



THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT: AN INTRODUCTORY GUIDE FOR THE HEALTH CARE PROVIDER

Overview

The Individuals with Disabilities Education Act (“IDEA”) is a federal law that ensures that all eligible students with disabilities, ages three through 21, will receive a free appropriate public education (“FAPE”).¹

Eligible students are those identified by a team of professionals as having a qualifying disability that adversely affects academic performance and as being in need of special education and related services.

Qualifying disabilities include: Autism, Deaf-blindness, Deafness, Developmental delay, Emotional disturbance, Hearing impairment, Intellectual disability, Multiple disabilities, Orthopedic impairment, Other health impairment, Specific learning disability, Speech or language impairment, Traumatic brain injury, and Visual impairment, including blindness.

According to the National Center for Education Statistics, the number of students receiving special education services is approximately 7.3 million, or 14% of total public school enrollment.

Health care providers have an important role to play in supporting families and students with disabilities in the school environment, particularly at the point of initial referral as well as assisting the program planning team in understanding the child’s needs.

Key Components of the Law

Free appropriate public education: States and local school districts must provide FAPE to all eligible children with disabilities within their jurisdiction.

Identification and evaluation: States and school districts must identify, locate, and evaluate all children with disabilities, without regard to the severity of their disability, to determine their eligibility and need for special education and related services. This requirement is referred to as “child find,” and the principle is known as “zero reject,” meaning that no child can be denied a public education.

¹ The information in this document is limited to Part B of the IDEA involving children ages three through 21. For information regarding Part C of the IDEA involving children from infancy up to age three, please contact the New Mexico Department of Health.

Individualized education program: Each eligible student with a disability must receive an individualized education program (“IEP”) describing his or her specific educational and service needs, with parent participation on the IEP team. To meet its substantive obligation, a school district must offer an IEP that is reasonably calculated to enable a student to make meaningful educational progress in light of their individual circumstances.

Least restrictive environment: Children with disabilities must be educated with children without disabilities “to the maximum extent possible” in the least restrictive environment (“LRE”).

Due process safeguards: Procedural safeguards must be put in place for children and their families, including the right to mediation, request for complaint investigation, and due process hearing.

The Role of the Health Care Provider

Identifying Children in Need of Special Education Services: Assessments performed by the health care provider will often lead to the identification of children with disabilities who require further evaluation to determine the need for appropriate special education services.

The health care provider should become familiar with local practices and advise the parents regarding referral to the local educational agency, often the school district, on how to obtain a special education evaluation.

When a parent asks for an evaluation, the school district must determine whether an evaluation will be conducted. If the school system decides that an evaluation will be conducted, the parent must give informed, written consent for the evaluation. Then the “comprehensive, multidisciplinary” evaluation must be completed by the school district within 60 days of the parental consent, followed by development of the IEP. More specifically, a meeting must be conducted to develop an IEP within 30 days of the eligibility determination, after which special education and related services are to be made available as soon as possible.

If the district decides it will not conduct an evaluation, it must provide written information, known as prior written notice, to the parent indicating its decision as well as why it has decided not to conduct an evaluation, including all the information about the child that was used to make that determination and the factors that influenced the decision, what steps the parents can take if they disagree with this decision, and sources for parents to contact to obtain assistance in understanding their rights under IDEA.

Sharing Relevant Information (with parental permission): As part of the referral process, the health care provider should provide detailed information regarding the child’s impairment, how that impairment affects major life activities, and a summary of tests or assessments performed. This information should be reduced to writing and provided to

the parent to be distributed as the parent sees fit. Health care providers can advise school districts about the possible educational ramifications of medical or disabling conditions and suggest solutions; however, services in schools are decided collaboratively by the IEP team.

Meeting with School District Personnel and Parents: Although time-consuming, participation at meetings with school district personnel may also be considered for complex children who have many needs within the school environment or in situations when the team disagrees about how a health, disability, or mental health issue affects the educational program.

Behavioral and Mental Health Issues for Students with Disabilities in the School Environment: When a student with a disability breaks a rule of conduct in a school, he or she may be subject to disciplinary action. There are, however, a variety of rules that exist to ensure that students with disabilities are not punished for conduct they cannot help. For more information See <https://sites.ed.gov/idea/topic-areas/#Discipline-Behavioral-Supports>.

The IDEA requires the use of positive behavioral interventions must be considered and a functional behavioral assessment must be used to determine causes of behavioral issues and possible proactive interventions. In addition, a manifestation determination review must be conducted to decide whether the behavior is associated with the child's disability before any change in placement can be made. A child's placement refers to their educational setting and the programs and service that comprise that setting, rather than a physical location.

We strongly recommend that a student facing disciplinary removal contact legal counsel and obtain specific advice regarding the situation.

Related Services versus Medical Services: Therapies, such as physical therapy, occupational therapy, and speech and language therapy, may be required to support a student with a disability to benefit from special education. These therapies are considered "related services" by IDEA and the school district must provide if the student's needs so require.

In contrast, a school district need not provide "medical services" *except* for medical services necessary for diagnostic and evaluation purposes. Nursing services such as clean intermittent catheterization and full-time nursing, are related services (and not medical services) if the child requires them to attend school.

For more information, please contact Pegasus Legal Services for Children or visit our website at www.pegasuslaw.org.