

Individuals with Disabilities  
Education Improvement Act  
(IDEIA) 2004  
P.L. 108-446

What's New?

Regional Forum Sessions

April 2005

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Our Purpose

- Connecting Change to PA's Context
  - Implications for PA's rules
  - Connecting to Gaskin and other PA requirements
- Regional Forums
  - To provide information on the new law and the changes
  - To obtain field input that informs and guides State Board and PDE

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Federal Regulations - OSEP

- Held informal hearings January - February 2005
  - Gathered comments/recommendations regarding changes to parts 300 and 313 of the Code of Federal Regulations (34 CFR) needed to clarify/implement IDEIA
- Plan for proposed federal regulations July 2005; final federal regulations December 2005
- Commitment to an expedited process

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State Regulations–  
PA State Board of Education &  
PA Department of Education

- State Board – Chapter 14
- PDE – Chapter 711
- Input from April regional forums will be shared
- Note: A “red flag” suggests that the new IDEIA may not be implemented until the State Board of Education and/or PDE revise regulations and policy.



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Purpose of Changes



- More emphasis on outcomes, not process
- Aligning NCLB with IDEIA
- More federal direction to state level activities
- Prioritizing specific monitoring outcomes
- Less adversarial dealings between parents and schools
- Reduction in paperwork and meeting time

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Evaluation/Reevaluation

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## Initial Evaluation

- 60 **calendar** days to complete evaluation or within State-established timeframe (PA currently 60 **school** days until notified otherwise)
  - Relief from timeline if child transfers or if child not present for evaluation
- If parent refuses services or fails to respond to request for services
  - LEA not required to convene IEP meeting or develop IEP
  - LEA not in violation of provision of FAPE
- LEA must make reasonable attempts to obtain parental consent for children who are wards of the state, but if cannot, not required

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## Evaluation Procedures

- Assessments provided/administered in language and **form most likely to yield accurate academic, developmental and functional information**
- For children who transfer, sending and receiving schools coordinate efforts to complete evaluation expeditiously
- For specific learning disability
  - LEA not required to consider severe discrepancy between achievement and ability
  - LEA may use response to scientific, research-based intervention

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## Evaluation Procedures (cont'd)

- **RESPONSE TO INTERVENTION** – in response to concerns regarding requiring students to experience failure before being considered for special education services
- Emphasis on research-based instructional interventions that are documented prior to referral

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## Reevaluation

- Not more than once a year
- At least once every three years unless parent and LEA agree it is unnecessary
  - PARC Consent Decree requires reevaluation of students with mental retardation at least every two years

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## Evaluations Before Change in Eligibility

- LEA must provide summary of child's academic achievement and functional performance, including recommendations on how to assist the child in meeting postsecondary goals
  - Still required to reevaluate before determining child no longer eligible

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## Evaluation/Reevaluation

- Issues
- Recommendations

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# Individual Education Programs (IEPs)

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- ## IEP Team Attendance
- If IEP team member's areas of expertise not being discussed/modified, team member need not attend if parent/LEA agree in writing
  - If IEP team member's area of expertise is being discussed/modified, IEP team member may be excused if parent/LEA agree in writing and if member's written input submitted prior to the meeting
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- ## IEP Development
- Parents and LEA may agree not to convene an IEP meeting to make changes to IEP after the annual meeting
- Instead may develop a written document to modify current IEP
  - Upon request parent receives revised copy of IEP
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- ## IEPs
- IEP contains statement of
- Short-term objectives (STOs)/benchmarks for **children with disabilities who take alternate assessments aligned to alternate standards**
    - STOs not required for most students with disabilities
    - PDE has developed draft alternate standards to be submitted to State Board for approval Spring 2005
  - Special ed/related services **based on peer-reviewed research to extent practicable**
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- ## IEPs: Postsecondary Transition
- Postsecondary transition planning (including courses of study) must begin with IEP in effect at age 16
    - Courses of study at age 14 no longer required
  - Transition planning may begin at any age for a student with a disability
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- ## IEP: Transfer Students
- Transfer within state
    - LEA must implement current IEP until LEA adopts current IEP or develops new IEP
  - Transfer outside state
    - LEA must implement comparable services until LEA conducts evaluation, if necessary, and develops new IEP
  - To facilitate transition, sending and receiving schools take reasonable steps to send/obtain child's records
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## Multi-Year IEP Demonstration

