated for individual students who are suspected of having a disability or who have already been identified with a disability and is coordinated according to the regulatory requirements of the IDEA.</p>
Objectives <i>Also known as:</i> Short Term Objectives	STO	Sequential, incremental, and measurable written statements, developed by an individualized education program team to mark progress toward attainment of annual goals.
Office of Civil Rights	OCR	A division of the USDOE that is responsible for enforcement of Section 504 of the Rehabilitation Act of 1973.
Office of Special Education Programs (Federal)	OSEP	The Office of Special Education Programs is a federal program dedicated to improving results for infants, toddlers, children and youth with disabilities ages birth through 21 by providing leadership and financial support to assist states and local districts.
Office of Special Education and Rehabilitation Services	OSERS	The Office of Special Education and Rehabilitation Services is a federal organization dedicated to improve early childhood, educational, and employment outcomes and raise expectations for all people with disabilities, their families, their communities, and the nation. OSERS supports



		programs that help educate children and youth with disabilities and provides for the rehabilitation of youth and adults with disabilities.
Parent		<p>A parent means:</p> <ol style="list-style-type: none"> <li>1. A biological or adoptive parent of a child.</li> <li>2. A foster parent, unless state law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent, such as a therapeutic foster parent; a guardian authorized to act as the child's parent to make educational decisions for the child; an individual acting in the place of a parent, including a grandparent, stepparent, or other relative, with whom the child lives; an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with state policy and federal regulations.</li> <li>3. A surrogate parent is an individual appointed to assume the role of parent in special education decision making when the student is a ward of the State or the parent is unknown or unavailable.</li> </ol>
Parent Rights and Age of Majority		Beginning at least one year before the student reaches the age of majority (18) under state law, the student's IEP must include a statement that the student has been informed of his/her rights under the IDEA, and that these rights will transfer to the student on reaching the age of majority. In addition, parents must be notified that all rights will transfer to their child.
Pattern of Removal		A pattern that emerges when a student is removed for a total of more than 10 school days per year and/or when patterns emerge such as a similarity in behaviors that cause removals, length, time, and proximity to one another of removals.
Positive Behavior Support Plan  <i>Also known as:</i> Behavior Intervention Plan	PBSP  BIP	Written document developed by an IEP Team for any student with a disability experiencing behavioral challenges in the classroom or school setting which interferes with the student's learning, the learning of other students, progress toward mastery of IEP goals and objectives, and access to their general curriculum. A PBSP/BIP requires systematic implementation of procedures that result in lasting, positive changes in the individual's behavior including the design, implementation, and evaluation of individual and group instructional and environmental modifications, accommodations, and behavioral instruction.



Present Level of Academic Achievement and Functional Performance	PLAAFP	Written statements developed by an individualized education program team of how a student is performing in school including progress in the general curriculum or an alternative curriculum and state standards.
Prior Written Notice	PWN	Written notice required to be provided to parents of a child with a disability a reasonable time before the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
Procedural Safeguards		A required document under the IDEA, provided to the parent(s) of a child with a disability, that informs parents of their rights and protections in all matters regarding the special education programming for their child.
Qualified Personnel		Personnel who have met the State approved certification, licensing, registration, or other comparable requirements that apply to the area in which the individuals are providing special education and related services.
Related Services		Transportation and such developmental, corrective, and other supportive services as required to assist a child with a disability to benefit from special education, and includes; speech – language pathology and audiology services, interpreter services, psychological services, physical and occupational therapy, therapeutic recreation, counseling services, rehabilitation counseling, orientation and mobility services, school nurse services designed to enable a student with a disability to receive a free appropriate public education as described in the individualized education program of the student, social work services in schools, and parent counseling and training. The term does not include a medical device that is surgically implanted or the replacement of such a device.
Resolution Meeting		A dispute resolution process that takes place after a parent files a due process complaint. Resolution meetings offer parents and school districts the opportunity to resolve issues before a due process hearing happens.
Special Education Effectiveness Review	SEER	The SEER is an internal (NHA) SE Department tool used to identify program strengths in addition to the level of risk which may impact charter renewal or state monitoring and to determine the areas of growth/improvement needed for focused support and training to enhance the performance of students with disabilities and compliance.
Specially Designed Instruction	SDI	Adapting, as appropriate, to the needs of a child with a disability, the content, methodology, or delivery of

		instruction to address the unique needs of a child that result from the child's disability; and to ensure access of the child to the general curriculum, so that he/she can meet the educational standards that apply to all children.
Special Education	SE	Specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education; and speech language pathology, travel training, and vocational education if they are required to meet the unique needs of the child.
Section 504 of the Rehabilitation Act of 1973		A Federal civil rights statute that prohibits discrimination/harassment on the basis of disability in any program or activity receiving Federal financial assistance.
Special Circumstances		<p><b>Drugs:</b> A controlled substance (not including a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any legal authority).</p> <p><b>Weapons</b> The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury. Each state has specific criteria for defining a weapon.</p> <p><b>Serious Bodily Injury:</b> A bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.</p>
Supplementary Aids and Services		Aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.
State Complaint		A written, signed statement that alleges a public agency has violated the requirements of the IDEA, as it pertains to special education programs and services.
State Performance Plan	SPP	Each state is responsible for developing a plan that addresses 17 Federal indicators of Special Education and outlines the plan annually via an annual performance report (APR), submitted to the Office of Special Education Program (OSEP).

Student with a Disability	SWD	A student identified in one of 13 categories of disability, meeting state specific criteria for eligibility and special education services and supports.
Transition Services		A coordinated set of activities for a student with a disability that is designed within an outcome oriented process; that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; is based on the individual student's needs, taking into account the student's preferences and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

### Disability Categories

A child must be evaluated and determined eligible based on one of the 13 disability categories under IDEA (terms may differ based on state specific language, and some states recognize 14 categories).

Autism/ Autism Spectrum Disorder	AU ASD	<p>A developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, which adversely affects a child's educational performance. Other characteristics often associated with autism are engaging in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term autism does not apply if the child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in #5 below.</p> <p>A child who shows the characteristics of autism after age three could be diagnosed as having autism, if the criteria above are satisfied.</p>
Deaf-blindness	DB	A concomitant [simultaneous] hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

Hearing impairment, including deafness	HI	A hearing impairment so severe that a child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects a child's educational performance.
Developmental Delay	DD <i>Also known as:</i> ECDD	For children from birth to age three (3) (under IDEA Part C) and children from ages three through nine (under IDEA Part B), the term developmental delay, as defined by each state, means a delay in one or more of the following areas: physical development; cognitive development; communication; social or emotional development; or adaptive [behavioral] development.
Serious Emotional Disability	SED <i>Also known as:</i> ED, EI	<p>A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:</p> <ol style="list-style-type: none"> <li>An inability to learn that cannot be explained by intellectual, sensory, or health factors.</li> <li>An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.</li> <li>Inappropriate types of behavior or feelings under normal circumstances.</li> <li>A general pervasive mood of unhappiness or depression.</li> <li>A tendency to develop physical symptoms or fears associated with personal or school problems.</li> </ol> <p>The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.</p>
Hearing Impairment	HI	An impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but is not included under the definition of "deafness".
Intellectual Disability	ID <i>Also known as:</i> CI	Significantly subaverage general intellectual functioning, existing concurrently [at the same time] with deficits in adaptive behavior and manifested during the developmental period, that <u>adversely</u> affects a child's educational performance. Intellectual disabilities ranges include mild, moderate, and severe.
Multiple Disabilities	MU <i>Also known as:</i> SXI	Concomitant [simultaneous] impairments (such as intellectual disability-blindness, intellectual disability-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in a special education program designed solely for one of the impairments. The term does not include deaf-blindness.

