

Special Education Q&A for Parents Provided by Tia Marsili

The following are a series of questions and answers to help explain key special education terms and requirements encountered in the special education process. This information is intended only as a summary and parents should refer to the Virginia Department of Education's special education regulations for detailed information about the law:

http://www.doe.virginia.gov/special_ed/regulations/state/regs_speced_disability_va.pdf.

What is IDEA?

IDEA is the Individuals with Disabilities Education Act and was most recently amended by Congress in 2004. IDEA 2004 and Virginia's implementing special education regulations require public schools to proactively identify and serve all children with disabilities within their jurisdiction. The purpose of IDEA is "to ensure that all children with disabilities have available to them a free appropriate public education (FAPE) which emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living."

What is special education?

Special education means, "specially designed instruction to meet the unique needs of a child with a disability." It includes instruction conducted in a classroom, home, hospital, institution, or other setting, at no cost to the parent. It also includes instruction in physical education. Special education services and support are delivered through an Individualized Education Program (IEP).

What is an Individualized Education Program or IEP and how does it work?

Every child who meets the eligibility criteria for having a disability and is enrolled in a public school must have an IEP which outlines the special education and related services (for example: speech, occupational, physical therapy, etc) that student needs and will receive. The IEP creates an opportunity for parents, teachers, school administrators, related services personnel, and students (whenever appropriate) to work together to improve educational outcomes.

An IEP represents a legally binding document that spells out exactly what special education services your child will receive and why. It includes, but is not limited to:

- the child's disability classification
- placement (where services will be provided (setting) and the particular school selected)

- academic, behavioral and social goals
- related services
- a behavior plan (if needed)
- number of hours of special education services
- who will provide the services
- how progress will be measured
- parent concerns about the child's education

The IEP is developed at an IEP meeting in which parents, teachers, other school staff and often the student formally come together to look closely at the student's individual and unique needs. The members of the team pool their knowledge, experience and expertise to design an educational program that will help the student be involved and progress in the general curriculum. The IEP guides the delivery of special education supports and services for a student with a disability.

The individualized part of IEP means that the plan has to be tailored specifically to the child's unique needs - not to the needs of the teacher, or the school, or the district. Goals, modifications, accommodations, services, supports and placement, all must be selected and implemented with the particular child in mind. "We don't do that" or "we don't have money for that" are not individualized responses and, if a particular service or support is appropriate to the child's needs, then the IEP should provide it. However, all decisions are reached by consensus and the team must come to agreement in order for any particular service or support to be included.

What does the child's "eligibility category" mean?

In Virginia, a child is eligible for special education and related services if he or she has been evaluated and determined to have:

- autism
- deafness
- deaf-blindness
- developmental delay (DD)
- emotional disability (ED)
- hearing impairment, including deafness
- intellectual disability (ID)
- multiple disabilities
- orthopedic impairment

- other health impairment (OHI) - this includes ADHD, ADD
- specific learning disability (LD)
- speech or language impairment
- traumatic brain injury (TBI)
- visual impairment, including blindness

To be found eligible as a student with one of these disabilities, the child must meet the specific criteria for these disability categories under the Virginia Department of Education (VDOE) special education regulations. In addition, the child's disability must affect his or her educational performance. In other words, the disability must cause the child to need special education and related services. No matter the disability category, services are to be provided based on child's need, not based on the particular category or label.

As a parent of a child with a disability, what are my rights?

IDEA and Virginia's special education regulations require that parents be considered equal participants in the development of a child's IEP and that the parents' participation in the IEP process must be meaningful. Before the school can take certain actions, the child's parents must give their written permission, called "informed parental consent." In Virginia, informed parental consent is required before:

- Conducting an initial evaluation or reevaluation, including a functional behavioral assessment, if such assessment is not a review of existing data conducted at an IEP meeting
- An initial eligibility determination OR any change in the categorical identification
- Initial provision of special education and related services (initial IEP)
- Any revision to the child's IEP services, including related services
- Any partial or complete termination of special education and related services, except for graduation with a standard or advance studies diploma
- The provision of a free appropriate public education to children with disabilities who transfer between public agencies in Virginia or transfer to Virginia from another state
- Accessing a child's public benefits or insurance or private insurance proceeds

- Inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services

Parental consent may be for the whole IEP or only certain portions (at the parents' discretion). Parents can refuse or withdraw consent at any time. When parents do not agree with an entire IEP and wish to implement only the areas with which they do agree, the parent can give "partial consent". The partial consent should specify in writing the specific IEP provisions to which the parents agree.

How are IEP decisions made? The school wrote the goals and asked me to sign agreement. Do I have to?

All IEP decisions are to be reached by consensus. Consensus is joint agreement by the team on the services, supports or placement outlined in the IEP. Consensus does not involve voting to resolve disagreements. Rather, consensus requires a decision-making process that values the input of each member. If the team is in disagreement, it must continue to work toward consensus. In addition, an IEP cannot be implemented without the parents' consent. The existing IEP continues as written until it is revised and consented to by the parents. You do not have to sign the IEP.

