

THE INDIVIDUALS WITH
DISABILITIES
EDUCATION ACT AMENDMENTS
OF 1997



Office of Special Education Programs
U.S. Department of Education

*Prepared for classroom use by Dr. Lyndal M. Bullock with the
assistance of Cynthia Miller*



Public Law 94-142: The Education for All Handicapped Children Act

Congress finds that-

- (1) there are more than 8 million handicapped children in the US today**
- (2) the special educational needs of such children are not being fully met**



Public Law 94-142: The Education for All Handicapped Children Act (cont..)

- (3) more than half do not receive appropriate educational services which would enable them to have full equality of opportunity**
- (4) one million children are excluded from the public school system and will not go through the educational process with their peers**



Public Law 94-142: The Education for All Handicapped Children Act (cont.)

- (5) there are more handicapped children participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected



Public Law 94-142: The Education for All Handicapped Children Act (cont.)

- (6) because of the lack of adequate services within the public school system, families are often forced to find services outside the public school system, often at great distance from their home and at their own expense...



The History of IDEA

Public Law...

106-17	1997		IDEA 97
102-119	1992		IDEA
101-476	1990	Ü	new name- the IDEA!
99-457	1986		EHA
98-199	1983		EHA
94-142	1975		EAHCA



The Six Principles of the Law

- free appropriate public education
- appropriate evaluation
- individualized education program
- least restrictive environment
- parent and student participation in decision making
- procedural due process



Free Appropriate Public Education

“The term *‘free appropriate public education’* means special education and related services that-

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;



Free Appropriate Public Education (cont.)

- (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and**
- (D) are provided in conformity with the individualized education program required under section 614(d).”[Section 602 (8)]**



Free Appropriate Public Education

- Free-at no cost to parents
- Appropriate-suited to the individual needs of the child
- Public-provided by, or paid for by, the public school system
- Education (including extracurricular activities)-what this law is all about!



Appropriate Evaluation

One of the most significant changes in IDEA 97 relates to how the evaluation process should be viewed. “The committee believes that a child should not be subjected to unnecessary tests and assessments...and the LEA should not be saddled with associated expenses unnecessarily.” (Report Language, p.19)



Appropriate Evaluation-(slide 2)

Evaluation activities should include gathering information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities.



Appropriate Evaluation

- ❑ Evaluators must be knowledgeable and trained.
- ❑ A variety of instruments and procedures must be used to gather information about the student.
- ❑ Tests and other procedures must be selected and administered so as not to be discriminatory on a racial or cultural basis.



Individualized Education Program

The term “individualized education program” or “IEP” means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).



Least Restrictive Environment

“...the presumption that children with disabilities are most appropriately educated with their nondisabled peers and that special classes, separate schooling, or other removal of children with disabilities from (continued on next slide)...



Least Restrictive Environment-(cont.)

...the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”



Parent and Student Participation in Decisionmaking

The Congress finds the following:

“Over 20 years of research and experience (have) demonstrated that the education of children with disabilities can be make more effective by-



Parent and Student Participation in Decisionmaking, (cont.)

...Strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home.”



Ways in Which Parents Participate:

- giving consent for evaluation and initial placement of their child
- helping design the IEP
- helping the school understand their child



Ways in Which Students Participate:

- **helping design the IEP**
- **expressing preferences and interests, particularly during transition planning**

Procedural Safeguards

Safeguards to ensure:

- that the rights of children with disabilities and their parents are protected,
- that students with disabilities and their parents are provided with the information they need to make decisions about the provision for FAPE, and



Procedural Safeguards-(cont.)

- That procedures and mechanisms are in place to resolve disagreements between parties



Some Procedural Safeguards:

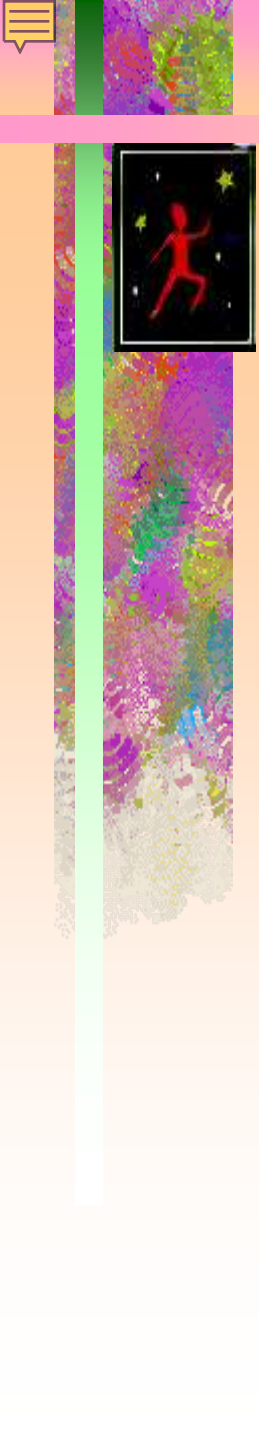
- parent notification
- parent consent
- parent access to educational records
- due process hearing, including disclosure of evaluation results and recommendations
- opportunity to present due process complaints
- mediation



FREE APPROPRIATE PUBLIC EDUCATION

*During this session, you will gain a working
knowledge of:*

- **Definition of FAPE**
- **Major areas of change under IDEA
97:**



Major areas of change under IDEA 97:

- **Special education and related services**
- **FAPE and the general curriculum**
- **CSPD and personnel standards**
- **Early childhood amendments**



Findings of Congress in 1975:

**Over 8 million children with disabilities in
the U.S.**

**Over half were not receiving an
appropriate education.**

**Over one million where receiving no
services**



STATES' OBLIGATION TO MAKE FAPE **AVAILABLE**

**Under IDEA 97, States must ensure that:
“A free appropriate public education is
available to all children with disabilities
residing in the State between the ages of 3
and 21, inclusive, including children with
disabilities who have been suspended or
expelled from school.”**

[Section 612(a)(1)]



IDEA 97's Definition of FAPE

“The term ‘free appropriate public education’ means special education and related services that--

- (A) have been provided at public expense, under public supervision and direction , and without charge;**
- (B) meet the standards of the State educational agency;**



IDEA 97's Definition of FAPE-(cont.)

- (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and

- (D) are provided in conformity with the individualized education program required under section 614(d).” [Section 602(8)]



“This Act will give disabled people more opportunities for quality education and meaningful employment than ever before in our nation’s history.”

Judy Heuman



IDEA 97'S DEFINITION OF SPECIAL EDUCATION

“The term ‘special education’ means specially designed instruction, at no cost to parents, to meet the unique needs of the child with a disability, including--

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(B) instruction in physical education.” [Section 602(25)]



IDEA 97's DEFINITION OF RELATED SERVICES

Remains essentially unchanged from previous definitions, except that “orientation and mobility services” have been added to the list of related services.

HOW IS AN “APPROPRIATE” EDUCATION DETERMINED?



Appropriate evaluation gathers accurate information about the student’s strengths and needs.

IEP Team uses the evaluation information to identify appropriate goals and objectives for the student to work on throughout the year.



HOW IS AN “APPROPRIATE” EDUCATION DETERMINED (cont.)?

IEP Team specifies appropriate special education and related services, given the needs of the student and his or her goals and objectives for the year.



FAPE AND THE GENERAL CURRICULUM

IDEA 97 emphasizes student involvement in the general curriculum. This focus will enhance what an “appropriate education” is for a student with a disability.



FAPE AND THE GENERAL CURRICULUM- part 2

Other areas of IDEA 97 affecting what's appropriate:

- **including students with disabilities in state and district-wide assessments**
- **developing performance goals and indicators for students with disabilities**



STATES AS QUALIFIED PROVIDERS OF FAPE

IDEA 97 required that:

- **States coordinate their existing Comprehensive System of Personnel Development (CSPD) with the personnel section of their state improvement plan (SIP) grants under Part D**
- **Many CSPD activities are now handled through the SIP.**

PROFESSIONAL STANDARDS

IDEA 97:

- *Allows States to use appropriately trained and supervised paraprofessionals and assistants to assist in the provision of special education and related services.*

PROFESSIONAL STANDARDS

IDEA 97:

- *Allows States to adopt a policy that requires LEAs to make an “ongoing good-faith effort” to recruit and hire appropriately trained personnel. However, when there is a shortage of these personnel, States can allow the most qualified people to be hired. These people will have 3 years to complete course work needed to meet State standards.*



STATE IMPROVEMENT PLANS

- **States must compete for SIP awards.**
- **A SIP helps a State to address the critical aspects that must be improved to enable children with disabilities to meet the goals the State has established for these children.**



STATE IMPROVEMENT PLANS(cont.)