Orthopedic Impairment	OI	A severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).
Other Health Impairment	OHI	A health impairment/condition that manifests in having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and adversely affects a child's educational performance.
Specific Learning Disability	SLD	A disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disability; of emotional disturbance; or of environmental, cultural, or economic disadvantage.
Speech or Language Impairment	SLI	A communication disorder such as stuttering, impaired articulation, language impairment, or a voice impairment that <u>adversely affects</u> a child's educational performance.
Traumatic Brain Injury	TBI	An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that <u>adversely affects</u> a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.
Visual Impairment (Including Blindness)	VI	An impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

## Section 4 - Free and Appropriate Public Education (FAPE)

### 4.1. FAPE Requirements

A free appropriate public education (FAPE) must be available to all children ages 3 through 21, including children with disabilities who have been suspended or expelled from school. Any child with a disability who requires special education and related services and who has not graduated from high school is eligible to continue to receive a free appropriate public education until the end of the school year in which that child reaches the age of 22, unless otherwise indicated by state specific policies.

**Each Local Education Agency (LEA) is obligated to ensure the provision of services:**

1. Are provided at public expense, under public supervision and direction, and without charge.
2. Meet the standards of the State Education Agency, including the requirements of this part.
3. Include an appropriate preschool, elementary school, or secondary school education in the State involved; following state requirements.
4. Are provided in conformity with an individualized education program (IEP).

**Each LEA must ensure that FAPE is available:**

1. To any child with a disability who meets eligibility and requires special education and related services.
2. This includes children advancing from grade to grade and for children incarcerated in a local jail who were eligible prior to their incarceration.

### 4.2. Exception to FAPE for Certain Ages

The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

1. Children aged 3, 4, 5, 18, 19, 20, or 21 to the extent that its application to those children would be inconsistent with state law or practice, or the order of any court, respecting the provision of public education to children of those ages.
2. Children 18 through 21 to the extent that state law does not require that special education and related services under the IDEA be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility:
  - a. Were not actually identified as being a child with a disability.
  - b. Did not have an IEP.

- c. This exception does not apply to children with disabilities, ages 18-21, who:
  - i. Had been identified as a child with a disability and had received services in accordance with an IEP, but left school prior to their incarcerations.
  - ii. Did not have an IEP in their last education setting, but who had actually been identified as a child with a disability.
- 3. Children with disabilities who have graduated from high school with a regular high school diploma.
  - a. The exception does not apply to children who have graduated but have not been awarded a regular high school diploma.
  - b. Graduation from high school with a regular diploma constitutes a change in placement, requiring prior written notice.
  - c. The term 'regular' high school diploma does not include an alternative degree that is not fully aligned with each state's academic standards, such as a certificate of completion or a general education development credential (GED).

### **4.3. Other FAPE Requirements**

#### **4.3.1. Residential Placement**

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

#### **4.3.2. Assistive Technology**

Each LEA must ensure that assistive technology devices and/or services are made available to a child with a disability if required as a part of a child's special education, related services, or supplementary aids and services.

#### **4.3.3. Nonacademic Services**

Each LEA must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the LEA, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.



#### **4.3.4. Extended School Year (ESY)**

**ESY** services are provided to a student beyond the traditional school calendar at no cost to the parent. ESY services must be considered annually as a part of the IEP. ESY services are provided if the IEP team determines that the services are necessary for the provision of FAPE.

The IEP team must make data-based decisions for ESY services and must consider the following factors in relation to each of the student's goals:

1. Regression and recoupment.
2. Nature and severity of the disability.
3. Critical stage or area of learning.

#### **Criteria**

Each state identifies specific criteria for determining ESY services. The need for ESY services must be considered for every student with a disability, at least annually, at an IEP team meeting. ESY must be provided if the IEP Team determines, after reviewing and analyzing goal data, that such services are necessary for the provision of a FAPE to the student. The need for ESY must be determined individually and may not be provided or denied based upon category of disability or program assignment.

It should be noted that some children with disabilities require special education and/or related services longer than the typical school year in order to receive FAPE, thus the need for ESY services. Each state has a specific criteria required in order for a student to be eligible.

#### **4.3.5. Nonacademic Settings**

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services set forth, each LEA must ensure that each child with a disability participates with nondisabled children in those extracurricular services and activities to the maximum extent appropriate to the needs of that child. The LEA must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

#### **4.3.6. Technical Assistance and Training Activities**

Each LEA must carry out activities to ensure that teachers and administrators in all public agencies:

1. Are fully informed about their responsibilities for implementing LRE requirements.
2. Are provided with technical assistance and training necessary to assist them in this effort.



#### **4.3.7. Physical Education**

Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the LEA enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. Each child must be afforded the opportunity to participate in the regular education program available to nondisabled children unless the child is enrolled in a separate facility or the child needs specially designed physical education mandated within the IEP.

#### **4.3.8. Program Options**

Each LEA must ensure that children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the LEA, including art, music, industrial arts, consumer and homemaking education, and vocational education.

#### **4.3.9. Individualized Education Program**

Each LEA must ensure that an IEP is developed that meets the requirements of Part B of the IDEA, and is developed, reviewed, and revised for each child with a disability in accordance with Part B of the IDEA.

#### **4.3.10. Routine checking of hearing aids and external components of surgically implanted medical devices.**

1. Each LEA must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.
2. Each LEA must ensure that the external components of surgically implanted medical devices are functioning properly.
3. For a child with a surgically implanted medical device who is receiving special education and related services, the LEA is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted, or of an external component of the surgically implanted medical devices.

#### **4.3.11. Child Find**

Child Find is a key component of ensuring FAPE. Please see Child Find, located in [Section 5](#) of this manual.

## Section 5 - Child Find

### 5.1. Overview of Child Find

The IDEA includes a Child Find Mandate. Child Find requires all school districts to locate, identify, and evaluate all children ages 3 through 21 with disabilities who are in need of special education and related services. This obligation encompasses all children who are suspected of having a disability, including children receiving passing grades and advancing from grade to grade. It is the obligation of the LEA to inform parents and/or guardians of the services available to meet the needs of their child. A parent who suspects that their child may have a disability, and is in need of special education and related services, may make a written request for consideration of an evaluation of their child under IDEA. Each state's policies for Child Find can be located within their state policy manual, linked in the [State Specific Resources Appendix](#).

Child Find information is located in the school office, and within each school's Parent/Student Handbook.

## Section 6 - Least Restrictive Environment (LRE)

### 6.1. Overview of Least Restrictive Environment (LRE)

Each LEA must ensure that:

1. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with their nondisabled peers.
2. Special classes, separate schooling, or other removal of children with disabilities from the regular education environment occurs only if the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved.

Complying with IDEA requirements, it is important that the IEP Team explore and select options based on student need and consistent with the provision of LRE.

### 6.2. Continuum of Special Education Placements

Each LEA must ensure that a continuum of special education placements is available to meet the needs of students with disabilities for special education and related services. There is variation among states as to the specific titles given within the continuum of placements.

Special education continuums are determined based on the needs of the student as documented within the IEP. The type and level of service must reasonably ensure that the student accesses their general education curriculum and progresses toward meeting their IEP goals and objectives within the annual IEP, conforming to the provision of LRE requirements.

#### **The continuum must:**

1. Include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.
2. Make provision for supplementary services (such as instruction in the resource room) to be provided in conjunction with regular class placement.

#### **The placement decision:**

1. Is made by the IEP Team, which includes the parent and other persons knowledgeable about the child, knowledgeable about the evaluation data, and knowledgeable about the placement decisions.
2. Conforms to LRE requirements.