How are the parents involved in the development of their child's IEP?

The parent of a student with a disability is a legally required member of the child's IEP team. In order to develop an appropriate IEP for the child, the parent must provide information and ideas at the meeting. The parent may invite to the IEP meeting any individual who has knowledge or special expertise about the child. During the discussion of the child's needs and development of the IEP, the team must discuss the parents' ideas for enhancing their child's education.

Will my child be in the general education classroom?

Least Restrictive Environment (LRE) means that to the maximum extent appropriate, children with disabilities are educated along-side their non-disabled peers. It also means that special classes, separate schools, or other removal from the general education environment occurs only when the nature or severity of the disability of the child is such that education in a general education setting with the use of supplementary aids and services cannot be achieved satisfactorily. LRE is an IEP team decision and placement of the child is driven by the IEP, i.e. the present levels, goals, short term objectives, related services, support and aids. Service hours in and out of the special education setting must be documented.

Is the IEP a finite document or can I add to it?

The IEP is a fluid document and can be reviewed at any time when requested by the

parent. If an IEP meeting is desired, contact the school in writing and document your request. Follow up with the appropriate school staff to schedule an IEP date to discuss any changes in your child's special education program or to discuss your concerns.

Who should be at the IEP meeting?

Anyone the parent believes has particular knowledge or expertise about their child can attend an IEP meeting at the parent's request. This may include but is not limited to the child's therapists, mental health professionals, medical experts, an advocate, a family member or a family friend.

Can I recommend my own dates and times for the IEP meeting?

The school must offer to meet at a mutually agreeable time and place. Recommending specific dates and times to the school can help speed the scheduling process. Also, parents are to be informed in advance of the meeting so there are no surprises. The school must provide notice of the meeting in writing, must give the purpose, date, time, and location of the meeting as well as a list of school staff that will attend.

What happens if the parent cannot attend the IEP meeting?

If the parent cannot attend, the school must offer to reschedule the meeting or use other methods to ensure participation, such as conference calls or video conferencing. The school is allowed to hold a meeting without the parent if there is an immediate timeline the school must meet and the school has made numerous attempts (documented by a record of telephone calls, letters, or any visits made or attempted to ensure attendance) to contact the parent.

What are related services?

Related services are those services required for a child with a disability to benefit from special education and include early identification and assessment of disabling conditions in children. The term related services means for example: transportation, speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation (including therapeutic recreation), social work services, school nurse services, counseling services, (including rehabilitation counseling), orientation and mobility services, and medical services (for diagnostic and evaluation purposes only).

What are accommodations and modifications?

Accommodations are instructional or test adaptations. They allow the student to demonstrate what he or she knows without fundamentally changing the targeted skill

that's being taught or measured in testing situations. Accommodations do not reduce the curriculum or performance expectations, but they do change the manner or setting in which information is presented or the student responds. Also, any accommodations approved for use on state tests must have been used in the classroom during instruction and testing.

Modifications are instructional or test adaptations that allow demonstration of what the student knows or can do by reducing the targeted skill. For example, a modification might lower the performance expectations by reducing the number of items to be completed or the complexity of the items or task required.

Why are assessments important?

According to IDEA 2004, the IEP must include "a statement of the child's present levels of academic achievement and functional performance." Any determination of a child's present levels of academic achievement and functional performance requires a review of data from objective testing. Assessments are also important to provide baseline data to track and measure a child's progress.

At the triennial reevaluation meeting, the school said testing really wasn't necessary. Is that true?

The eligibility group - sometimes called the local screening committee - may agree that additional assessments are not necessary in order to find the child eligible as a child with a disability. Recent assessments may have been done or the previous assessments continue to be appropriate measures of the child's areas of need. However, if the parent disagrees, the failure to conduct assessments of the child would be considered a denial necessitating a Prior Written Notice of the reasons for the refusal. The parent may request testing even when the group disagrees. In addition, if the parent disagrees with any change in the disability category under which the child is determined eligible, the parent may refuse to provide written parental consent to the proposed change, leaving the child with his or her current classification.

The school recommended stopping (or decreasing) my child's related services. I don't agree, what can I do?

Any time the school proposes to change or terminate any service agreed to in an IEP, it must provide Prior Written Notice (PWN) to the parents giving them a detailed explanation of the reasons. Prior Written Notice is a detailed explanation to the parent of the reasons the school is proposing to change, deny or terminate educational services or the placement of a child. If the school does not provide Prior Written Notice voluntarily, the parent should ask that it be provided. In addition, prior to any change or termination of the related services provided in the IEP, the child's parents must give

written permission or "informed parental consent." If the parents disagree with the proposal, they need only refuse to consent. Should the parents agree to the proposed IEP, other than the change or termination of the related service, the parents can provide "partial consent" to implement the areas of the agreement.

How do I know whether or not my child's IEP is appropriate?

