



Special education basics for school board members

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The Individuals with Disabilities Education Act (IDEA) (www.law.cornell.edu/uscode/text/20/chapter-33) is a federal law that requires school districts to provide special education and related services to children with disabilities. In addition to IDEA, state and federal statutes and regulations governing the education of children with disabilities are established in Title 34 of the Code of Federal Regulations (CFR), Chapter 3323 of the Ohio Revised Code (RC) and Chapter 3301-51 of the Ohio Administrative Code (OAC). This fact sheet is intended to provide board members with an introduction to the services required for students with disabilities. This information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.

IDEA and Ohio law

What is special education?

Special education is specially designed instruction, provided at no cost to parents, to meet the unique needs of a child with a disability (20 (United States Code (USC) 1401(29); 34 CFR 300.39).

What is the primary purpose of IDEA?

The primary purpose of IDEA is to require state education agencies and school districts to:

- make a free appropriate public education (FAPE) available for all eligible children with disabilities;
- ensure that IDEA's rights and protections are extended to eligible children and their parents (20 USC 1400 et seq.).

Why was IDEA enacted?

Congress stated its reason for enacting IDEA in the bill: "Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities" (20 USC 1400(c)(1)).

Who qualifies as a child with a disability?

A child with a disability is any person from the age of 3 through 21 who needs special education and related services because he or she has any of these disabilities:

- intellectual disability;
- speech or language impairment;
- serious emotional disturbance;
- orthopedic impairment;
- traumatic brain injury;
- other health impairment;
- autism;
- specific learning disability;
- hearing impairment, including deafness;
- visual impairments, including blindness;
- deaf-blindness;
- multiple disabilities.

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Also included is any child from the ages of 3 through 5 who needs special education and related services because the child is experiencing developmental delays in the area of physical development, cognitive development, communication development, social or emotional development, or adaptive development (20 USC 1401(3); RC 3323.01(A)).

What are the key guarantees in IDEA?

IDEA provides each child with disabilities with:

- a nondiscriminatory evaluation, with the parents' written consent, to determine a student's needs;
- FAPE consistent with an individualized education program (IEP);
- education, whenever possible, in the least restrictive environment, with students who do not have disabilities and at the school that is as close as possible to the student's home;
- related services that assist the student to benefit from the education program;
- procedural due process, and parent and student participation in education.

Evaluations (Child Find)

What is Child Find?

Child Find is a fundamental part of IDEA. Each state must ensure that all children with disabilities residing in the state who need special education are identified, located and evaluated (34 CFR 300.111). Failure to properly implement Child Find is a failure to provide FAPE.

What kind of evaluation is required?

The evaluation must determine whether the student is a child with a disability and the student's educational needs. In most situations, there is no specific kind or format of evaluation required. The district must use a variety of assessment tools and strategies to gather functional, developmental and academic information about the child. The district must consider any information provided by the student's parent and must review existing evaluation data available for the student (34 CFR 300.304).

Can the district do an initial evaluation without a parent's consent?

No. The district is required to obtain informed parental consent before conducting an initial evaluation (34 CFR 300.300).

Is there a time frame within which the initial evaluation must be done?

Yes. The district must conduct an evaluation within 60 days of receiving parental consent (34 CFR 300.301).

How comprehensive must the evaluation be?

Each evaluation must be "sufficiently comprehensive to identify all of the child's special education and related services needs," even if the needs are not commonly linked to the disability category in which the child has been classified (30 CFR 300.304(c)).

Is the district ever required to reevaluate a student? What are the requirements?

Yes. Generally, the reevaluation must meet the requirements of the initial evaluation. The district is required to reevaluate every student with a disability:

- at least once every three years, unless the parent and district officials agree that a reevaluation is not necessary;
- if the district determines that the student's needs warrant reevaluation, but not more than once each year unless the parent and district officials agree that more frequent evaluations are required;
- if the student's parent or teacher requests an evaluation; again, not more than once each year unless the parent and district officials agree that more frequent evaluations are required;
- when a student, having met the eligibility criteria for a developmental delay, transitions from preschool to school-age services;
- to make a change in a disability category (30 CFR 300.303).

FAPE

What is FAPE?

FAPE – a free appropriate public education – must be provided to all children with disabilities from ages 3 to 21. This includes special education and related services provided at public expense under public supervision and direction, without cost to the family. FAPE must meet State Board of Education standards and conform with requirements in federal law. FAPE includes preschool, elementary school and secondary school. FAPE must be provided to each student in conformity with an IEP (30 CFR 300.17).