### **The child's placement on the continuum:**

1. Is determined at least annually.
2. Is based on the child's IEP.
  - a. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.
    - i. If the child cannot be educated in the school he or she would attend if nondisabled, the child is educated as close to the child's home as possible.
3. Consideration must be given to any potential harmful effect on the child or on the quality of services that he or she needs.
4. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

### **6.3. Nonacademic Setting**

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services set forth, each LEA must ensure that each child with a disability participates with nondisabled children in those extracurricular services and activities to the maximum extent appropriate to the needs of that child. The LEA must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

### **6.4. Technical Assistance and Training Activities**

Each LEA must carry out activities to ensure that teachers and administrators in all public agencies:

1. Are fully informed about their responsibilities for implementing LRE requirements.
2. Are provided with technical assistance and training necessary to assist them in this effort.

## Section 7 - Consent

### 7.1. Definition

Consent means that:

1. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication.
2. The parent understands and agrees **in writing** to the carrying out of the activity for which his or her consent is sought, and the consent describes the activity and lists the records (if any) that will be released and to whom.
  - a. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
  - b. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

### 7.2. Types of Consent

#### 7.2.1. Consent for Initial Evaluation

The LEA proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability must obtain informed consent from the parent of the child before conducting the evaluation. Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

The LEA must maintain documentation of their efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the LEA shall not be required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

1. Despite reasonable efforts to do so, the LEA cannot discover the whereabouts of the parent of the child.
2. The rights of the parent to make educational decisions have been removed by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation, or the parent fails to

respond to a request to provide consent, the LEA may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards, including the mediation procedures or due process procedures, if appropriate. The LEA does not violate its obligation if it declines to pursue the evaluation.

#### **7.2.2. Parental Consent for Services**

The LEA is responsible for making FAPE available to a child with a disability and must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. The LEA must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency:

1. May not use due process procedures including the mediation procedures in order to obtain agreement or a ruling that the services may be provided to the child.
2. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent.
3. Is not required to convene an IEP Team meeting or develop an IEP for the child, unless otherwise required by your state.

#### **7.2.3. Revocation of Consent**

If, at any time subsequent to the initial provision of special education and related services, the parent of a child with a disability or a child who has reached age of majority revokes consent in writing for the continued provision of special education and related services, the public agency, in accordance with state policies and procedures:

1. Must provide prior written notice before ceasing the provision of special education and related services.
2. May not continue to provide special education and related services to the child.
3. May not use the due process procedures (including the mediation procedures) in order to obtain agreement or a ruling that the services may be provided to the child.
4. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services.
5. Cannot convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.

#### **7.2.4. Parental Consent for Reevaluations**

Each LEA must obtain informed parental consent prior to conducting any reevaluation of a child with a disability.

1. If the parent refuses to consent to reevaluation, the LEA may, but is not required to, pursue the reevaluation by using the consent due process procedures.
2. The LEA does not violate its obligation if it declines to pursue the evaluation or reevaluation.

The informed parental consent need not be obtained if the LEA can demonstrate that:

1. It made reasonable measures to obtain such consent.
2. The child's parent has failed to respond.

#### **7.2.5. Other Consent Requirements**

Parental consent is **not** required before:

1. Reviewing existing data as part of an evaluation or a reevaluation.
2. Administering a test or other evaluation that is administered to all children in the school unless, before administration of that test or evaluation, consent is required of parents of all children in the school.

## Section 8 - Evaluations

### 8.1 Overview of Evaluations

Special Education Evaluation is the process of gathering information about a student for determining the existence of a disability, consideration of eligibility, and development of the IEP. Evaluation is an individualized, multidisciplinary process that includes input from the parents regarding education development and uses a variety of assessment tools and strategies, including efforts to determine whether there are modifications or services that may enable the student to participate and progress in the general education curriculum. Assessments must be conducted in all areas of suspected disability.

### 8.2 Review of Existing Evaluation Data (REED)

The IDEA requires a review of existing evaluation data (REED) at time of initial referral and reevaluation, and specific to certain states, when adding or removing a service.

The REED is conducted by the IEP Team and other qualified professionals and includes:

1. Current and relevant information which may include:
  - a. State assessment results.
  - b. District-wide assessment results.
  - c. Progress monitoring data from scientific, research-based interventions.
  - d. Discipline reports.
  - e. Attendance.
  - f. Report Cards.
  - g. Medical/health records.
  - h. Observations by teachers and related service providers.
2. Input provided by parents which may include:
  - a. Outside evaluations.
  - b. Developmental history (physical, medical, psychosocial).
  - c. Information about the student's behavioral and social performance outside school.
  - d. Traumatic events that have impacted the student (loss of parent/significant other, etc.)
  - e. Other.

On the basis of the review, the IEP Team must identify what additional data, if any, are needed to determine:

1. If the child is a child with a disability.
2. The educational needs of the child.
3. In the case of a reevaluation:
  - a. Whether the child continues to have such a disability.



- b. The educational needs of the child.

**Note: In the case of an initial referral,** eligibility determination requires assessments specific to the suspected area of disability, ***based upon state established criteria.***

- There may be circumstances by which the required assessment data has been obtained, such as an outside evaluation or prior evaluations done by the school. In these circumstances, if this data is current and relevant, there may be no need to conduct formal assessments in those areas.

**Note: In the case of reevaluations,** the team must consider what additional assessments (**if any**) are needed.

- At time of reevaluation, if suspecting another disability category, all required assessments for that disability must be conducted if not already obtained.

**Note:** Your state and/or district may require certain forms to be completed to gather teacher and/or parent input throughout the evaluation process.

### 8.3 Request for Initial Referral/Evaluation

An initial referral for an evaluation of a student with a suspected disability can be made by the LEA (general education teacher(s), other school staff that have knowledge of the student) or the parent(s). Upon an oral request for an initial evaluation from a parent, the LEA shall provide assistance, as needed, in completing a written referral immediately. The receipt of a written referral initiates state-specific timelines that must be adhered to in locating, identifying, and evaluating a student suspected of having a disability to ensure a provision of FAPE. Some states allow for an agreement to extend certain timelines.

### 8.4 Initial Evaluations

Upon receipt of consent for evaluation, each LEA must conduct a comprehensive (full and individual) evaluation to determine eligibility and the need for the initial provision of special education and related services to a child with a disability.

#### 8.4.1. Timeline for Initial Referral

The timeline for conducting evaluations, determining eligibility, developing an IEP, and completing placement varies state to state. Please follow your state-specific guidelines.

#### 8.4.2. Exception

The time frame does not apply to an LEA if:

1. The parent of a child repeatedly fails or refuses to produce the child for the evaluation.

2. The parent of a child repeatedly fails or refuses to respond to a request for consent for the evaluation.
3. A child enrolls in a school of another LEA after the timeline has begun, and prior to the determination by the child's previous LEA as to whether the child is a child with a disability.

The exception applies only if the subsequent LEA is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent LEA agree to a specific time when the evaluation will be completed.

## 8.5 Reevaluations

### 8.5.1. Timeline for Reevaluations

Students receiving special education programs and services must be re-evaluated at least once every three years to determine their continued eligibility for special education. The reevaluation may not occur more than once a year, unless the parent and the LEA agree otherwise. Parents and the LEA may also agree that a re-evaluation is unnecessary.

The parents and the LEA may agree to re-evaluate before three years have passed if the LEA determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation.

**Note:** If the child's parent requests assessments for the purpose of determining eligibility at the time of reevaluation, the LEA must conduct them.

### 8.5.2. Three Possible Outcomes of a Reevaluation

1. The IEP team reviews existing data and determines that additional information is needed to determine eligibility and the education needs of the child.
  - a. The IEP team must convene once the additional data has been gathered to determine continued eligibility.
2. The IEP team reviews existing data and determines that no additional information is needed to determine eligibility and the education needs of the child.
  - a. The IEP team determines eligibility.
3. The parent and LEA agree that a reevaluation of the student is not necessary.
  - a. Ensure appropriate notice is provided to the parent (IEP/Prior Written Notice).