- Purpose: provide opportunity for long-term planning
- Comprehensive, not to exceed 3 years, designed to coincide with natural transition points
- USDE Secretary may approve up to 15 states' proposals
- USDE Secretary must submit report in 2 years

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## Individual Education Programs (IEPs)

- Issues
- Recommendations

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## Procedural Safeguards/ Discipline

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## Procedural Safeguards: Surrogate Parents

- **For child who is a ward of the state, judge overseeing child's care may appoint a surrogate** who may be an employee of the SEA, the LEA or other agency not involved in the education/care of the child
- For unaccompanied homeless youth, LEA must appoint surrogate
- Surrogate must be appointed within 30 days after determination of need

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## Procedural Safeguards Notice (PSN)

- LEA obligation to give copy to parents only 1 time per year, except also given upon
  - Initial referral or parental request for evaluation
  - First occurrence of filing of due process complaint
  - Parent request
  - With notice of disciplinary change of placement

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## Due Process Procedural Safeguards Notice

PSN to contain explanation of

- Timeline to submit due process complaint (2 years)
- Opportunity to resolve the complaint (resolution session)
- Timeline for filing civil actions (90 days or as State law allows)

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## Due Process Complaint

- Two-year statute of limitations for filing due process complaint notice
- Parent or LEA may request a due process hearing
- Requirements for due process complaint notice
- Either party may dispute whether notice meets requirements

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## Due Process Hearing

Opportunity to Resolve Due Process Hearing Complaints

- Starts with a specific written complaint from parent/LEA
- Requires “preliminary meeting” within 15 days to resolve complaints before a hearing begins, unless waived in writing by both parties
- No attorney for district unless parents have an attorney
- Attorney fees can be awarded to SEA or LEA under specific circumstances

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## Timeline for Requesting Due Process Hearing

Hearing must be requested within 2 years of alleged action, unless parent prevented due to

- Misrepresentation by LEA that problem was resolved
- LEA withheld information from parent

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## Award of Attorneys' Fees

The court may award reasonable attorneys' fees

- Against the attorney of a parent who
  - Files a complaint that is frivolous, unreasonable, or without foundation
  - Continued to litigate after the litigation clearly become frivolous, unreasonable, or without foundation
- Against the attorney of a parent or against the parent if parent's complaint was presented to harass, cause unnecessary delay, or needlessly increase cost of litigation

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## Purpose of Changes: Discipline

- Simplify process of immediate response to dangerous situations
- Reduce paperwork burden
- Maintain protections of provision of FAPE
- Maintain manifestation determination

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## Discipline

- For removals of more than 10 school days, when behavior not a manifestation of child's disability, FAPE must be provided **but may be provided in an interim alternative educational setting**
- In PA, 10/15 day rule still applies

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## Discipline (cont'd)

- Unilateral removal for drugs, weapons, **serious bodily injury** violations, whether or not a manifestation of child's disability, can be for up to 45 **school** days to interim alternative educational setting
  - Parent must be notified with PSN
  - FAPE must be provided
  - Manifestation determination must be conducted
  - FBA, behavior intervention services must be provided

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## Procedural Safeguards/ Discipline

- Issues
  
  
  
- Recommendations

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## Additional Changes

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## New Funding Formula

- Establishes 6 year path to reach 40% goal, however
- **The USDE estimate 2005-06 Federal grant provides only a 2-3% increase for PA Local Education Agencies (LEAs)**
- States may use up to 10% of state-level activities funds to establish "risk pools" to reimburse school districts for "high-need; low-incidence, catastrophic or extraordinary aid" (PA has a state "Contingency Fund")

