

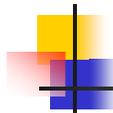


Individuals with Disabilities
Education Improvement Act
(IDEIA) 2004
P.L. 108-446

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

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In addition to the Individuals with Disabilities Education Improvement Act (IDEIA), the written material accompanying this PowerPoint presentation includes references from the following:

Congressional Research Service (CRS) Report, Individuals with Disabilities Education Act (IDEA): Analysis of Changes Made by P.L. 108-446, by Richard Apling and Nancy Jones, January 5, 2005, Report to Congress. Order code RL 32716

Gaskin, et al., vs. Commonwealth of Pennsylvania, et al., E.D. of Pa, 94-4048.

Gaskin is a class action lawsuit brought on behalf of Pennsylvania public school students with physical, behavioral and developmental disabilities. The action asserts violations of federal statutes protecting the rights of children with disabilities, principally the Individuals with Disabilities Education Act. The plaintiff class representatives are twelve significantly disabled public school students. Other plaintiffs include their parents and eleven national and state organizations that advocate for the rights of disabled persons. The defendants are the Pennsylvania Department of Education, various PDE officials, and the members of the Pennsylvania State Board of Education.

The lawsuit, originally filed in 1994, alleges that students with disabilities have been denied their federal statutory right to a free appropriate public education in regular classrooms with necessary supplemental aids and services. In particular, the plaintiffs allege that PDE has systematically failed to enforce the provisions in federal law requiring local schools and school districts to offer a full continuum of support services allowing disabled children to be educated in regular classrooms.

On December 21, 2004, counsel for parties in the *Gaskin* case signed a provisional settlement agreement in this class action lawsuit. Under this agreement, the Department of Education will undertake a series of reforms in special education processes and procedures including data collection, compliance monitoring, plan approval, IEP format and complaint resolution. The settlement agreement must be approved by the court following a public hearing, which probably will be scheduled later this Spring.



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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The U.S. Department of Education (USDE), Office of Special Education & Rehabilitation Services - OSERS - on December 29, 2004, announced its intention of conducting informal hearings (7) to gather *comments and recommendations regarding changes to 34 CFR parts 300 and 303 that are needed, particularly to clarify a provision in the new law or to facilitate its implementation.*

The USDE has been quoted that they hope the process is completed within one year, which would mean by December, 2005. And, the USDE states its intent to publish draft regulations in July 2005.

The USDE has not announced any formal hearings, but when the regulations are formally proposed, the IDEIA requires a public comment period **of not less than 75 days** on any regulation proposed under Part B or Part C. **Thus, the comment period on formal rule proposal could be even longer.**

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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Both the State Board of Education and PA Department of Education have rule making responsibility, namely, Chapter 14 and Chapter 711 respectively. Moreover in 2001, both current Chapters adopted by reference the federal regulations implementing the IDEA.

To the extent that the Individuals with Disabilities Education Improvement Act of 2004 conflicts with existing federal regulations, incorporated into Chapters 14 and 711, the language of the IDEIA will control, and the changes will take effect July 1, 2005.

To the extent that current Chapters 14 and 711 provide requirements or protections that are in addition to the IDEIA, but do not conflict with IDEIA, they remain in effect. The IDEIA requires states to identify those state requirements which exceed the IDEIA and submit that information to the USDE.

The Pennsylvania Department of Education plans participation in a series of meetings sponsored by the USDE this Spring. It is anticipated that information will be shared at those sessions regarding implementation and required assurances and local applications. As that information becomes available, it will be shared with schools and parents.



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

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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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With regard to ward of the state, consent not required if, despite reasonable efforts the whereabouts of parent cannot be discovered; or right of parent has been terminated under state law; or a judge has subrogated (assigned an individual to be the parent to represent the child), then consent not required of the parent.

Impact on PA: The language of IDEIA permits use of a State-established timeframe. State Board Regulation, 22 Pa. Code Section 14.123(b), requires that the evaluation report must be presented to the parents within 60 “school” days. Therefore, the State-established timeframe will control. The State Board, however, could decide to alter this timeframe when it revises its regulations following adoption of federal regulations.

The remaining above items will be implemented July 1, 2005.

Excerpted from CRS Report pp.19-20: LEAs are required to “conduct a full and individual initial evaluation” of a child before special education and related services are provided, and to conduct reevaluations as warranted to determine if the education and services provided require revisions or if the child no longer needs special education and related services. P.L. 108-446 adds language that clarifies that either the parent or the LEA may request an initial evaluation. If the LEA makes the request, the parent generally must provide consent for the evaluation to take place (§614(a)(1)(D)). P.L. 108-446 also establishes a timeframe after a parental request for an initial evaluation has been received by the LEA. Such evaluation must take place either within 60 days or within an alternative timeframe established by the state (§614(a)(1)(C)).