In order for the IEP to be appropriate, it must contain an accurate reflection of the child's present levels of academic achievement and functional performance. In order to do so, the IEP team should have access to baseline data about the child's performance or abilities based on objective assessments. Only once the child's academic and functional needs are clear can the IEP team develop appropriate annual goals and objectives. (Annual goals are those that the team believes the child reasonably can accomplish in a year.) For goals to be appropriate, they must also be SMART: Specific, Measurable, Use Action Words, Realistic and relevant, and Time sensitive. Finally, the goals must relate to meeting the needs that result from the child's disability. They also must help the child to be involved and progress in the general curriculum.

How can I be sure my child is making meaningful progress?

IEP goals must be "designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability." If the goals are inappropriate to the child's needs or if they are not implemented as agreed, he or she will not make meaningful progress. For example, a child who has a disability which impacts learning, and whose reading skills are two or three years below his peer group, obviously needs more intensive remediation in reading.

The school keeps telling me that my child is making progress, but I don't see it. What do I do?

The IEP must state how a child's progress toward the annual goals will be measured and how often the parents will receive periodic reports on the child's progress toward meeting his or her annual goals. The parents are to be informed of their child's progress through the use of quarterly or other periodic reports. An IEP must also clearly state how progress will be measured and that measurement should be based on regularly collected data. Parents should ask to review the collected data, not just general progress codes, which some school systems use. Without data to compare a child's performance from one reporting period to the next, any assessment of progress is merely subjective and cannot be documented.

Do I need an independent educational evaluation and if so what how to I get one?

One way that parents can act as equal participants in educational decision-making for their child is to obtain additional information from an Independent Educational Evaluation (IEE). IDEA defines an IEE broadly as "an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question." An IEE is not limited to evaluating only a child's academic or cognitive skills, but may include the evaluation of any skill related to the child's educational needs. Evaluations of social functioning, adapted physical education and sensory needs are but a few examples of the types of IEEs covered under IDEA.

Private outside evaluations may provide support for the parents' opinions and requests, and parents often pursue and pay for their own IEEs. However, if the parents disagree with a school district evaluation and request an IEE at public expense, the school district must obtain the IEE and pay for it unless it requests a due process hearing and a hearing officer rules that the IEE is not needed. Additionally, if the school district does not have the personnel or resources to conduct an evaluation that an eligibility group or IEP team has identified is needed, the school district must obtain an IEE at its own expense.

My child is acting out at school and I don't know what to do.

If a child's behavior interferes with his or her ability to learn or the learning of other students, the IEP team must consider using positive behavioral interventions, strategies, and supports to address the behavior. The IEP team will also either develop IEP goals and services specific to the child's behavior or conduct a "functional behavioral assessment" (FBA) to determine if a "behavior intervention plan" (BIP) is needed. If the team agrees to develop a BIP for the student, it becomes part of that child's proposed IEP and the parent must consent to its implementation.

How can I get the school to communicate with me?

A positive, collaborative relationship between the parents, the child's teachers and other school staff involved in the student's education (including therapists, counselors, bus drivers, etc.) is critical to his or her success. IEP development and implementation must be a team effort with all members working together to help the student progress. However, avenues for open communication can be difficult to establish and maintain. Here are some tips on communicating with your child's school:

<http://www.cadeworks.org/search/steps%20to%20success>

What do I do about bullying?

Bullying in schools is a national problem. According to one study, victims tend to be "loners who tend to cry easily, lack self-defense skills, aren't able to use humor in conflict situations or who don't think quickly on their feet." Children with disabilities are common victims of bullying. Virginia recently passed legislation that makes it mandatory for schools to have anti-bullying policies. If parents suspect their child is being victimized at school, they can advocate on the child's behalf to resolve the problem by reviewing the school's anti-bullying policy and speaking directly with school administrators and counselors.

However, if the child is being bullied because of their disability, it may be a more serious matter involving discrimination. Students with disabilities or their parents have a right to file a complaint under Section 504 of the Rehabilitation Act of 1973 if they believe discrimination has occurred. Initially, the complaint should be filed with the school's or school district's Section 504 compliance officer. Alternatively or in addition, students and parents may also file a complaint with the Office for Civil Rights itself (in their regional office) which, in addition to technical assistance activities, conducts compliance reviews and investigations.

What is the difference between a 504 plan and an IEP?

In addition to IDEA, another federal law gives rights to children with disabilities. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination on the basis of disability in any program or activity receiving federal funding, including education. More specifically, this law protects the rights of qualified persons with a disability of school age. Whereas IDEA is remedial and requires the provision of programs and services in addition to those available to persons without disabilities, Section 504 is intended to establish a "level playing field," usually by eliminating barriers that exclude persons with disabilities. For more information regarding the differences between the two laws, see <http://www.wrightslaw.com/howey/504.idea.htm>

What is mediation and how does it work?

Mediation in special education is a process in which a mediator assists in negotiating disagreements between parents and schools over any IEP issues. The mediator is neutral and not an advocate for any parties involved. A qualified and impartial mediator who is selected from a list maintained by the VDOE, trained in effective mediation techniques, and knowledgeable in special education law, conducts mediation. Mediation must be voluntary on the part of both the school and the parent.