The U.S. Supreme Court has said that a district must offer "an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" (*Endrew F. v. Douglas Cnty. School Dist. RE-1*, 137 S.Ct. 988 (2017)). More information about IEPs is available in OSBA's "Five Fast Facts on IEPs" at www.ohioschoolboards.org/osba-fact-sheets-and-brochures.

What happens if a district is unable to provide FAPE?

If a school district determines that it cannot provide FAPE to a child, an IEP team can refer the student to a separate public or private facility in order for the student to receive FAPE. In cases when the student is referred to a separate facility, the school district of residence is still responsible for ensuring that IDEA requirements are met and FAPE is received at the separate facility (RC 3323.02 and OAC 3301-51-01(A)(2)(a)).

In very rare situations, if a school district cannot a school district fails to provide FAPE to a child, parents may withdraw the child and make a unilateral “private placement” of the child in another setting that can meet the child’s educational needs. In these cases, the school district may be required to reimburse the parents for costs incurred from the private placement, regardless of whether the child received special education services from the district (*Forest Grove School Dist. v. T.A.*, 557 U.S. 230 (2009)).

Education in the least restrictive environment
What does “least restrictive environment” (LRE) mean?

IDEA provides that each state must have policies and procedures to ensure that children with disabilities are educated with typical children to the maximum extent appropriate. Children with disabilities should be removed from the regular educational environment only when education in regular classes cannot be achieved satisfactorily (20 USC 1412(a)(5)(A)).

How does a district achieve the appropriate environment for a student?

LRE must be determined for each student. Using a combination of supports both inside and outside the classroom, a district can provide education in the general education classroom, resource rooms, special classes, special schools, students’ homes, and hospitals and institutions. For many students, the district’s approach may involve a combination of these environments. For example, a student may spend 80% of his or her school time in a general education classroom and the other 20% in a resource room or receiving individual or small group instruction with an intervention specialist.

What about sports and extracurricular activities?

Students with disabilities have the right, under Section 504 of the Rehabilitation Act, to an equal opportunity to participate in their school’s extracurricular activities. Schools must ensure that students with disabilities are given an equal opportunity to participate alongside peers (“Dear Colleague Letter on Students with Disabilities in Extracurricular Athletics,” U.S. Department of

Education, Jan. 25, 2013).

Related services

What “related services” are districts obliged to provide?

If needed to provide an appropriate education to a child with a disability, a school can provide related services to the student. “Related services” can include such services as transportation; developmental, corrective and other supportive services; occupational therapy; physical therapy; speech and language services; and audiology, psychological services, recreation services and school nurse services. However, “related services” does not extend to medical devices that are surgically implanted or need replacing (20 USC 1401(26) and RC 3323.01(K)).

Procedural due process

What is prior written notice?

Any time a school district proposes, or refuses to take, specified significant action that affects the special education of a student with disabilities, the district must notify the student’s parents in writing. This is referred to as “prior written notice.” Some of the actions that trigger prior written notice are:

- proposing to change the provision of FAPE to a student;
- refusing to initiate or change, at the parents’ request, the provision of FAPE;
- proposing to change the student’s identification, evaluation or educational placement;
- refusing to initiate or change, at the parents’ request, the student’s identification, evaluation or educational placement.

What must be included in prior written notice?

The district must explain why it plans to take or refuses to take the proposed action. The district must describe the evaluation procedure, assessment, record or report used as a basis for taking or refusing to take the proposed action and any other options the school considered and rejected before its current proposal.

The district must include a notice of procedural safeguards, which explains when parents are entitled to refuse consent for a school district proposal or otherwise exercise their rights under IDEA. In Ohio, the notice of procedural safeguards is called “A Guide to Parent Rights in Special Education” and is available at <http://links.ohioschoolboards.org/11244>.

What if the student or parent doesn't speak English?

The district must provide written communication to a student or parent in a form the general public can understand. The district must provide written communication in the student or parents' native language or in the mode of communication – such as Braille or large print – they normally use, unless it is clearly not feasible to do so.

What can parents do if they think their child is not receiving FAPE?

The parents can take advantage of the procedural safeguards guaranteed in IDEA. First, parents are entitled to pursue dispute resolution and mediation, which is a meeting between the parent, the district and a mediator from the list approved by the Ohio Department of Education (ODE) to resolve the concern. If that doesn't work, the parent can file for a due process hearing before an impartial hearing officer through ODE. If the procedural safeguards in IDEA do not resolve the concern, the parent may be entitled to pursue litigation against the district.

The information contained in this fact sheet is designed to provide authoritative general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.