If the LEA proposes to conduct an initial evaluation of a child to determine a child’s eligibility for IDEA services, it must generally obtain consent from the parent of the child. Provision of parental consent for the evaluation does not commit the parent to consenting to special education and related services for the child (§614(a)(1)(i)(I)). Rather the LEA must seek “informed consent” from the parent before initiating IDEA services (§614(a)(1)(i)(II)). P.L. 108-446 provides extensive new language to deal with situations in which the parent fails to provide consent or does not respond to the LEA’s request for the initial evaluation. Under those circumstances, the LEA may use procedures described in §615 (dealing with procedural safeguards) to initiate the evaluation (§614(a)(1)(ii)(I)). If the parent refuses the provision of special education and related services for the child based on the initial evaluation, P.L. 108-446 directs the LEA **not** to “provide special education and related services to the child by utilizing the procedures described in section 615” (§614(a)(1)(ii)(II)). Under such circumstances, the LEA would not be considered to be violating its obligation to provide FAPE, nor would it be obligated to develop an IEP for the child (§614(a)(1)(ii)(III)). P.L. 108-446 provides specific procedures dealing with parental consent for children who are wards of the state (§614(a)(1)(iii)). The LEA is to make “reasonable efforts” to obtain parental consent for the initial evaluation. However, parental consent is unnecessary if the LEA, after reasonable efforts, cannot locate the parent, the parent’s rights have been terminated by state law, or a judge has subrogated the parent’s right to make educational decisions for the child (§614(a)(1)(iii)(II)).



Evaluation Procedures



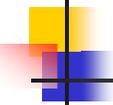
- Assessments provided/administered in language and **form most likely to yield accurate academic, developmental and functional information**
- For children who transfer, sending and receiving schools coordinate efforts to complete evaluation expeditiously
- For specific learning disability
 - LEA not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

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Impact on PA: Currently in Pa, specific learning disability **is** identified using a discrepancy model. Historically, this model permits a student to fail before being considered for services. A response to intervention model should identify a student’s need for services much earlier. The language of IDEIA eliminating the required use of a discrepancy determination conflicts with the federal regulation from IDEA '97 that was incorporated by reference into state regulation. Therefore, the language of IDEIA controls and will be implemented July 1, 2005.

Excerpted from CRS Report pp.20-21. One notable change to these requirements deals with the language or mode of communication used to administer assessments. Prior law required that “tests and other evaluation materials” be “provided and administered in the child’s native language or other mode of communication, unless it is **clearly not feasible** [emphasis added] to do so....” P.L. 108-446 rephrases this requirement as follows: “assessments and other evaluation materials” must be “provided and administered in the language and form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is **not feasible** [emphasis added] to so provide or administer....” (§614(b)(3)(A)(ii)). P.L. 108-446 also addresses concerns about children with disabilities who transfer from one LEA to another during the school year by requiring coordination between “such children’s prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations” (§614(b)(3)(D)).

P.L. 108-446 continues to require that the eligibility for special education and related services be determined by “a team of qualified professionals” and the child’s parent (§614(b)(4)(A)) and that eligibility not be predominantly based on the lack of appropriate reading or mathematics instruction or on limited English proficiency. P.L. 108-446 adds specific requirements regarding the determination of specific learning disabilities. In determining whether a child has a specific learning disability, an LEA “shall not be required to take into consideration whether a child has a severe discrepancy between achievement and intellectual ability ...” (§614(b)(6)(A)).



Evaluation Procedures (cont'd)



NEW

- 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

9

Impact on PA: Currently in Pennsylvania, a specific learning disability is identified using a discrepancy model. Historically, this model permits a student to fail before being considered for services. A response to intervention model should identify a student's need for services much earlier.



Reevaluation



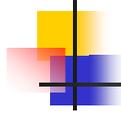
- Not more than once a year
- At least once every three years unless parent and LEA agree it is unnecessary
 - PARC Consent Decree requires reevaluation of students with mental retardation at least every two years

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Impact on PA: Reevaluation required at least every 3 years and, per the PARC Consent decree of 1971, every 2 years for a child with Mental Retardation. The requirement of IDEIA prohibiting evaluations more than once a year conflicts with the federal regulation incorporated by reference into state regulation. Therefore, the language of IDEIA controls and will be implemented July 1, 2005.