**Note:** Reevaluations must be completed in accordance with state timelines.



## 8.6 Other Evaluation Procedures

Assessments and other evaluation materials used to assess a child are:

1. Selected and administered so as not to be discriminatory on a racial or cultural basis.
2. Provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer.
3. Used for the purposes for which the assessment or measure are valid and reliable.
4. Administered by trained and knowledgeable personnel.
5. Administered in accordance with any instructions provided by the producer of the assessment.

## Section 9 - Eligibility

### 9.1. Determining Eligibility

The IEP Team, as defined by each state, determines whether a student is eligible for special education ([see Section 10.2 for IEP Team membership](#)). To make this determination, the IEP Team draws upon information gathered within the review of existing data (REED) and comprehensive evaluation. **Each state has established criteria for what constitutes a comprehensive evaluation.** A child must be evaluated and determined eligible based on one of the 13 disability categories under IDEA (terms may differ based on state specific language, and some states recognize 14 categories). For additional information including definitions of the 13 categories, see [Section 3 - Terms, Acronyms & Definitions](#).

In determining eligibility, the IEP team must consider:

1. Results of assessments, including any independent assessments that are presented by the parent.
2. Strengths and needs of the student, including information provided by the parent.
3. More than a single indicator, measurement, or assessment as the basis for determining eligibility.

### 9.2. Eligibility Criteria

#### 9.2.1. Special Education Eligibility

A student **is** eligible for special education when the IEP Team determines that the student:

1. Has a disability in one or more of the State identified categories
2. that adversely affects educational (academic, behavioral, functional) performance; **and**
3. is in need of specially designed instruction.

A student can meet eligibility criteria for special education and related services even if they are progressing from grade to grade. The IEP Team considers all the educational needs of the child, including academic and functional (social, emotional, behavior, and physical). If the IEP Team determines eligibility in one or more of the areas of disability, the team develops an IEP.

#### 9.2.2. Special Education Ineligibility

A student **is not** eligible for special education if the IEP Team determines:

1. The student does not otherwise meet the state eligibility criteria, **or**
2. The determinant factor for that determination is:
  - a. A lack of appropriate instruction in reading.

- b. A lack of appropriate instruction in math.
- c. Limited english proficiency.

**Note:** A student identified as having a disability but otherwise does not meet eligibility under IDEA should be referred to the Section 504 Team for their consideration.

### 9.3. Specific Learning Disabilities

The determination of whether a child suspected of having a specific learning disability (one of the 13 disability categories) has additional components required in determining eligibility. The determination must be made by a qualified team of professionals to include the child's parent(s) and must follow state specific requirements for team membership, which must include:

1. The child's general education teacher; or if the child does not have a general education teacher, a general education classroom teacher qualified to teach a child of his or her grade.
2. A special education teacher.
3. A minimum of one other professional qualified to conduct individual diagnostic assessments in the areas of speech and language, academic achievement, intellectual development, or social-emotional development and interpret assessment and intervention data such as school psychologist, reading teacher, or educational therapist. Determination of the required group member should be based on the data being reviewed and the child's individual needs.
4. The LEA representative.

The LEA must use the State criteria adopted in determining a child has a specific learning disability. The group may determine that a child has a specific learning disability, if:

1. The child does not achieve adequately for the child's age or to meet state-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:
  - a. Oral expression.
  - b. Listening comprehension.
  - c. Written expression.
  - d. Basic reading skills.
  - e. Reading fluency skills.
  - f. Reading comprehension.
  - g. Mathematics calculation.
  - h. Mathematics problem solving
2. The child does not make sufficient progress to meet age- or state-approved process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance,

achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments. The group must determine that the findings are not the primary result of:

- a. A visual, hearing, or motor disability.
- b. A cognitive impairment.
- c. An emotional disturbance.
- d. Cultural factors.
- e. Environmental or economic disadvantage.
- f. Limited english proficiency.

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider:

1. Data to demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel.
2. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the State timelines unless extended by mutual written agreement of the child's parents and a group of qualified professionals, if, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, and whenever a child is referred for an evaluation.

Each LEA must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. In determining whether a child has a specific learning disability, the group must decide to:

1. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
2. Have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent is obtained. In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of:

1. Whether the child has a specific learning disability.
2. The basis for making the determination.

3. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning.
4. The educationally relevant medical findings.
5. Whether the child:
  - a. Does not achieve adequately for the child's age or to meet state-approved grade-level standards.
  - b. Does not make sufficient progress to meet age of state-approved grade-level standards.
  - c. Exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards or intellectual development.
6. The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level.
7. If the child has participated in a process that assesses the child's response to scientific, research-based intervention to include the instructional strategies used and the student-centered data collected.
8. Documentation that the child's parents were notified about:
  - a. The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided.
  - b. The strategies for increasing the child's rate of learning.
  - c. The parents' right to request an evaluation.

Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

#### **9.4. Termination of Special Education Eligibility at time of Graduation or Aging Out**

A reevaluation is not required before the determination of ineligibility due to graduation from secondary school with a regular diploma or exceeding the age of eligibility, which is determined by each state.

For a student whose eligibility terminates under the circumstances described above, the district must provide the student with a summary of the student's academic achievement and functional performance which shall include recommendations on how to assist the student in meeting postsecondary goals.

## Section 10 - The Individualized Education Program (IEP)

### 10.1. Introduction

The term Individualized Education Program (IEP), in accordance with IDEA, means a written statement for each student with a disability that is developed, reviewed, and revised in a meeting. In developing each child's IEP, the IEP team must consider:

1. The strengths of the child;
2. The concerns of the parents for enhancing the education of their child;
3. The results of the initial or most recent evaluation of the child; and
4. The academic, developmental, and functional needs of the child.

The IEP must include the key components as outlined below:

#### 10.1.1. Present Level of Academic Achievement and Functional Performance (PLAAFP)

IDEA requires that the IEP indicate a statement of the child's present levels of academic achievement and functional performance and must include:

- a. How the child's disability affects the child's involvement and progress in the general education curriculum; or
- b. For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities.

The PLAAFP includes baseline data that describes what the child knows and is able to do. It includes the child's strengths and needs. It describes the child's unique needs that result from his or her disability and how those needs are impacting the child's ability to progress in the general education setting including academic, functional, communication, fine motor skills, behavior, social skills, and daily living activities. Each area of need identified in the Present Level must be addressed within the IEP.

#### 10.1.2. Annual Goals/Objectives

IDEA requires that the IEP indicate a statement of measurable annual goals, including academic and functional goals designed to:

- c. Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum.
- d. Meet each of the child's other educational needs that result from the child's disability.

Annual goals and objectives/benchmarks ensure the student has access to, and makes progress in, the general education curriculum. Goals are descriptions of what the student can be expected to accomplish within the life of the IEP. Objectives/benchmarks are intermediate steps between the student's present



level of performance and the annual goal to be achieved, and are required for all students accessing alternate curriculum. States and local districts may also require short term objectives and/or benchmarks for students accessing the general education curriculum.

**Note:** All IEP annual goals (general and alternate curriculum) must align with the student's enrolled grade-level standards.

### 10.1.3. Special Factors

IDEA requires the IEP Team to consider special factors that include:

1. In the case of a child whose **behavior** impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior.
2. In the case of a child who is **blind or visually impaired**, provide for instruction in Braille and the use of Braille unless the IEP determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.
3. In the case of a child with **limited English proficiency**, consider the language needs of the child as those needs relate to the child's IEP.
4. Consider the **communication needs** of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.
5. Consider whether the child needs **assistive technology** devices and/or services.