- **At least 75% of SIP must be used to ensure there are sufficient personnel with the skills and knowledge necessary to meet the needs of children with disabilities, or to work with other States on common certification criteria. (State can use not less than 50% of funds for these purposes, if State demonstrates that it has sufficient trained personnel.)**



EARLY INTERVENTION AMENDMENTS

- **Early intervention services for 0-3 year olds provided in a natural environment.**

- **Continuity of services and programs:**
 - **An IFSP can act (under certain conditions) as an IEP when entering preschool program.**



EARLY INTERVENTION AMENDMENTS (cont.)

- LEA must attend transition planning meeting.

- Personnel standards and use of paraprofessionals similar to requirements under Part B



Appropriate Evaluation

IDEA 97

One of the most significant changes in IDEA 97 relates to how the evaluation process should be viewed. “The committee believes that a child should not be subjected to unnecessary tests and assessments...and the LEA should not be saddled with associated expenses unnecessarily.” (Report Language, p.19)



Appropriate Evaluation (cont.)

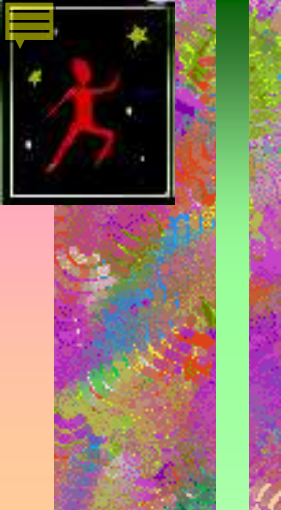
IDEA 97

Evaluation activities should include gathering information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities.

Appropriate Evaluation

During this session, you will gain a working knowledge of:

- **The purpose of an evaluation**
- **The definition of a “child with a disability”**
- **Major changes in the evaluation/reevaluation process**
- **Including children with disabilities in state and districtwide assessments**
- **Performance goals and indicators**



Appropriate Evaluation


What Do I Know?



The Purpose of an Initial Evaluation

A child must receive a “full and individual initial evaluation” to determine:

- **Whether the child is a “child with a disability,” and**
- **what the child’s educational needs are.**




Definition of a “Child with a Disability”

IDEA 97 defines a “child with a disability” as a child with:

- mental retardation
- hearing impairments (including deafness)
- speech or language impairments

Definition of a “Child with a Disability” (cont.)

- serious emotional disturbance (hereinafter referred to as ‘emotional disturbance’)
- orthopedic impairments
- autism
- traumatic brain injury



Definition of a “Child with a Disability” (cont.)

- other health impairments
- specific learning disabilities


AND who, because of this disability, needs special education and related services.



Definition of a Child with a Disability

Amending the Age Range for “Developmental Delay”

At the discretion of the State and the LEA, a “child with a disability” aged 3 through 9 may include a child experiencing developmental delays in one or more of the following areas:
physical development, cognitive development, (cont.)



Definition of a “Child with a Disability” (cont.)

communication development, social or emotional development, or adaptive development;

and who, by reason thereof, needs special education and related services.



Report Language

“The use of a specific disability category to determine a child’s eligibility for special education and related services frequently has led to the use of the category to drive the development of the child’s IEP and placement to a greater extent than the child’s needs.



Report Language(cont.)

Use of ‘developmental delay’ as part of a unified approach will allow the special education and related services to be directly related to the child’s needs and prevent locking the child into an eligibility category which may be inappropriate or incorrect.” (pp. 6-7)



Major Changes in Evaluation

- LEAs must notify parents of *any* evaluation or reevaluation they plan and obtain informed parental consent *before* the evaluation is conducted.
- A variety of tools and strategies must be used to gather relevant functional and developmental information about the child. This includes information provided by the parent.



Major Changes (cont.)

- **A team of qualified professionals AND the parents decide if the child is a “child with a disability.”**
- **A child who has received a lack of instruction in math or reading, or who has limited English proficiency, must not be identified as having a disability,**



Major Changes (cont.)

...if any one of those is the reason for determining the child has a disability.

- **Initial evaluation and reevaluation processes look different! Existing evaluation data may be used.**



The Initial Evaluation

First Steps

- **Before a child may be evaluated, the LEA must notify parents in writing. This notice must describe any evaluation procedures the agency proposes to use.**
- **Parents must give their informed consent before their child may be evaluated.**



The Initial Evaluation

The Next Steps

The IEP Team and other qualified professionals, as appropriate, look at evaluation data already available on the child, including information and evaluations provided by the parents, to identify what additional data, if any, are needed to determine:



The Initial Evaluation

The Next Steps (cont.)