Excerpted from CRS Report pp.19-20. Reevaluations are required if the child's teacher or parent makes a request or if the LEA determines that the child's educational and service needs, academic achievement, or functional performance warrants a reevaluation (§614(a)(2)).62. For example, a reevaluation might be warranted if the child's performance in school significantly improves, suggesting that he or she no longer requires special education and related services, or if the child is not making progress toward the goals set out in his or her IEP, indicating that changes are needed in the education or related services the LEA is providing. The prior version of IDEA required that reevaluations take place at least every three years. P.L.108-446 permits the parent and the LEA to override this requirement if they agree that a reevaluation is not necessary. In addition, P.L. 108-446 prohibits reevaluations more frequently than once a year, unless the parent and the LEA agree.

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

11

Impact on PA: Evaluation not required before graduation with regular diploma/aging out, which is consistent with current Federal regulations found at §300.534(c)(2).

Excerpted from CRS Report pp. 21-22. P.L. 108-446 continues to require an evaluation before determining that a child no longer requires special education and related services. The Act adds new exceptions to this requirement making the change-in-eligibility evaluation unnecessary if the child graduates from high school with a regular diploma or reaches the age at which state law no longer provides for FAPE (§614(c)(5)(B)(i)). For children whose eligibility for IDEA services ends as a result of graduation or age termination, the LEA is required to provide a summary of his or her academic and functional performance, including "recommendations on how to assist the child in meeting the child's postsecondary goals" (§614(c)(5)(B)(ii)).



Evaluation/Reevaluation

- Issues

- Recommendations

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Each section has a summary slide like this one.

Give participants 1-3 minutes to think about the things they heard during this section and jot down any issues and/or recommendations that they have on this slide. They will be referring to their handout and these summary slides when it is time to give feedback in the breakout sessions. These summary slides will serve to jog their memories about thoughts they had during the presentation.



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

14

Impact on PA: The requirements of IDEIA conflict with the federal regulations incorporated by reference into state regulation. Therefore, the language of IDEIA controls and will be implemented July 1, 2005.

Excerpted from CRS Report p.23. P.L. 108-446 makes additions and alterations to the IEP team requirements aimed at reducing paperwork and other burdens of the IEP process and providing procedures for the IEPs of children with disabilities who change LEAs during the school year. P.L. 108-446 permits members of the IEP team to be excused from IEP meetings if the parent and the LEA agree (§614(d)(1)(C)). If the meeting topic does not deal with the member's areas of concern, there are no further requirements. If the meeting deals with the excused member's areas, he or she must provide written input to the parent and to the team. **In all cases, the parent's agreement or consent must be obtained in writing.**



IEP Development



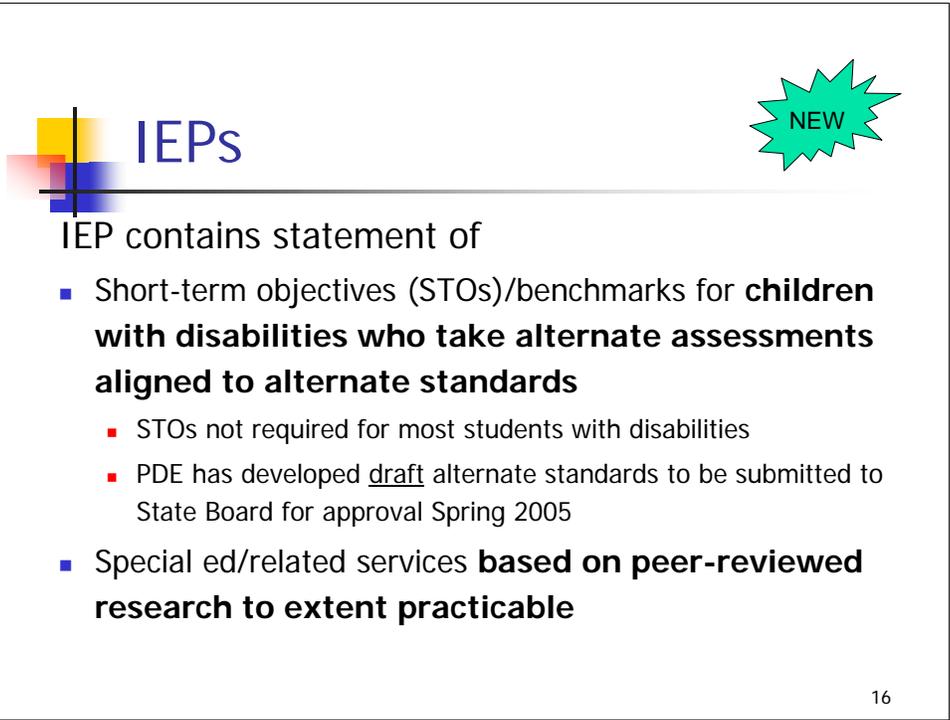
- Parents and LEA may agree not to convene an IEP meeting to make changes to IEP after the annual meeting
- Instead may develop a written document to modify current IEP
 - Upon request parent receives revised copy of IEP