### 10.1.4. State and District-Wide Assessments

IDEA requires that all students with IEPs participate in state assessments. The IEP team must determine and document within the IEP, the appropriate accommodations that are necessary for the student to access and fully participate in state and district-wide assessments. All testing accommodations identified in the IEP must be routinely provided in the classroom.

The IEP team determines the State assessment most appropriate for the student to access, either the standard assessment or the alternate assessment. If the IEP team determines an alternate assessment, the IEP must include a statement of why the child cannot participate in the standard assessment. The IEP team's decision to utilize an alternate assessment must be based on the individual needs of the child and may NOT be based solely on any of the following factors:

1. The student's disability.
2. The services and programs the student receives.

3. The effect the student's participation in a particular assessment has on the school's/district's overall performance.

For LEAs administering district-wide assessment(s), students with disabilities also must participate. For students accessing an alternate curriculum, an alternate district-wide assessment must be made available and administered.

**Note:** Follow state specific requirements for determining state assessment participation.

#### **10.1.5. Reporting Progress**

IDEA requires that the IEP indicate a description of how the child's progress toward meeting the annual goals will be measured and that periodic reports on the progress the child is making toward meeting the annual goal will be provided concurrent with the issuance of report cards.

Parents must be notified of their child's progress toward meeting their annual goals and the extent to which the progress is sufficient to enable the student to achieve the annual goals within the life of the IEP.

#### **10.1.6. Supplemental Aids & Services**

IDEA requires that the IEP indicate a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

1. To advance appropriately toward attaining the annual goals.
2. To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities.
3. To be educated and participate with other children with disabilities and nondisabled children in the activities.

Supplementary aids and services means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

**Note:** States have varying criteria for defining Supplemental Aids and Services.

#### **10.1.7. Related Services**

Related services help children with disabilities benefit from their special education by providing extra help and support in needed areas, such as speaking or moving. Related services can include, but are not limited to, any of the following:

- Speech & Language Pathology and Audiology Services

- Interpreter Services
- Psychological Services
- Physical and Occupational Therapy
- Recreation (including therapeutic recreation)
- Early Identification and Assessment of Children with Disabilities
- Counseling Services (including rehabilitation counseling)
- Orientation and Mobility Services
  - Service Animal: Under the ADA, a service animal is defined as having been individually trained to do work or perform tasks for an individual with a disability.
- Medical Services for Diagnostic or Evaluation Purposes
- School Health Services and School Nurse Services
- Social Work Services in Schools
- Parent Counseling and Training
- Transportation

**10.1.8. Participation with Nondisabled Peers**

IDEA requires that the IEP indicate an explanation of the extent, if any, to which the child will not participate with their nondisabled peers in the general education setting.

**10.1.9. Beginning Date of Services and Supports**

IDEA requires that the IEP indicate the projected date for the beginning of the services and modifications, the anticipated frequency, location, and duration of those services and modifications.

**10.1.10. Transition Services**

Beginning at the age of 16 (and in some states at age 14) transition services must be identified within the IEP annually. Specific requirements are outlined in [Section 11 Transition Services](#).

**10.2. IEP Team**

The LEA must ensure that the IEP Team for each child with a disability includes:

1. The parent(s)/guardian(s) of the child with a disability.
2. Not less than one general education teacher of the child (only if the child is, or may be, participating in the regular education environment).
3. Not less than one special education teacher, or, where appropriate, not less than one special education provider of the child.
4. A representative of the local educational agency who:
  - a. Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities.
  - b. Is knowledgeable about the general education curriculum.
  - c. Is knowledgeable about the availability of resources of the public agency.

5. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above.
6. At the discretion of the parent or the LEA, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate.
7. Whenever appropriate, the child with a disability.

#### **10.2.1. Transition Services Participants**

The LEA must invite a child with a disability to attend the IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals.

If the child does not attend the IEP Team meeting, the LEA must take other steps to ensure that the child's preferences and interests are considered.

To the extent appropriate, with the consent of the parent(s), or a child who has reached the age of majority, the LEA must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

#### **10.2.2. Parent Participation**

Each LEA must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or afforded the opportunity to participate, including:

1. Notifying the parent(s) of the meeting in a timely manner, following state and/or district requirements, to ensure that they have an opportunity to participate and provide input.
2. Scheduling the meeting at a mutually agreed upon time and place.

The notice required must:

1. Indicate the purpose, time, and location of the meeting and who will be in attendance.
2. Inform the parent(s) of their rights to invite other individuals who have knowledge or special expertise about their child.

For each student with a disability, as determined by each state, for the purpose of transition, the notice must also:

1. Indicate that a purpose of the meeting will be the development of a statement of transition services needs and/or postsecondary goals.
2. The LEA/district will invite the student and identify any other agency that will be invited to send a representative.

The LEA must provide other methods for parent participation, including participating virtually, conducting conference telephone calls, etc.

An IEP meeting may be conducted without a parent in attendance if, after reasonable attempts to notify and mutually schedule with the parent, as defined by state and district practice, the parent chooses not to attend or does not respond. In this case, the LEA must keep a record of its attempts to arrange a mutually agreed upon time and place.

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

### **10.2.3. Surrogate Parent**

Each LEA must ensure that the rights of a student are protected when:

1. No parent can be identified.
2. The LEA, after reasonable efforts, cannot locate a parent.
3. The child is a ward of the State under the laws of that state and the parents' rights have been terminated or their rights to make educational decisions have been terminated by the court.
4. The child is an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act.

The duties of the LEA under this section include:

1. A method of determining whether a student needs a surrogate parent.
2. Assigning a surrogate parent to the student.

Any surrogate assigned to a student must meet the following criteria:

1. Is not an employee of the State educational agency, the LEA, or any other agency that is involved in the education or care of the student.
2. Has no personal or professional interest that conflicts with the interest of the student.
3. Has knowledge and skills that ensure adequate representation of the student.

The LEA must make reasonable efforts to assign a surrogate parent not more than 30 days after a public agency/school determined that the student needed a surrogate parent.

For educational purposes, an appointed surrogate parent shall serve as the student's parent and represent the child in all matters relating to:

1. The identification, evaluation, and educational placement of the child.
2. The provision of a free appropriate public education (FAPE) to the child.

In the case of a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the child's case, provided the surrogate meets the requirements.

In the case of unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate parent can be appointed that meets the requirements as noted above.

#### **10.2.4. Transfer of Parental Rights at Age of Majority**

When a child with a disability reaches the age of 18 (except for a child with a disability who has been determined to be incompetent under state law):

1. The LEA must provide any notice required to both the individual and the parents and all rights accorded to parents under Part B of the IDEA transfer to the child.
2. All rights accorded to parents under Part B of the IDEA transfer to children who are incarcerated in an adult or juvenile, state or local correctional institution.
3. The LEA must notify the individual and the parents of the transfer of rights.

**Special Rule:** A state must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the education interests of the child throughout the period of the child's eligibility under Part B of the IDEA if, under state law, a child who has reached the age of majority, but has not been determined to be incompetent can be determined not to have the ability to provide informed consent with respect to the child's educational program.

#### **10.2.5. Determination of Knowledge and Special Expertise**

At the discretion of the parent or the LEA, other individuals who have knowledge or special expertise, including related services personnel as appropriate, may be invited to participate in the IEP meeting.

#### **10.2.6. IEP Team Attendance**

A member of the IEP Team is not required to attend an IEP Team meeting, in whole or in part, if the parent and the LEA agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

A member of the IEP Team may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

1. The parent, in writing, and the LEA, consent to the excusal, and
2. The IEP Team member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

### 10.3. Review and Revision of the IEP

IEPs must be reviewed and revised at least annually, and at any time revisions need to be considered within the life of the IEP. Revisions to the IEP can be recommended by the LEA or parent for consideration by the IEP Team. Revisions to the IEP are appropriate under the following circumstances: to address any lack of expected progress toward the annual goals, as a result of a reevaluation, when information is provided to, or by the parents, or any other matters related to the educational needs of the child to include secondary transition services.