- whether the child has a particular category of disability
- the child's present levels of educational performance
- the child's educational needs



The Initial Evaluation

The Next Steps (cont.)

- **whether any additional or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.**



The IEP Team and other qualified professionals, as appropriate, find that:

- **Enough evaluation data exist to make the determinations listed on overheads 12 and 13. No more evaluation is needed.**
- **Not enough evaluation data exist to make these determinations. The LEA must administer such tests and other evaluation materials as needed to produce the data identified as being needed.**



In Evaluation

The Law Requires:

- T Individualized testing**
- T Evaluation in the native language or mode of communication, unless clearly not feasible to do so**
- T Nondiscriminatory evaluation (on a racial or cultural basis)**



The Law Requires (cont.):

- T Any standardized tests to be validated for the specific purpose for which they are used**
- T Tests administered by trained and knowledgeable personnel**
- T Tests administered in accordance with any instructions provided by the producer of such tests**



The Law Requires (cont.):

- T The student must be assessed in all areas of suspected disability.**
- T The LEA must use a variety of assessment tools and strategies, including information from parents.**



The Law Requires (cont.):

T The LEA must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.



The Law Requires (cont.):

T The LEA must not use any single procedure as the sole criterion for determining whether a child is a “child with a disability” or for determining an appropriate educational program for the child.



Determining Eligibility

**Who
decides a
child's
eligibility?**

**A team of qualified
professionals and the
parents of the child.**



Determining Eligibility (cont.)

Special Rule

If a child has a lack of instruction in math or reading, or has limited English proficiency, he or she must not be identified as having a disability, if any one of those is the reason for determining the child has a disability.



Reevaluation

Is needed every 3 years to see:

- **if the child continues to have a disability and continues to need special education and related services**
- **what the child's present levels of educational performance and educational needs are**



Reevaluation (cont.)

Is needed every 3 years to see:

- **if any additions or modifications to the special education and related services are needed to enable the child to meet the IEP goals and participate, as appropriate, in the general curriculum.**



Reevaluation (cont.)

Is needed every 3 years to see:

NOTE:

An LEA must ensure that a reevaluation of each child with a disability is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every 3 years.

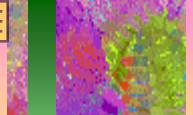


Reevaluation

looks at existing information first!

The IEP Team and other qualified professionals, as appropriate, review existing evaluation data on the child, including-

- **evaluations and information provided by the parents**



Reevaluation (cont.)

looks at existing information first!

- **current classroom-based assessments and observations**
- **observations by teachers and related services providers**



Reevaluation (cont.)

On the basis of that review, and input from the parents, the IEP Team and other qualified professionals, as appropriate, identify what additional data, if any, are needed.



Reevaluation (cont.)

- **Yes, more data are needed. The LEA must administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team.**



Reevaluation (cont.)

- **No, no additional data are needed to determine whether the child continues to have a particular category of disability and to make the other required determination listed on overheads 12(a), 12(b), and 13.**



Reevaluation (cont.)

The LEA is not required to conduct such an assessment unless requested to by the parents to determine whether the child continues to be a “child with a disability.”

Reevaluation

Parental Notification and Consent

- **Parents must be notified if the child is to be reevaluated. They must also be notified if no additional data are needed to determine whether the child continues to be a “child with a disability,” and the reasons for that determination.**

Reevaluation (cont.)

Parental Notification and Consent

- **An LEA must obtain parental consent before conducting any reevaluation of a child with a disability. (Such informed consent need not be obtained if the LEA can show that it took reasonable measures to obtain the consent and the parents failed to respond.)**



Reevaluation (cont.)

Parental Notification and Consent


- Parents must also be notified of their right to request an assessment of their child, to determine whether the child continues to be a “child with a disability.”
- If parents request such an assessment, the LEA must conduct it.



Reevaluation (cont.)

Parental Notification and Consent

- **A copy of the evaluation report and the documentation of determination of eligibility must be given to the parent.**



Including Children with Disabilities in State and District-wide Assessments

Under IDEA 97, children with disabilities must be included in general State and district-wide assessment programs, with appropriate accommodations where necessary.

The requirement was effective immediately upon enactment.