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Additional provisions: LEA should encourage consolidation of reevaluation and IEP meetings; Parent and LEA may agree to use alternative means of meeting, such as **videoconferences** and conference calls. Current §300.345 (c)--...shall use other methods to ensure parent participation, including individual or conference telephone calls.

Impact on PA: The requirements of IDEIA conflict with the federal regulations incorporated by reference into state regulation. Therefore, the language of IDEIA controls and will be implemented July 1, 2005.

Excerpted from CRS Report p. 23. P.L. 108-446 makes certain revisions to expedite changes to the IEP. If the parent and the LEA agree, changes to the IEP after the annual IEP meeting may be made via a written document without holding an IEP meeting (§614(d)(3)(D)). In addition, LEAs are encouraged to consolidate reevaluation meetings with IEP meetings for other purposes if possible (§614(d)(3)(E)). Finally, changes to the IEP may be made by amending it, rather than completely redrafting it (§614(d)(3)(F)). P.L. 108-446 permits alternatives to physical meetings, such as video conferencing and conference telephone calls. These alternatives can take the place of physical IEP meetings and administrative meetings related to procedural safeguards under §615 (such as scheduling and exchange of witness lists) (§614(f)).



IEPs

NEW

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**

16

Impact on PA: STOs/benchmarks currently required for all students. The requirements of IDEIA conflict with the federal regulation incorporated by reference into state regulation. Therefore, the language of IDEIA controls and will be implemented July 1, 2005. The State Board, however, could decide to retain this requirement when it revises its regulations following adoption of federal regulations.

Some Gaskin-related changes must be made to the IEP format and annotated IEP. Anticipate PDE written guidance on LRE portion of the IEP.

Excerpted from CRS Report p.22. A notable change is the elimination of the requirement for “benchmarks and short-term objectives” for all children with disabilities except those who are the most severely cognitively disabled.



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

17

Impact on PA: Currently, course of study duties are owed child who is 14 years old. The requirements of IDEIA conflict with the federal regulation incorporated by reference into state regulations. Therefore, the language of IDEIA controls and will be implemented July 1, 2005.

Excerpted from CRS Report p. 22. Prior law required that the IEP contain a statement of “transition service needs” beginning at age 14 and annually updated to ease and support the transition from the IDEA program in public school to education, employment, and (when necessary) independent living after public schooling ended. P.L. 108-446 changes the timing of this requirement to “not later than the first IEP to be in effect when the child is 16 and continues the requirement for annual updates (§614(d)(1)(A)(i)(VIII)). P.L. 108-446 adds a transition-services requirement for postsecondary goals for appropriate education, training, employment, and independent living skills (§614(d)(1)(A)(i)(VIII)(aa)).

Although courses of study are no longer required at age 14, they are required no later than age 16.



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

18

Impact on PA: Currently under Chapter 14, a child with an IEP who transfers from out of state may be placed in a regular education classroom. The requirements of IDEIA regarding transfers from out of state conflict with 14.131(a)(4). Therefore, the language of IDEIA controls and will be implemented July 1, 2005.

The more specific state regulations regarding records continue in effect. As per Chapter 11 records must be sent within 10 business days of request. Charter schools must send records within 10 school days and must receive records from sending school within 10 calendar days.

Excerpted from CRS Report p.23. P.L. 108-446 continues to require that each LEA have an IEP for each child with a disability in place at the beginning of the school year (§614(d)(2)(A)). The Act adds requirements for children who transfer from one school district to another during the school year (§614(d)(2)(C)). For those children changing districts **within** a state, the new LEA must provide “services comparable to those described in the previous IEP” until it adopts the previous IEP or develops and implements a new IEP. For children transferring **between** states, the new LEA must also continue comparable services until it conducts an evaluation of the child (if the LEA determines it to be necessary) and “develops a new IEP, if appropriate, that is consistent with Federal and State law.” (§614(d)(2)(C)(i)). Both the old and new schools are required to “take reasonable steps” to ensure that the child’s IEP, supporting documentation, and other records are promptly transferred (§614(d)(2)(C)(ii)).