Revisions to the IEP after the annual IEP Team meeting:

1. In making changes to a child's IEP **after the annual IEP Team meeting**, the parent of a child with a disability and the LEA may agree, in writing, not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.
2. If changes are made to the child's IEP in accordance with the above, the LEA must ensure the child's IEP Team is informed of those changes and ensures the parent receives a copy of the revised IEP.
3. To the extent possible, the LEA must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.
4. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, by creating a new IEP or amending the existing IEP (within the life of the annual IEP).

## Section 11 - Transition Services

### 11.1. Definition

Transition services means a coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation, and is based on the individual child's needs, taking into account the child's strengths, preferences and interests; and includes:

1. Instruction.
2. Related services.
3. Community experiences.
4. The development of employment and other post-school adult living objectives.
5. If appropriate, acquisition of daily living skills and functional vocational evaluation.


### 11.2. Student Participation in Transition IEP Team Meeting

In accordance with the development of the IEP, the LEA must invite a child with a disability to attend the IEP Team meeting if a purpose of the meeting will be consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals:

1. Beginning no later than the first IEP to be in effect when the child turns 16, or younger if determined by the IEP Team, and updated annually.
2. States may determine to meet prior to age 16, and in many states, by age 14, for the purpose of identifying the courses of study required for the child to meet their postsecondary goals. Each state's policy and procedures for addressing transition services must be followed.
3. To the extent appropriate, with the consent of the parent(s) or a child who has reached the age of majority, the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.
  - a. Nothing relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition services that the agency would otherwise provide to the child with disabilities who meet the eligibility criteria of that agency.

### 11.3. Development of the IEP for Transition Services





The IEP must include:

1. Appropriate, measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills.
2. The transition services, including courses of study needed to assist the child in reaching those goals.
3. A statement that the child has been informed of their rights, if any, that will transfer to them upon reaching the age of majority. This requirement must occur not later than one year before the child reaches the age of majority under state law.
4. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP, the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

## Section 12 - Procedural Safeguards & Due Process Procedures for Parents and Children

### 12.1. Overview

Each LEA must ensure its obligation to establish, maintain, and implement procedural safeguards that meet the requirements of the IDEA, requiring schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under IDEA and the U.S. Department of Education. A school district is required to provide a copy of this notice to parents as follows:

1. Once each school year.
2. Upon initial referral or parent request for an evaluation
3. Upon receipt of the first state complaint in a school year.
4. Upon receipt of the first due process complaint in a school year.
5. When a decision is made to take a disciplinary action that constitutes a change of placement.
6. Upon parent request.

**Note: Documentation of providing Procedural Safeguards Notice must be maintained.**

### 12.2. Contents of Procedural Safeguards

The contents of the procedural safeguards notice must provide an explanation of:

1. Independent educational evaluations.
2. Prior Written Notice.
3. Parental consent.
4. Notice to participate in meetings.
5. Access and opportunity to participate in meetings and examine educational records regarding:
  - i. The identification, evaluation, and educational placement of the child.
  - ii. The provision of FAPE to the child.
6. Opportunity to present and resolve complaints through the due process hearing and state complaint procedures.
7. The availability of mediation.
8. The right to request and obtain an independent educational evaluation of the child, at public expense, following the IDEA.
9. The child's placement during pendency of due process hearing.
10. Procedures for students who are subject to placement in an interim alternative educational setting.
11. Requirements for unilateral placement by parents of children in private schools at public expense.
12. Hearings on petitions for due process hearings, including requirements for disclosure of evaluation results and recommendations.
13. Civil actions, including the time period in which to file those actions.

#### 14. Attorney's fees.

The notice is required to be provided in an understandable language.

The Procedural Safeguards Notice can be found on each LEA/school website. A parent or school staff member can request a copy of the Procedural Safeguards by contacting the special education staff at your school or by accessing the information provided on each school's website. Reach out to your Special Education Supervisor if the Procedural Safeguards Notice needs to be provided in a parent's native language.

### **12.3. Independent Educational Evaluation**

An independent educational evaluation or IEE is a procedural safeguard afforded parents under the Individuals with Disabilities Education Act ("IDEA"). A parent has a right to an independent educational evaluation at no cost to the parent, subject to certain conditions, if the parent disagrees with an evaluation obtained by the LEA. An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child.


Each LEA must provide parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the LEA criteria that applies for independent educational evaluations.

If a parent requests an independent educational evaluation, the LEA must, without unnecessary delay, either:

1. File a due process complaint to request a hearing to show its evaluation is appropriate; or
2. Ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet the LEA criteria.

If the LEA files a due process complaint notice to request a hearing and the final decision is that the LEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at the LEA expense.

It is important to work directly with the SE Supervisor when the LEA receives an IEE request from a parent to ensure all procedural requirements are met and that parent requests are appropriately addressed. There are state specific processes and requirements regarding a parent's request for an IEE. Some states require that a parent must submit the parent's disagreement and IEE request in a written, signed, and dated form. Additionally, state specific timelines do apply in certain states. The LEA may ask for the parent's reason why he/she objects to the public evaluation. However, the LEA may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due



process complaint to request a due process hearing to defend the evaluation conducted by the LEA.

A parent is entitled to only one independent educational evaluation at public expense each time the LEA conducts an evaluation with which the parent disagrees.

If the parent obtains an independent educational evaluation at LEA expense or shares with the LEA an evaluation obtained at private expense, the results of the evaluation:

1. Must be considered by the LEA, if it meets the LEA criteria, in any decision made with respect to the provision of FAPE to the child, and
2. May be presented by any party as evidence at a hearing on a due process complaint.

If a hearing officer requests an independent educational evaluation as a part of a hearing on a due process complaint, the cost of the evaluation must be at LEA expense.

## Section 13 - Prior Written Notice

### 13.1. Overview

Written notice must be given to the parent of a student with a disability within a reasonable time (determined by state/district) before the district:

1. Proposes to initiate or change the identification, evaluation, or educational placement of the child or provision of FAPE to the child.
2. Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

### 13.2. Required Components of the Prior Written Notice

1. A description of the action proposed or refused by the district.
2. Explanation of why the district proposes or refuses to take the action.
3. Description of each evaluation, procedure, assessment, record, or report the district used as a basis for the proposed or refused action.
4. Statement that the parent of a student with a disability has protection under the procedural safeguards.
5. Sources for parents to contact to obtain assistance in understanding the provisions.
6. Description of other options that the IEP Team considered and the reason why those options were rejected.
7. Description of other factors relevant to the district's proposal or refusal.

#### **Written Notice must be:**

- a. Written in understandable language.
- b. Provided in the native language, or other mode of communication, of the parent.
- c. If the native language or other mode of communication of the parent is not a written language, the district must ensure that the notice is translated orally, or by other means, to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice.

### 13.3. Additional Requirements

Prior Written Notice must be provided within a reasonable timeframe following the conclusion of every IEP meeting, regardless of the reason for the meeting.

### 13.3.1. Initial Provision of Services and Programs and Parent Consent Requirement

1. In cases where an initial IEP is being offered to the student, consent is required from the parent before the IEP can be implemented.
2. The date of the IEP meeting must match the IEP meeting date indicated in the Prior Written Notice.
  - a. A district has a set number of school days, defined by each state, to provide notice to the parent following the conclusion of the IEP team meeting.
3. The IEP implementation date is required to be documented within the notice.
  - a. The district must implement the IEP in accordance with the documented date and not before the notice has been provided to the parent.
  - b. **Exception:** *Initial IEP requires parent signed consent before implementing an initial IEP. If a parent does not provide written consent or refusal within a reasonable timeframe as determined by your state/district, contact your Special Education Supervisor to determine next steps following state/district requirements.*

## Section 14 - Discipline and Behavior

### 14.1. Discipline and Students with Disabilities

The purpose of an IEP is to design a plan that supports the student's needs through the development of appropriate goals and objectives, programs, and services. This includes considering the behavioral needs of the student and **developing and implementing** supports to address these needs (e.g. behavior goals/objectives, supplemental aids and supports, and/or positive behavior support plan/behavior intervention plan (PBSP/BIP) based on a functional behavior assessment (FBA).