Alternate Assessments

Not all children will be able to participate in State and district-wide assessments programs, even with appropriate accommodations. Therefore, as appropriate:

- **SEAs and LEAs must develop guidelines for participation of children with disabilities in alternate assessments.**



Alternate Assessments

- **SEAs and LEAs must develop alternate assessment and, beginning no later than July 1, 2000, conduct those alternate assessments.**



Including Children with Disabilities in State and District-wide Assessments Reporting Results

Once an SEA receives information from these assessments, it must make available to the public and report to the public, with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:



Reporting Results (cont.)

- **number of children with disabilities participating in regular assessments**
- **number of children with disabilities participating in alternate assessments**



Reporting Results (cont.)

- **performance of those children on regular assessments (beginning no later than July 1, 1998) and on alternate assessments (no later than July 1, 2000), if doing so would be a statistically sound and would not result in the disclosure of performance results identifiable to individual children.**



Performance Goals and Indicators

Each State must:

- **establish goals for the performance of children with disabilities that will promote the purpose of this Act and are consistent (to the maximum extent appropriate) with other goals and standards for children established by the State**



Performance Goals and Indicators(cont.)

- establish performance indicators by which to assess progress toward achieving those goals that, at a minimum, address performance of children with disabilities on:
 - assessments
 - drop-out rates
 - graduation rates



Performance Goals and Indicators (cont.)

- report every 2 years to the Secretary and the public on the progress of the State and of the children with disabilities toward meeting the goals
- based on its assessment of that progress, revise its State Improvement Plan (if it has received such funds), as needed, to improve its performance.



Besides having a disability,



**What do all children with
disabilities served under IDEA
have in common?**



The IEP Process

IEP Team members meet at least annually.

Team develops, reviews, and (if appropriate) revises the IEP.

The IEP is used to guide education of the child.



Major Changes in the IEP and Placement Processes

- **Student involvement in general curriculum**
- **Involvement of the regular education teacher**
- **Special factors to be considered**



Major Changes in the IEP and Placement Processes

- **Statement of transition service needs at age 14**
- **Reporting on student progress**
- **Parent involvement in placement decisions**



Report Language

“The majority of children identified as eligible for special education and related services are capable of participated in the general education curriculum to varying degrees with some adaptations and modifications.”



Report Language (cont.)

“This provision is intended to ensure that children special education and related services are in addition to and are affected by the general education curriculum, not separate from it.”



Elements of the IEP Emphasizing General Ed Involvement

- **“Present levels of educational performance” must state how the child’s disability affects involvement and progress in general curriculum.**
- **“Annual goals, including benchmarks/objectives,” are related to helping the child be involved and progress in general curriculum.**



Elements of the IEP Emphasizing General Ed Involvement (cont.)

- **A statement of the “special education and related services” and “supplementary aids and services” for the child, and “program modifications or supports for school personnel,” that will be provided for the child-**
 - **to advance appropriately toward attaining the annual goals,**



Elements of the IEP Emphasizing General Ed Involvement (cont.)

- to advance appropriately toward attaining the annual goals,
- to be involved and progress in general curriculum, and participate in extracurricular and other nonacademic activities, and
- to be educated and participate with disabled and nondisabled children.



Elements of the IEP Emphasizing General Ed Involvement (cont.)

- **“Explanation of nonparticipation” with nondisabled children in regular class and activities must be included in IEP.**



The Expanded Role of the Regular Education Teacher

The regular education teacher is now part of the IEP Team! Areas where he or she might contribute:

- helping develop, review, and as appropriate, revise the IEP**
- determining appropriate positive behavioral interventions and strategies for the student**



The Expanded Role of the Regular Education Teacher (cont.)

- **determining supplementary aids and services, and program modifications for the student**
- **determining support that school personnel need in order to help the “child progress in the general curriculum”**



Special Factors to be Considered

- **Positive behavior strategies and interventions for students with behavior that impedes their learning or that of others**
- **Student's language needs, for students with limited English proficiency**



Special Factors to be Considered (cont.)

- Instruction in Braille and the use of Braille, unless IEP Team determines it is not needed, for students who are blind or visually impaired**
- The child's communication needs**
- The student's need for assistive technology devices and services**



Special Factors (cont.)

- **In the case of a child who is deaf or hard of hearing, the IEP Team must consider the child's:**
 - **language and communication needs**
 - **opportunities for direct communications with peers and professionals in the child's language and communication mode**



Special Factors (cont.)