Multi-Year IEP Demonstration



NEW

- 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

19

Impact on PA: Statute provides no information about the RFP. It will not be available until after federal regulations are issued, therefore, the RFP may be available January 2006.

Excerpted from CRS Report p.24. The U.S. Secretary of Education is authorized to approve demonstration proposals from up to 15 states. These demonstrations would allow parents and LEAs to adopt IEPs covering up to 3 years that coincide with the child's "natural transition points." The multi-year IEPs must be optional for parents and based on their informed consent. They must contain measurable annual goals linked to natural transition points. The IEP team must review the IEP at each transition point and annually to determine if progress is being made toward annual goals. More frequent reviews are requested if sufficient progress is not being made. Beginning in 2006 and annually thereafter, the Secretary must report on the effectiveness of the demonstration programs. The transition points are defined to include: the transition "from preschool to elementary grades, from elementary grades to secondary school grades, and from secondary school grades to post secondary activities, but in no case a period longer than 3 years." §614 (d)(5)(C).

Required elements of the multi-year IEP include: measurable goals coinciding with natural transition points that will enable child to be involved in and make progress in the general education curriculum and that will meet the child's other needs that result from the disability; and measurable annual goals for determining progress toward meeting those goals. Process for review/revision includes: a review of the IEP by the IEP team at natural transition points; in other years, an annual review of IEP to determine child's current levels of progress and requirement to amend the IEP as necessary; a more thorough review of IEP within 30 calendar days if child not making expected progress; and at request of parent, a review of multi-year IEP rather than or subsequent to an annual review.



Individual Education Programs (IEPs)

- Issues

- Recommendations

20

Each section has a summary slide like this one.

Give participants 1-3 minutes to think about the things they heard during this section and jot down any issues and/or recommendations that they have on this slide. They will be referring to their handout and these summary slides when it is time to give feedback in the breakout sessions. These summary slides will serve to jog their memories about thoughts they had during the presentation.



Procedural Safeguards/ Discipline

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

22

Impact on PA: Currently in PA a surrogate may not be an employee of the SEA, the LEA or other agency involved in the education/care of the child. The requirements of IDEIA conflict with the federal regulation incorporated by reference into state regulations. Therefore, the language of IDEIA controls and will be implemented July 1, 2005.

Excerpted from CRS Report p.24. The requirement, found in §615(a), that state educational agencies establish and maintain procedures to ensure procedural safeguards regarding a free appropriate public education (FAPE) is the same as previous law. Many of the types of procedures are also the same but several changes have been made; notably, more detailed procedures have been added regarding the appointment of an individual to act as a surrogate for parents in situations where the child is a ward of the state or is an unaccompanied homeless youth. The state is required to make reasonable efforts to ensure the assignment of a surrogate not more than thirty days after there is a determination by the agency that the child needs a surrogate (§615(b)).

Procedural Safeguards Notice (PSN)

NEW

- 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

23

Impact on PA: Currently in PA, in addition to above, PSN must be provided prior to IEP meeting, upon reevaluation, and upon each filing for due process hearing.

The requirements of IDEIA conflict with the federal regulation incorporated by reference into state regulations. Therefore, the language of IDEIA controls and will be implemented July 1, 2005. In addition, the schools must still satisfy 22 Pa. Code Section 14.162(a) requiring that notice must be provided by certified mail when a student is a student with mental retardation or thought to be a student with mental retardation.

The law allows LEA to place PSN on website. USDE's clarification regarding the application of website notices to fulfill responsibilities is expected.

Excerpted from CRS Report p.25. The procedural safeguards notice requirements are amended to reduce the paperwork burden on schools. The new law requires that a copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only one time a year, except that a copy shall also be given upon initial referral or parental request for evaluation, upon the first occurrence of the filing of a complaint, and upon the request of a parent (§615(d)(1)).

In addition, under (k)(1)(H), not later than date of decision to change the placement of a student for disciplinary reasons, the LEA must notify the parents of that decision and of all procedural safeguards.

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)

24

Impact on PA. In PA, there are no time limitations for filing civil actions. The new provisions will be implemented July 1, 2005. ODR will have to develop a new form to track timeline.

Excerpted from CRS Report p.25. The description of the contents of the procedural safeguards notice generally tracks previous law except that there are additions relating to the opportunity to resolve complaints, including the time period in which to make a complaint, the opportunity for the agency to resolve the complaint, the availability of mediation, and the time period in which to file civil actions (§615(d)(2)).



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

25

Impact on PA: These provisions will be implemented July 1, 2005.

