



## Archived Information

IDEA '97

FINAL REGULATIONS

# MAJOR ISSUES

The final regulations accompanying the Individuals with Disabilities Education Act (IDEA) amendments of 1997 appear in the March 12<sup>th</sup> *Federal Register*. Here are some of the major issues addressed in this package of regulations:

### 1) IEPs & GENERAL CURRICULUM:

Prior to 1997, the law did not specifically address general curriculum involvement of disabled students. The 1997 Amendments shifted the focus of the IDEA to one of improving teaching and learning, with a specific focus on the Individualized Education Program (IEP) as the primary tool for enhancing the child's involvement and progress in the general curriculum.

**The final regulations reflect the new statutory language which requires that the Individualized Education Program for each child with a disability include:**

- A statement of the child's present levels of educational performance including how the child's disability affects the child's involvement and progress in the general curriculum;
- A statement of measurable annual goals related to meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum;
- A statement of the special education and related services and supplementary aids and services; and
- A statement of the program modifications or supports for school personnel that will be provided for the child to advance appropriately toward attaining the annual goals, be involved and progress in the general curriculum, and participate in extra curricular and other nonacademic activities and to be educated and participate with other children with disabilities and nondisabled children.

## **2) GENERAL STATE AND DISTRICT-WIDE ASSESSMENTS**

The 1997 amendments specifically require that, as a condition of State eligibility for funding under Part B of IDEA, children with disabilities are included in general State and district-wide assessment programs. The amendments also address timelines and reporting requirements.

**The final regulations essentially incorporate these statutory provisions on general State and district-wide assessments verbatim. These provisions require that States and LEAs must:**

- Provide for the participation of children with disabilities in general State and district-wide assessments – with appropriate accommodations and modifications in administration, if necessary;
- Provide for the conduct of alternate assessments not later than July 1, 2000 for children who cannot participate in the general assessment programs; and
- Make available, and report, to the public on the assessment results of disabled children, with the same frequency and in the same detail as reported on the assessment results of non-disabled children.

## **3) REGULAR EDUCATION TEACHER INVOLVEMENT**

Prior to 1997, the law did not include a regular education teacher as a required member of the Individualized Education Program team. Under the 1997 IDEA amendments, the IEP team for each child with a disability now must include at least one of the child's regular education teachers, if the child is, or may be, participating in the regular education environment. The new law also indicates that the regular education teacher, to the extent appropriate, participates in the development, review and revision of the IEP of the child.

**The final regulations package clarifies that:**

- If a child has more than one regular education teacher, the LEA may designate which teacher (or teachers) will be on the IEP team;
- Depending upon the child's needs and the purpose of the specific IEP team meeting, the regular education teacher need not be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or attend every meeting;
- The extent to which it would be appropriate for the regular education teacher member of the IEP Team to participate in IEP meetings must be decided on a case-by-case basis; and,
- Each of the child's teachers, including the regular education teacher(s) and provider(s) must be informed of his or her responsibilities related to implementing the child's IEP and the specific accommodations, modifications, and supports that must be provided for the child.

#### 4) GRADUATION WITH A REGULAR DIPLOMA

Neither the old or revised IDEA speaks directly to the issue of students with disabilities graduating with a regular high school diploma. However, the 1997 Amendments placed greater emphasis on involvement of disabled students in the general curriculum and in State and district-wide assessment programs.

**The final regulations incorporate the Department's long-standing policy position clarifying that:**

- Graduation from high school with a regular diploma is considered a change in placement requiring written prior notice;
- A student's right to FAPE **is terminated** upon graduation with a regular high school diploma (The statutory requirement for reevaluation before a change in a student's eligibility **does not** apply.); and,
- A student's right to FAPE **is not terminated** by any other kind of graduation certificate or diploma.

#### 5) DISCIPLINE

Prior to 1997, the statute only specifically addressed the issue of discipline in a provision that allowed personnel to remove a child to an interim alternative educational placement for up to 45 days if the child brought a gun to school or to a school function. The IDEA '97 incorporated prior court decisions and Department policy that allows schools to remove a child for up to ten school days at a time for any violation of school rules as long as there is not a pattern, and children with disabilities can not be long-term suspended or expelled from school for behavior that is a manifestation of his or her disability and services must continue for children with disabilities who are suspended or expelled from school. The IDEA '97 also expanded the authority of school personnel to remove to an interim alternative educational placement for up to 45 days to apply to all dangerous weapons and to knowing possession of illegal drugs and sale or solicitation of the sale of controlled substances and added a new ability of schools to request a hearing officer to remove a child for up to 45 days if keeping the child in his or her current placement is substantially likely to result in injury to the child or others. The amendments added provisions requiring schools to assess children's troubling behavior and develop positive behavioral interventions to address that behavior, and defining how to determine whether behavior is a manifestation of a child's disability.

**The final regulations incorporate these statutory provisions and provide additional specificity on a number of key issues:**

- **Services During Periods of Disciplinary Removal:**  
Schools do not need to provide services during the first ten school days in a school year that a child is removed.
  - During any subsequent removal that is for ten school days or less, schools provide services to the extent determined necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of his or her IEP. In cases involving removals for ten school days or less, school personnel, in consultation with the child's special education teacher, make the service determination.
  - During any long-term removal for behavior that is not a manifestation of disability, schools provide services to the extent determined necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of his or her IEP. In

cases involving removals for behavior that is not a manifestation of the child's disability, the child's IEP team makes the service determination.