- **academic level**
- **full range of needs, including opportunities for direct instruction in child's language and communication mode**



Transition Planning at Age 14

Beginning at age 14, and updated annually, the IEP must contain a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation on advanced-placement course or a vocational education program)...



Reporting on Student Progress

- **How will the child's parents be regularly informed (by such means as report cards) of:**
 - **Their child's progress toward annual goals?**
 - **The extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year?**

The IEP must state this information.



Parent Participation in Placement Decisions

Each local educational agency or State educational agency shall ensure that...

...the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.



LEAST RESTRICTIVE ENVIRONMENT


IDEA 1997



LEAST RESTRICTIVE ENVIRONMENT

During this session, you will gain a working knowledge of:

- **IDEA 97's revised LRE provision**
- **Definition of “supplementary aids and services”**
- **LRE and students' involvement in general education**
- **LRE and permissive use of funds**
- **Other aspects of IDEA 97 and LRE**



Since 1975, schools have been required to make available to students with disabilities a free appropriate public education in the least restrictive environment.

Depending on the child's individual needs, LRE could be the provision of special education and related services in:

- The regular classroom**
- A special education classroom within the child's neighborhood school**

Depending on the child's individual needs,
LRE could be the provision of special
education and related services in (cont.):

- A separate school specializing in a certain disability
- Something else



THE “OLD” LRE PROVISIONS

Each public agency must ensure:

“(1) That to the maximum extent appropriate children with disabilities, including children in public or private institution or other care facilities, are educated with children who are nondisabled; and”



“(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”



THE LRE PROVISIONS,
UNDER IDEA 97

**The previous LRE provisions are
maintained.**

An additional requirement is added.



PLACEMENT-NEUTRAL FUNDING

As part of LRE's requirements:

- **If a State uses a funding formula that gives State money to LEAs based on the type of setting in which a child is served, the formula cannot result in placements violating LRE.**



PLACEMENT-NEUTRAL FUNDING

As part of LRE's requirements (cont.):

- **If a State does not have policies and procedures in place to ensure compliance, the State must provide Secretary of Education with assurance that it will revise its funding mechanism ASAP, if feasible.**

DETERMINING A CHILD'S LRE

Before IDEA 97 and Under IDEA 97:

- Consider the general education classroom first.
- Consider what aids and services would help.



DETERMINING A CHILD'S LRE (cont.)

Supplementary aids and services: “Aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance” with LRE.



DETERMINING A CHILD'S LRE (cont.)

- **If the student can be educated satisfactorily in the general education classroom, with aids and services, then that's the student's LRE.**
- **If not, consider alternative placements:**
 - **instruction in regular classes**
 - **special classes**



DETERMINING A CHILD'S LRE (cont.)

- **special schools**
- **home instruction**
- **instruction in hospitals and institutions**



LRE AND THE CONNECTION TO GENERAL EDUCATION

IDEA 97 emphasizes student involvement in general curriculum. The IEP of each student must now contain:

“an explanation of the extent, if any, to which the child will not participate with nondisabled children in regular class” and in extracurricular and nonacademic activities.



REPORT LANGUAGE

“The law and this bill contain a presumption that children with disabilities are to be educated in regular classes...”

“This committee recognizes that every decision made for a child with a disability must be made on the basis of what that individual child needs....”



REPORT LANGUAGE (cont.)

“...Nonetheless, when the decision is made to educate the child separately, an explanation of that decision will need...to be stated as part of the child’s IEP.”



LRE AND PERMISSIVE USE OF FUNDS

IDEA 97 allows LEAs to use Part B funds to pay for special education and related services, and supplementary aids and services, provided to a child with a disability in a regular class or other education-related setting, even if one or more children without disabilities benefit from these services.



OTHER ASPECTS OF IDEA 97 CONNECTED TO LRE

- **Participation in State and district-wide assessments**
 - **with modifications, as necessary**
 - **through alternate assessments, if necessary**



OTHER ASPECTS OF IDEA 97 CONNECTED TO LRE (cont.)

- **Performance goals and indicators**
 - **Goals must be consistent to the maximum extent appropriate “with other goals and standards for children established by the State”**



“...Over 20 years of research and experience [have] demonstrated that the education of children with disabilities can be made more effective by-

...strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home...”