Excerpted from CRS Report pp. 24-25. The types of procedural safeguards required by §615(b) include an opportunity for any party to present a complaint but provides that such complaint may only be presented concerning violations that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action. There are several exceptions to this statute of limitations. First, if state law has an explicit time limitation for presenting a complaint, that provision shall control. In addition, the time requirement does not apply to a parent if the parent was prevented from presenting the complaint due to specific misrepresentations by the LEA that it had resolved the problem or the local educational agency withheld information from the parent that was required to be provided under Part B (§615(b)(6)). Another new provision requires that a party may not have a due process hearing until the notice is filed. Generally, the due process complaint notice shall be deemed sufficient unless the party receiving the notice notifies in writing both the hearing officer and the other party that the receiving party believes the notice does not meet the requirements of §615(b)(7). This notice must be provided within fifteen days of receiving the complaint (§615(c)(2)(C)), and within five days of the receipt of this notification, the hearing officer shall make a determination of whether the notice meets the requirements of §615(b)(7) and immediately notify the parties in writing.

Specific complaint procedures have been delineated as a way to resolve issues early, and to allow parents and LEAs to get back to the business of educating children.



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

26

Impact on PA. These provisions will be implemented July 1, 2005. Chapter 14 at 14.161, *Prehearing conference*, will have to be amended so that it is consistent with IDEIA. LEA must meet new requirements, but cannot allow such an obstacle to a parentally-requested due process hearing.

Excerpted from CRS Report p. 26. The cornerstone of the procedural safeguards under IDEA is the impartial due process hearing which is available after a complaint has been filed. The new law adds several provisions to the requirement. For example, the opportunity for a due process hearing is extended not only to the parents of a child with a disability but also to the LEA (§615(f)(1)(A)). A new provision for a “resolution session” is added as a requirement prior to a due process hearing. This preliminary meeting involves the parents, the relevant members of the IEP team, and a representative of the local educational agency who has decision-making authority. The session must be convened within 15 days of receiving notice of the parent’s complaint. During the resolution session, the parents of the child with a disability discuss their complaint and the LEA is provided the opportunity to resolve the complaint. The LEA may not include its attorney unless the parent is accompanied by an attorney. The resolution session may be waived by the LEA and the parents in writing or if they agree to use the mediation process.

The 2004 reauthorization adds a new provision essentially prohibiting attorneys’ fees for the resolution session.

Presumably, Chapter 711 will continue to adopt by reference, which would include new Federal regulations pertinent to this rule. Chapter 14 will need to be amended to reflect the requirement. In particular, §14.161, *Prehearing conference*, may need to be amended to compliment and not conflict with the new IDEIA.

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

27

Impact on PA. Currently in PA there is no statutory time limit for filing a due process complaint. These new provisions will be implemented July 1, 2005.

Excerpted from CRS Report p.27. The 2004 reauthorization includes statutes of limitations in various sections. As previously discussed, Section 615(b) provides for a two-year statute of limitations regarding the filing of a complaint. There is also a two-year statute of limitations regarding requests for a hearing. The two years is from the date the parent or agency knew or should have known about the alleged action. In addition, if the state has an explicit time limitation for requesting a hearing, the state law on the subject shall prevail (§615(f)(3)(C)). However, the statute of limitations provisions in §615(f)(3)(C) shall not apply to a parent if the parent was prevented from requesting a hearing because of specific misrepresentations by the LEA that it had resolved the problem, or the LEA's withholding of information that was required to be provided to the parent (§615(f)(3)(D)).

In PA, there is currently no explicit State time limitation. Provision. Presumably, Chapter 711 will continue to adopt by reference, which would include new Federal regulations pertinent to this rule. Chapter 14 will need to be amended to reflect this requirement.



Award of Attorneys' Fees



NEW

The court may award reasonable attorneys' fees

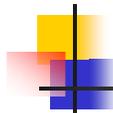
- Against the attorney of a parent who
 - Files a complaint that is frivolous, unreasonable, or without foundation
 - Continued to litigate after the litigation clearly become frivolous, unreasonable, or without foundation
- Against the attorney of a parent or against the parent if parent's complaint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

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Impact on PA: These new provisions will be implemented July 1, 2005.

Excepted from CRS Report. As under previous law, a court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is the parent of a child with a disability (§615(i)(3)(B)). However, the 2004 reauthorization also allows for attorneys' fees against the attorney of a parent for a SEA or LEA who is a prevailing party where the complaint is frivolous, unreasonable, or without foundation or where the parents' attorney continues to litigate after the litigation clearly becomes frivolous, unreasonable, or without foundation (§615(i)(3)(B)(i)(II)). In addition, attorneys' fees may be awarded to a prevailing SEA or LEA against the attorney of a parent or against the parent if the parent's complaint or subsequent cause of action is presented for an improper purpose such as to harass, cause unnecessary delay or needlessly increase the cost of litigation (§615(i)(3)(B)(i)(III)).

