What's New?
Regional Forum Sessions
April 2005

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

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

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.

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

Evaluation/Reevaluation
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

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

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

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

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

Evaluation/Reevaluation

- Issues

Recommendations
Individual Education Programs (IEPs)

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

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

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

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

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
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

Individual Education Programs (IEPs)

- Issues
- Recommendations

Procedural Safeguards/Discipline

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

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

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)
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

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

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

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 became 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

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

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
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

Procedural Safeguards/Discipline

- Issues
- Recommendations

Additional Changes

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”)

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

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
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

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

Definitions

- Added
  - Core Academic Subject
  - Highly Qualified
  - Homeless Children
  - Limited English Proficient
  - Universal Design
  - Ward of the State

- Modified
  - AT Device- Does not include medical device surgically implanted or replaced (e.g., cochlear implants)
  - Parent- Expanded definition
  - 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)

Implementation - IDEIA

- 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)

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

Additional Changes

- Issues
- Recommendations
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
  - 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