Parent and Student Participation

During this session, you will gain a working knowledge of:

- **Parents' Participation in their Child's Education, Old and New**
- **Parent Involvement at the National, State, and Local Levels**
- **Student Participation, Old and New**



Definition of “Parent”

Parent, as defined in IDEA 97, includes:

- (A) a legal guardian; and,**
- (B) an individual assigned as a surrogate parent.**

The surrogate parent may not be an employee of the State education agency, the local educational agency, or any other agency that is involved in the education of the child or providing any early intervention services.



Parents' Participation in Their Child's Education: Old Rights

- Schools must notify parents when they propose (or refuse) to initiate or change the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child.



Parents' Participation in Their Child's Education: Old Rights (cont.)

- Parental consent is required before a child may be evaluated for the first time.
- Parents are part of the team that develops their child's IEP
- Parents consent is required for a child's initial special education placement.



Parents' Participation in Their Child's Education: Old Rights (cont.)

- Parents have the right to challenge or appeal any decision related to the identification, evaluation, or placement of their child, or the provision of FAPE to their child.



Parents' Participation in Their Child's Education: New Rights

- *Input during evaluation:* Parents are entitled to provide information about their child during their child's evaluation. Parents, as member of their child's IEP Team, and other professionals as appropriate, review existing evaluation data as part of an initial evaluation (if appropriate) and as part of any reevaluation of their child.



Parents' Participation in Their Child's Education: New Rights (cont.)

- *Eligibility:* Parents are entitled to be part of the group that makes the decision regarding their child's eligibility.
- *Placement:* Parents are entitled to be part of the group that makes the decision regarding their child's educational placement.



Parents' Participation in Their Child's Education: New Rights (cont.)

- *Reevaluation*: Parents need to provide informed consent in order for their child to be reevaluated.
- *Participation in all meetings*: Parents now have the express right to participate in meetings with respect to the evaluation, identification, and educational placement of their child, and the provision of FAPE to their child.



Parents' Participation in Their Child's Education: New Rights (cont.)

- *Receiving progress reports and revising the IEP:* Parents have the right to receive regular reports on their child's progress. The IEP would need to be revised to address any lack of progress toward annual goals.



Parents' Participation in Their Child's Education: New Rights (cont.)

- *Notification to the public agency by parents regarding parental placement of their child in private school:* Parents must now notify the public agency if they intend to remove their child from the public school and place him or her in a private school at public expense.



Parents' Participation in Their Child's Education: New Rights (cont.)

- *Notification by parents (or the attorney representing the child) of their intent to file a due process complaint:* If parents intend to request a due process hearing, they must notify the SEA or the LEA, as the case may be, and they must provide certain information.



Parents At All Levels: National

The Standing Panel of Experts, established by the Secretary of Education to evaluate applications individually requesting more than \$75,000 per year in Federal funds, must include parents of children with disabilities.

Peer-Review Panels for particular competitions (subpanels of the Standing Panel) must, to the extent practicable, include parents of children with disabilities.



Parents At All Levels: State

The State Advisory Panel must include parents of children with disabilities.

By “Special Rule” the majority of member must be either individual with disabilities or parents of children with disabilities.

Parents of children with disabilities are one of the “required partners” in State Program Improvement Grants.



Parents At All Levels: Local

Parents of children with disabilities must be part of the Standing Panel that designs, implements, and evaluates a school-based improvement plan.



Student Participation: Old Rights

- **Students can attend the IEP meeting and contribute their ideas.**
- **Transition services are planned and delivered to students, beginning at age 16 and younger, if needed. Students must be invited to participate in the IEP meeting where transition services are to be discussed.**



Student Participation: Old Rights (cont.)



- **Students have a “say” in the transition services. These services are to be based on students’ needs and take into account their interests and preferences.**



Student Participation: New Rights

- Stating transition service needs in the IEP of the child begins for each student at age 14. The IEP Team looks at what courses the student is taking.

What other courses are needed, given the student's goals for life after school?



Student Participation: New Rights (cont.)

- **When the student reaches the “age of majority,” parental rights in some States transfer to the student.**
- **At least one year before, the student must be told about the rights, if any, that will transfer to him or her.**



Procedural Safeguards

During this session, you will gain a working knowledge of:

- **Parental rights to attend meetings and have access to educational records**
- **Notifications required from parents to public agencies**
- **Prior written notice and procedural safeguards notice**



Procedural Safeguards (cont.)