The previous requirements for attorneys' fees to be based on rates prevailing in the community and the prohibition of the use of bonuses or multipliers are kept in the new law as is the prohibition of attorneys' fees and related costs if a written offer of settlement is made and certain conditions apply (§615(i)(3)(C) and (D)). The new law also retains the exception to the provision regarding settlement contained in the previous law allowing attorneys' fees and related costs to a parent who is a prevailing party and who was substantially justified in rejecting the settlement offer (§615(i)(3)(E)). Previous law provided for a reduction in the amount of attorneys' fees when the court finds that the parent unreasonably protracted the final resolution of the controversy, the amount unreasonably exceeds the hourly rate prevailing in the community, the time spent was excessive or the attorney did not provide the appropriate information in the notice of the complaint. The new law keeps these provisions and also allows a court to reduce attorneys' fees if the parents' attorney unreasonably protracts the final resolution of the controversy (§615(i)(3)(F)).



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

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Impact on PA: The requirements of IDEIA conflict with the federal regulation incorporated by reference into state regulations. Therefore, the language of IDEIA controls and will be implemented July 1, 2005. PA's rule of a change of placement occurring for consecutive removals of more than 10 school days, or cumulative removals of more than 15 school days, or any removal for a student with mental retardation still applies.

Excerpted from CRS Report pp.29-32. As in previous law, school personnel may remove a student with a disability to an interim alternative education setting regardless of whether the behavior is a manifestation of the disability in certain circumstances and for a limited amount of time. Under previous law, the time limitation was not more than 45 days; under the new law the time limitation is for not more than 45 **school** days. Both the old and new laws permitted this placement in an interim alternative educational setting if a child carries or possesses a weapon to or at school or at a school function, or if a child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or on school premises or at a school function.



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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The 2004 reauthorization adds another situation to the school personnel's authority: where a child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function (§615(k)(1)(G)). Both previous and new law provide that the determination of the interim alternative educational setting shall be determined by the IEP team. However, in the 1997 law, this applied only to situations involving weapons or drugs. The 2004 reauthorization includes situations where the child's behavior is determined not to be a manifestation of the child's disability and school personnel seek to change the child's placement, and situations involving the infliction of serious bodily injury (§615(k)(2)).

The term "serious bodily injury" means bodily injury which involves (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty (§615(k)(7)).



Procedural Safeguards/ Discipline

- Issues

- Recommendations

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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")

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Impact on PA: PA intermediate units, as the state's LEAs, will receive a 2-3% increase in funding in 2005-06. IUs will continue to work with their component districts and public charter schools to flow through their respective share of IDEIA funds, based on school district child count. For 2005-06 funding, the December 2004 child count will be used, if that child count dropped, the pass-through funding allocation could be less than the estimated amount.



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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“Early intervening” is separate and distinct from early intervention, which deals with preschool children with disabilities.

Impact on PA: This provision will be implemented July 1, 2005. Federal regulatory language may have an effect. The 15% available for early intervening references 15% of the IDEIA funds a school district receives, this 15% is **not new or additional funds**.

Excerpted from CRS Report : P.L. 108-446 permits LEAs to use up to 15% of their IDEIA Part B funding for early intervening services for children who have not been identified as children with disabilities “but who need additional academic and behavioral support to succeed in a general education environment” (§613(f)).

Permits use of funds by LEA subgrantee, up to 15% of the amount received, to provide services for non-identified, but who need additional academic and behavior support to succeed in general education. The emphasis for use of the funds is on children in grades kindergarten through 3rd grade, however, the LEA is permitted to use the funds to provide educational and behavioral evaluations, services and supports to students from kindergarten through 12th grade.

The 15% amount is reduced by the amount the LEA is permitted to treat as local funds for MAINTENANCE OF EFFORT (MOE). (These funds must be used for activities authorized under ESEA.)



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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Impact on PA: These provisions will take effect July 1, 2005.

FEDERAL AND STATE MONITORING imposes on the US Department of Education Secretary the duty to perform FOCUS MONITORING [(a)(2)], oversight of State's PERFORMANCE PLANS required under this section, to enforce corrective action.

The USDE Secretary must require States to monitor LEAs and require States to enforce PART B.

The USDE must establish MONITORING PRIORITIES [(a)(3)] as prescribed, but may add other areas.