When a student consistently engages in behaviors that impact their learning and/or prevents the learning of other students, it is important for the IEP team to convene to review and consider the need for revisions to the IEP.

Students who receive special education are first and foremost, general education students. Students with disabilities can receive disciplinary consequences for violations of the school's code of conduct.

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension:

1. For not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities).
2. For additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement.

IAES is defined as an educational setting or program other than the student's current placement that enables the student to continue to receive special education and related services as determined by the IEP team in order to progress toward goals outlined in their IEP, and access and progress in the curriculum.

The term removal includes suspension, expulsion, and may include in-school suspension (ISS), on a temporary basis, if the removal to ISS denies the student access to their general education curriculum and special education and related services. The definition of the length of removal varies state to state. In some states a partial day of removal is considered an entire day for reporting purposes, while in other states this may differ.

#### 14.1.1. Change in Placement Defined

For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if:

1. The removal is for **more than 10 consecutive school days**; or
2. The child has been subjected to a **series of removals that constitute a pattern because**:
  - a. The series of removals total **more than 10 school days in a school year**
  - b. The child's behavior is **substantially similar** to the child's behavior in previous incidents that resulted in the series of removals; and
  - c. Of **additional factors** such as:
    - i. The length of each removal.
    - ii. The total amount of time the child has been removed.
    - iii. The proximity of the removals to one another.

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct. Circumstances considered should include area of disability, functioning level of the child, intent of the behavior, and other relevant factors.

#### **14.1.2. Provision of FAPE after the 10<sup>th</sup> day of Disciplinary Removal**

After a child with a disability has been removed from his or her placement for 10 cumulative school days in the same school year, during any subsequent days of removal the LEA must provide FAPE services.

After the **10<sup>th</sup> day of removal** in a school year, the student must be provided FAPE services to enable the student to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the student's IEP, including related services. General education instruction and special education instruction must be provided after the 10th day of removal.

After a child with a disability has been removed from his or her placement for 10 school days in the same school year, for subsequent removals:

1. If the current removal is **not a change of placement**, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are provided.
2. If the removal **is a change of placement**, the child's IEP Team determines appropriate services.

**Note:** All service providers (general education and special education) must document all provisions of FAPE services after the 10<sup>th</sup> day of removal.

#### **14.1.3. Notification**



On the date on which the decision is made to remove a child with a disability that constitutes a change in placement because of a violation of the code of conduct, the LEA must notify the parents of that decision, and provide parents a copy of the procedural safeguards.

## 14.2. Manifestation Determination

Within 10 school days of any decision to remove the student resulting in a change of placement because of a violation of a code of student conduct, a manifestation determination review (MDR), must be conducted by the LEA, parent, and relevant members of the IEP Team (as identified by the LEA and the parent) to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability.
2. If the conduct in question was the direct result of the LEA's failure to implement the IEP.

If it is determined that the conduct **was a manifestation** of the child's disability, the IEP team must:

1. Conduct an FBA, unless the LEA had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a PBSP/BIP for the child.
2. If a PSBP/BIP already has been developed, review the PBSP/BIP and modify it, as necessary, to address the behavior.
3. Return the child to the placement from which the child was removed, unless the parent and the LEA, through the IEP Team process, agree to a change of placement (continuum of supports).

If it is determined that the conduct **was NOT a manifestation** of the child's disability, the IEP team must:

1. School personnel may apply disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities.
2. Services are required after the 10th cumulative day of removal.

## 14.3. Special Circumstances

School personnel may remove a student to an IAES, for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

1. Carries a weapon to or possesses a weapon at school, as defined by state specific criteria, at school, on school premises, or at a school function under the jurisdiction of the LEA.

2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the LEA.
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the LEA.

As removals to an **IAES** constitute a change in placement, an MDR is required. The IEP team must document this change of placement in the IEP and Prior Written Notice (PWN).

#### **14.4. Protections for Students Not Yet Identified**

A child who has not been determined to be eligible for special education and related services under IDEA and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided if the LEA had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

##### **An LEA is deemed to have a basis of knowledge if:**

1. The parent of the child expressed concern in writing to supervisory or administrative personnel of the LEA, or a teacher of the child, that the child is in need of special education and related services.
2. The parent of the child requested an evaluation of the child.
3. The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or other supervisory personnel of the LEA.


If the disciplinary infraction constitutes a change in placement, IDEA requirements, including an MDR, must be met.

##### **The LEA would not be deemed to have knowledge if:**

1. The parent of the child has not allowed an evaluation of the child.
2. The parent of the child has refused services under IDEA.
3. The child has been evaluated and determined to not be a child with a disability.

If the LEA does not have a basis of knowledge that a child is a child with a disability, prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to all children without disabilities who engage in comparable behaviors.

If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner, in accordance with state specific timelines:

- 
1. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without services.
  2. If the child is determined to be a child with a disability, the agency must provide special education and related services.

#### **14.5. Seclusion & Restraint**

Please refer to the NHA Policies and Procedures for information regarding seclusion and restraint.

## Section 15 - Federal, State, and District (NHA) Compliance, Review, and Reporting

### 15.1. Overview

The IDEA requires each state establish procedures for monitoring LEAs on a regular basis to ensure compliance with state and federal laws, rules and regulations that govern the provision of special education, and related services to children with disabilities. The purpose of this monitoring is to focus federal, state, and local resources on improved results for children with disabilities.

Each state is responsible for conducting all monitoring activities through General Supervision requirements that may include:

1. Program Compliance Reviews
2. Targeted On-Site Monitoring
3. Focused Monitoring
4. LEA Program Assessments

### 15.2. State Performance Plan (SPP) and Annual Performance Report (APR)

The IDEA requires each state to submit a SPP that evaluates the State's efforts to implement the requirements and purposes of IDEA. The SPP serves as an accountability mechanism for states and LEAs. Each of the 17 SPP Indicators has been written to provide a measurable indication of a state's performance in specific statutory priority areas under IDEA including FAPE in the LRE, Disproportionality, and Effective General Supervision, which includes Child Find and Effective Transitions.

The SPP is a living document that is revised as needed and used as the mechanism for guiding improvement efforts at the State and local levels. The analysis of the progress and slippage, including compliance and performance, is used to prioritize each state departments' activities for each upcoming year. Improvement activities relate to the targets and are based on the analysis and interpretation of the data gathered. Each state evaluates each LEAs' performance against the targets. Resources and technical assistance to facilitate improved results are allocated to LEAs. An annual performance report (APR) outlining the performance of each indicator within the SPP is submitted to the Office of Special Education Programs (OSEP).

### 15.2.1. Federal Indicators

17 Federal Indicators	
1 - Graduation Rates	10 - Disproportionate Representation-Eligibility
2 - Drop Out Rates	11 - Timeline Compliance Part B
3 - Reading and Math Proficiency	12 - Timeline Compliance Part C
4 - Suspension and Expulsion	13 - Secondary Transition
5 - Least Restrictive Environment School Age	14 - Post Secondary Education
6 - Least Restrictive Environment Preschool	15 - Resolution Sessions
7 - Preschool Outcomes	16 - Mediation Agreements
8 - Parent Involvement	17 - State identified Measurable Result (SiMR)-Improvement, Correction, Incentives, and Sanctions; Fiscal Management and Accountability
9 - Disproportionate Representation - Disability	
Click <a href="#">here</a> for a definition of each indicator.	