- **Conducting Behavioral Assessments & Developing Behavioral Interventions:**  
Meetings of the IEP team to develop behavioral assessment plans or if the child has one, review the behavioral intervention plan, are only required when the child has first been removed from his or her current placement for more than ten school days in a school year and when commencing a removal that constitutes a change in placement. If other subsequent removals occur, the IEP team members review the child's behavioral intervention plan and its implementation to determine if modifications are necessary, and only meet if one or more team members believe that modifications are necessary.
- **Manifestation Determinations:**  
Manifestation determinations are only required if a school is implementing a removal that constitutes a change of placement.
- **Change of Placement:**  
The final regulations clarify that a change of placement occurs if a child is removed for more than ten consecutive school days or is subjected to a series of removals that constitute a pattern because they cumulate to more than ten school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.
- **Removals of Up to Ten School Days at a Time:**  
The final regulations clarify that school personnel may remove a child with a disability for up to ten school days and for additional removals of up to ten school days for separate acts of misconduct as long as the removals do not constitute a pattern.

## 6) ATTENTION DEFICIT DISORDER & ATTENTION DEFICIT HYPERACTIVITY DISORDER

Neither the old nor revised IDEA included Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder as a separate disability category.

**Relying on the Department's long-standing policy, the final regulations clarify that:**

- ADD and ADHD have been listed as conditions that **could** render a child eligible under the "other health impaired"(OHI) category of Part B of IDEA; and,
- The term "limited strength, vitality, or alertness" in the definition of "OHI", when applied to children with ADD and ADHD, includes a child's heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.

## 7) DEVELOPMENTAL DELAY

Prior to the 1997 IDEA amendments, States could define and require Local Education Agencies to use the developmental delay category for children ages 3 through 5. The 1997 IDEA amendments allowed States to define developmental delay for children ages 3 through 9 and authorized LEAs to choose to use the category and, if they do, they are required to use the State's definition.

### The final regulations clarify that:

- A State that adopts the term **developmental delay** determines whether it applies to children ages 3 through 9, or to a subset of that age range (e.g., ages 3 through 5);
- If an LEA uses the term **developmental delay**, the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State;
- If the State does not adopt the term **developmental delay**, an LEA may not independently use that term as a basis for establishing a child's eligibility under Part B of IDEA; and,
- Any State or LEA that elects to use the term **developmental delay** for children aged 3 through 9 may also use one or more of the disability categories for any child within that age range if it is determined, through the evaluation under Part B of IDEA, that the child has an impairment under Part B of IDEA, and because of that impairment needs special education and related services.

## 8) DEFINITION OF DAY & SCHOOL DAY

Prior to 1997, the law included only the term "day" that was interpreted by the Department to mean "calendar day." Now, law uses the terms "day," "business day," and "school day."

### The final regulations clarify that:

- **Day** means calendar day, unless otherwise indicated as business day or school day;
- **Business day** means Monday through Friday, except for Federal and State holidays, unless holidays are specifically included in the designation of business day;
- **School day** means any day (including a partial day) that children are in attendance at school for instructional purposes; and,
- The term "school day" has the same meaning for all children with and without disabilities.

## 9) CHARTER SCHOOLS

The IDEA Amendments of 1997 contain two specific provisions on public charter schools, including requiring that: (1) in situations in which charter schools are public schools of the LEA, the LEA must serve children with disabilities in those schools in the same manner that it serves children with disabilities in its other schools, and provide Part B funds to those schools in the same manner as it provides Part B funds to

its other schools; and (2) An SEA may not require a charter school that is an LEA to jointly establish its eligibility with another LEA unless it is explicitly permitted to do so under the State’s charter school statute.

**The final regulations clarify that:**

- Part B final regulations apply to all public agencies, including public charter schools that are not included as LEAs or education service agencies (ESAs), and are not a school of an LEA or ESA;
- The term LEA includes public charter schools that are established as an LEA under State law;
- The term “public agency” includes among the list of examples of a public agency, public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA;
- Children with disabilities who attend public charter schools and their parents retain all rights under Part B of IDEA; and,
- Compliance with Part B of IDEA is required regardless of whether a public charter school receives Part B funds.

## **10) PARENTALLY-PLACED CHILDREN WITH DISABILITIES IN PRIVATE SCHOOLS**

Prior to 1997, the law did not extensively address the education of children with disabilities placed in private schools by their parents. These children were served based on the limited provisions of the statutes and on the Education Department’s General Administrative Regulations (EDGAR) and the Department’s long-standing policy interpretation.

The 1997 amendments included some of the old language and incorporated the Department’s long-standing policy interpretation.

**Specifically, the final regulations clarify that:**

- The term “service plan” has been adopted for use in lieu of “IEP” for parentally-placed children in private schools;
- Part B services must be provided in accordance with a “service plan” that, to the extent appropriate, meets specified IEP requirements;
- Child find activities for private school children with disabilities must be comparable to that in the public schools;
- Public agencies must consult with representatives of parentally-placed private school children with disabilities on how to conduct child find activities for those children in a manner that is comparable to that for public school children;
- Each LEA must consult with representatives of private school children with disabilities to decide how to conduct the annual count of the number of those children;

- The costs of child find activities for private school children with disabilities may not be considered in determining whether the LEA met the minimum expenditure requirements; and,
- The due process procedures under Part B apply to child find activities for private school children with disabilities, including evaluations, but **do not** apply to the other provisions regarding children with disabilities enrolled by their parents in private schools.

For further information about the IDEA '97 statute and implementing regulations, contact the Department of Education at 202-205-5465 or 202-205-5507, or visit the Department's website at

**<http://www.ed.gov/offices/OSERS/IDEA>**