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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Impact on PA: Currently, PA follows the equitable participation provisions under 612(a)(10) and 300.450-462. Hopefully, federal regulations will provide clarification on a process for meeting the new requirements. These new provisions will be implemented July 1, 2005.

Excerpted from CRS pp. 12-14. The general requirement regarding child find is essentially the same as previous law. The requirement for finding children with disabilities is the same as that delineated in §612(a)(3) for children who are not parentally placed in private schools, including religious schools.

As was done in the previous section, the former use of the term “parochial” is replaced by the term “religious” in the new law. New provisions are added concerning equitable participation, activities, cost and the completion period. Child find is to be designed to ensure the equitable participation of parentally placed private school children with disabilities and their accurate count. The cost of child find activities may not be considered in meeting the LEA’s proportional spending obligation. Finally, the child find for parentally placed private school children with disabilities is to be completed in a time period comparable to that for students attending public schools (§612(a)(10)(A)(ii)).

P.L. 108-446 adds requirements that the LEA consult with private school officials and representatives of the parents of parentally placed private school children with disabilities. This consultation is to include: The child find process and how parentally placed private school children with disabilities can participate equitably; The determination of the proportionate amount of federal funds available to serve parentally placed private school children with disabilities, including how that amount was calculated; The consultation process among the LEA, private school officials and representatives of parents of parentally placed private school children with disabilities, including how the process will operate; How, where, and by whom special education and related services will be provided for parentally placed private school children with disabilities, including a discussion of the types of services, including direct services and alternate service delivery mechanisms, how the services will be apportioned if there are insufficient funds to serve all children and how and when these decisions will be made; and How the LEA shall provide a written explanation to private school officials of the reasons why the LEA chose not to provide services if the LEA and private school officials disagree (§612(a)(10)(A)(iii)).

Consultation may include meetings with private school(s), surveys, meetings with parent associations, and use of other existing mechanisms.



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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Impact on PA: Currently, PA follows the equitable participation provisions under IDEA '97. These new provisions will be implemented July 1, 2005.

Excerpted from CRS pp. 12-14. There are additional requirements in the new law including a written affirmation of the consultation signed by the representatives of the participating private schools. If the private school representatives do not sign within a reasonable period of time, the LEA must forward the documentation to the SEA.



Definitions



<ul style="list-style-type: none"> ■ Added <ul style="list-style-type: none"> ■ Core Academic Subject ■ Highly Qualified ■ Homeless Children ■ Limited English Proficient ■ Universal Design ■ Ward of the State 	<ul style="list-style-type: none"> ■ Modified <ul style="list-style-type: none"> ■ 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)
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Additions/modifications to definitions provide clarification and alignment with No Child Left Behind (NCLB).

Excerpted from CRS Report: Definitions added:

“Core academic subjects” (§602(4)), which cross-references the definition in the ESEA

“Highly qualified” aligned with NCLB; currently before the State Board of Education

“Homeless children” (§602(11)), which cross-references the McKinney-Vento Homeless Assistance Act

“Limited English proficient” (§602(18)), also an ESEA cross-reference

“Universal design” (§602(35)), which cross-references the Assistive Technology Act of 1998-- a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies.” 29 U.S.C §3002(17). P.L. 108-446 requires that state and districtwide tests adhere to “universal design principles” to the extent feasible.

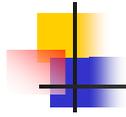
“Ward of the state” (§602(36)), which includes a foster child (unless the child has a foster parent, who would meet the definition of “parent”), a ward of the state, or a “child in the custody of a public child welfare agency.”

Modified definitions:

Adding an exception to the definition of “assistive technology device” (§602(1)) to exclude surgically implanted medical devices (e.g., cochlear implants)

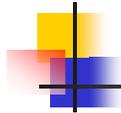
Expanding the definition of “parent” (§602(23)) to include, in addition to the natural parent, an adoptive or foster parent, a guardian, an individual with whom the child lives (such as a grandparent), or an individual legally responsible for the child.

Adding specific services to the definition of “related services” (§602(26)), including interpreting services and certain school nursing services and excluding surgically implanted medical devices. (e.g., cochlear implants).



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)



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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OSEP required to develop model forms by the adoption of final regulations, anticipated by December, 2005. The forms are the IEP, Individualized Family Service Plan (IFSP), Notice of Procedural Safeguards, and Prior Written Notice (In PA, we call this the Notice of Recommended Educational Placement).



Additional Changes

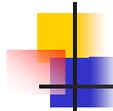
- Issues

- 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
 - 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>