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## Early Intervening

- Permits school districts to use up to 15% of the Part B grant for "early intervening" as follows:
  - To develop and implement coordinated early intervening services for students K through 12 who are not identified as disabled but need "additional academic and behavioral support to succeed in a general education environment"
  - Emphasis is on K through 3
    - Professional development
    - Providing educational and behavioral evaluations, services and supports

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## Federal Monitoring Priorities

- Quantifiable indicators shall be used to monitor the priority areas:
  - Provision of FAPE
  - Child find, effective monitoring, due process resolution sessions, mediation, and a system of transition services
  - Disproportionate representation of racial and ethnic groups  
(Currently these priority areas are in PA monitoring system, except due process resolution session)
- Qualitative indicators, as needed, shall be used to measure performance in the priority areas
- Four levels of federal monitoring response to states

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## Equitable Participation

**Children in private schools enrolled by their parents to be afforded equitable participation determined by proportionate amount of IDEIA funds available to serve these children**

- IU subgrantee shall consult with private school representatives and representatives of parents of children with disabilities regarding
  - Child find process
  - How the consultation process will operate throughout the year to ensure meaningful participation in special education and related services
  - How, where, and by whom services will be provided

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## Equitable Participation (cont'd)

- IU subgrantee responsibilities
  - Written affirmation of input from private schools/parents of students with disabilities
  - How, if the private school officials disagree with the LEA on provision or type of services, the LEA shall provide a written explanation of reasons
  - Private school official may file a complaint with the SEA
    - If private school official disagrees with SEA decision, may appeal to OSEP

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## Definitions

<ul style="list-style-type: none"> <li>■ Added           <ul style="list-style-type: none"> <li>■ Core Academic Subject</li> <li>■ Highly Qualified</li> <li>■ Homeless Children</li> <li>■ Limited English Proficient</li> <li>■ Universal Design</li> <li>■ Ward of the State</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>■ Modified           <ul style="list-style-type: none"> <li>■ AT Device- Does not include medical device surgically implanted or replaced (e.g., cochlear implants)</li> <li>■ Parent- Expanded definition</li> <li>■ Related Services- Added interpreting services and school nurse services designed to provide FAPE; Does not include medical device surgically implanted or replaced (e.g., cochlear implants)</li> </ul> </li> </ul>
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## Implementation - IDEIA

- December 3, 2004 – definition of “highly qualified teacher” for purposes of special education becomes effective – anticipate proposal re: PA Bridge Certificate – March 2005
- June 2005 - due process updates
  - Review of pre-hearing requirements
  - Review and revise Hearing Officer Handbook
  - Discussions with parents and parent advocacy groups
- July 1, 2005 – all changes presented are to be implemented except for new evaluation timeline allowing 60 school days (see slide #7) Existing obligations under PARC to students with mental retardation remain (see slide #10 and #23)

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## Implementation - IDEIA

- July 1, 2005 – PDE to have issued new forms and formats
- July 2005 – anticipate proposed federal regulations
- December 2005 – anticipate final federal regulations
- December 2005 – OSEP to have developed model forms by adoption of final regulations
- January 2006 – anticipate RFP for paperwork reduction and IEP pilot
- June 2006 - Chapters 14 and 711 revisions

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## Additional Changes

- Issues
  
  
- Recommendations

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## Resources

- Congressional Research Service (CRS) Report available @ <http://www.pennyhill.com/education/rl32716.html>
- P.L. 108-446 posted at [www.pattan.k12.pa.us](http://www.pattan.k12.pa.us)
  - Go to [Federal and PA Special Education Laws and Regulations](#)
  - Then to [IDEIA - Public Law 108-446](#)
- This presentation and other related materials will be available on PaTTAN website @ <http://www.pattan.k12.pa.us>

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