### 15.3. NHA's Special Education Review Process: Special Education Effectiveness Review (SEER)

The Special Education Evaluation Review is an internal monitoring tool utilized by the SE Department to ensure alignment with the 17 Federal Indicators required to be reported annually to each state and the OSEP.

#### 15.3.1. Purpose of SEER

1. To identify program strengths that result in the growth and performance of students with disabilities.
2. To identify areas of improvement needed to address federal reporting requirements.
3. To identify the level of risk which may impact charter renewal.

#### 15.3.2. Key Components of SEER

1. Child Find
2. Parent Participation
3. Positive Behavior Supports & Discipline for Students with IEPs
4. Timeline Compliance
5. Special Education Student Performance/Growth and Reporting
6. Quality IEP Development
7. IEP Implementation

## Section 16 - Special Education File Maintenance and Confidentiality

### 16.1. Confidentiality

#### 16.1.1. FERPA

The Family Educational Rights and Privacy Act (FERPA) is a federal statute designed to protect the privacy of students and parents. FERPA deals with privacy and confidentiality, parent access to educational records, parent amendment of records, and destruction of records.

FERPA applies to all agencies and institutions that receive federal funds, including elementary and secondary schools, colleges, and universities.

#### 16.1.2. What are Education Records?

“Education records” are broadly defined as: Those records, files, documents, and other materials, which:

1. Contain information directly related to a student.
2. Are maintained by an educational agency or institution or by a person acting for such agency or institution.

Education records include:

1. All instructional materials, including teacher’s manuals, films, tapes, or other supplementary material which will be used in connection with any survey, analysis, or evaluation as part of any applicable program shall be available for inspection by the parents or guardians of the children.
2. The transcript of a hearing.
3. Recordings of IEP meetings.
4. Due process decision.
5. Letters between parent(s) and school.
6. Emails.
7. Text messages.

**Note:** Personal notes and memory aids that are used only by the person who made them are not education records. However, if notes are shared with or disclosed to another person, notes are education records.

#### 16.1.3. When can Records be Disclosed?

Schools may release records without consent to “other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests.”

The agency must maintain a log of all disclosures without parental consent. Consent for disclosure must be signed and dated and must include specific information about the recipients of information.

In health and safety emergencies, schools may make disclosures without consent. Law enforcement agencies and monitoring agencies have access to confidential records.

**16.1.4. Confidentiality & Access Rights**

Each LEA must maintain a record of parties obtaining access to education records collected, maintained, or used under IDEA, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. Parties having access include: LEA Administration, special education providers of the child, general education teachers of the child, parent/guardian(s), and any other parties determined necessary by the State and LEA.

Each LEA must also allow parents to inspect and review any education records relating to their children that are collected, maintained, or used by the LEA. The LEA must comply with the request without unnecessary delay and before an IEP meeting, hearing, or resolution meeting, and in no case no more than 45 calendar days after the request is made. The right to inspect and review education records also includes that the LEA provides the parent copies of the records and the right to have a representative of the parent inspect and review the records.

**16.1.5. Records on More Than One Child**

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

**16.1.6. List of Types and Locations of Information**

Each LEA must provide to parents upon their request a list of the types and locations of education records collected, maintained, or used by the LEA.

**16.1.7. Amendment of Records at Parent's Request**

A parent who believes that information in the education records collected, maintained, or used is inaccurate, misleading, or violates the privacy or other rights of the child may request the LEA that maintains the information to amend the information.

The LEA must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

If the LEA decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

#### **16.1.8. Opportunity for a Hearing**

The LEA must, on request, provide an opportunity for a hearing, following state guidelines, to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

### **16.2. Release of Confidential Information and Records**

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:

1. School officials with legitimate educational interest.
2. Other schools to which a student is transferring.
3. Specified officials for audit or evaluation purposes.
4. Appropriate parties in connection with financial aid to a student.
5. Organizations conducting certain studies for or on behalf of the school.
6. Accrediting organizations.
7. To comply with a judicial order or lawfully issued subpoena.
8. Appropriate officials in cases of health and safety emergencies.
9. State and local authorities, within a juvenile justice system, pursuant to specific state law.

Written parent consent must be obtained prior to sharing or seeking confidential student educational, therapeutic, or medical information from third parties. **Please note that a parent can rescind their consent for release of information to others at any time.** The medical community may require use of their own form to ensure compliance with the Health Insurance Portability and Accountability Act (HIPAA).


### **16.3. File Retention/Disposal**

All NHA schools are required to follow the NHA Record Retention and Disposal Schedule located [here](#).

A hard copy of all Confidential Records should be stored in a locked area, cabinet, or drawer chronologically by year and in alphabetical order.

Three years following exit from special education, withdrawal, eighth grade or 12th grade graduation from an NHA school, the school should ship unclaimed files and copies of





records to Iron Mountain following the procedures linked [here](#). The process must be followed accurately to include the completion of all necessary forms and labeling of boxes.

NHA and the LEA only destroy records at the request of the parent following state and federal guidelines.

## Section 17 - Personnel

### 17.1. High Quality Licensing Requirement

Each state has established and maintains qualifications to ensure that personnel necessary to carry out the requirements of special education programming are appropriately licensed, including that those personnel have the content knowledge and skills to service children with disabilities.

#### 17.1.1. Qualifications for Related Service Personnel and Paraprofessionals


1. Must be consistent with state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services.
2. Ensure that related service personnel who deliver services in their discipline or profession meet state board requirements and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.
3. All paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, must be able to assist in the provision of special education and related services to children with disabilities.

#### 17.1.2. Qualifications for Special Education Teachers

1. Each person employed as a public school special education teacher who teaches in an elementary, middle, or secondary school must be highly qualified as a special education teacher per state requirements.
2. Provisional licenses may be granted as determined by each states' guidelines.
3. LEAs/districts must take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services to children with disabilities.

### 17.2. Absent Special Education Service Providers

In the absence of the special education teacher or service provider, an otherwise qualified person must be employed to satisfy delivery of IEP services for the special education provider. An otherwise qualified person may include a licensed/state approved substitute teacher or another staff member with the required credentials. In some states, review of a student's progress to determine the need for compensatory education

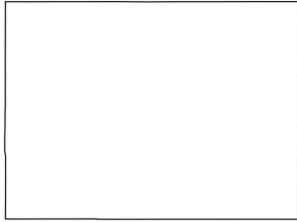


services is required even when a properly licensed substitute has been fulfilling a vacancy.

## Appendix: State Specific Information

### Colorado

[Policy and Procedures](#)  
[Procedural Safeguards](#)



### Georgia

[Policy and Procedures](#)  
[Procedural Safeguards](#)



### Indiana

[Policy and Procedures](#)  
[Procedural Safeguards](#)



### Louisiana

[Policy and Procedures](#)  
[Procedural Safeguards](#)



### Michigan

[Policy and Procedures](#)  
[Procedural Safeguards](#)



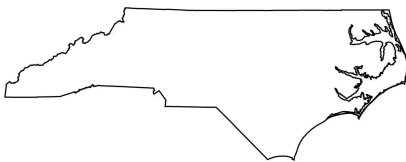
### New York

[Policy and Procedures](#)  
[Procedural Safeguards](#)



### North Carolina

[Policy and Procedures](#)  
[Procedural Safeguards](#)



### Ohio

[Policy and Procedures](#)  
[Procedural Safeguards](#)  
(Apex, Bennett Venture, Pinnacle,  
Winterfield)  
[Procedural Safeguards](#)  
(Alliance, Emerson, North Dayton,  
Orion, Pathway, Stambaugh)



### Wisconsin

[Policy and Procedures](#)  
[Procedural Safeguards](#)