- **Mediation**
- **The law’s “stay-put” provision, past and present**
- **Section 615(k)**
- **Attorneys’ fees**



Additions or Changes to Prior Law

- **Parents have the right to participate in all meetings regarding the identification, evaluation, and educational placement of their child, and the provision of FAPE. [615(b)(1)]**



Additions or Changes to Prior Law (cont.)

- **IDEA 97 clarifies that parents have the right to inspect and review *all* of their child's educational records, not only those that are relevant to whatever issue or concern has arisen.**

[615(b)(1)]



NOTIFICATION BY PARENTS

- **Parents must give notice to the public agency when they intend to remove their child from the public school and place him or her in a private school at public expense.**
- **Parents must give notice to the SEA, State agency, or LEA, as appropriate, when filing a request for due process.**



Notice When Removing Child to a Private School

Parents must tell the public agency-

- that they are rejecting the placement the public agency is proposing for the child;
- what their concerns are;
- that they intend to enroll their child in a private school and they expect the public agency to pay for it.



Notice When Removing Child to a Private School (cont.)

If parents (or their attorneys) do not provide this notice, reimbursement for the private school place may be reduced or denied. There are certain exceptions to this provision.



Notice When Filing for Due Process

When parents give notice when filing a request for due process, the notice to the agency must include-

- name of child, address of residence of child, and name of school the child attends**
- a description of the nature of the problem, including related facts, and**




Notice When Filing for Due Process (cont.)

- a proposed resolution of the problem, to the extent known and available to parents at that time.

**Notice must remain confidential.
[615(b)(7)]**



- **SEA must have procedures that require the SEA to develop a model form to assist parents in filing requests for due process consistent with 615(b)(7). [615(b)(8)]**
- **Revisions to prior written notice: Splits notice into two pieces that are provided at different times and makes some changes in the content of each.**



I. PROCEDURAL SAFEGUARDS NOTICE

- **Provided:**
 - **on initial referral for evaluation**
 - **on each notification on an IEP meeting**
 - **on reevaluation of the child**
 - **on registration of a due process complaint.**



I. PROCEDURAL SAFEGUARDS

NOTICE (cont.)

- **Contents: a full explanation of the procedural safeguards available under the law on 13 topics.**
- **Note!! The procedural safeguards notice must be in the native language of the parents, unless it clearly is not feasible to do so. [615(d)(2)]**



II. PRIOR WRITTEN NOTICE

- **Prior written notice is provided whenever the agency proposes or refuses to initiate or change the-**
 - **identification,**
 - **evaluation,**
 - **educational placement, or**
 - **provision of FAPE to the child.**

[615(b)(4)]

II. PRIOR WRITTEN NOTICE (cont.)

- **Note!! The prior written notice must be in the native language of the parents, unless it clearly is not feasible to do so.**

[615(b)(4)]

- **Prior written notice must include certain information, such as:**
 - **a description of the action proposed or refused by the agency, and an explanation of why;**

II. PRIOR WRITTEN NOTICE (cont.)

- *a statement that the parents have protection under the procedural safeguards of Part B* and, if this notice is not an initial referral for evaluation, how parents can get a copy of the description of the procedural safeguards;
- **sources for parents to contact to obtain assistance in understanding the provisions of Part B. [615(c)]**

MEDIATION

- SEAs and LEAs must ensure that procedures are established and implemented to allow parties to any dispute that could be subject of a due process proceeding to resolve those disputes through a mediation process.
- At a minimum, the mediation process must be available whenever a due process hearing is requested under 615(f) or 615(k).



MEDIATION (cont.)

- **The mediation process must:**
 - **be voluntary on the part of the parties;**
 - **not be used to deny or delay parents' rights to due process or any other rights under Part B; and**
 - **be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.**



MEDIATION (cont.)

- **An LEA or State agency may establish procedures to require parents who choose not to use mediation to meet, at a time and location convenient to the parents, with a disinterested party under contract with:**
 - **a PTI or community parent resource;**
 - **an appropriate alternative dispute resolution entity.**



MEDIATION (cont.)

The purpose of the meeting is to encourage the use and explain the benefits of the mediation process to the parents.

- The State must maintain a list of individuals who are qualified mediators and knowledgeable about the laws and regulations on special education.**



MEDIATION (cont.)

- **The State bears the cost of mediation.**
- **An agreement reached by the parties must be set forth in a written mediation agreement.**
- **Discussions occurring during mediation must be confidential and may not be used as evidence in subsequent due process or civil proceedings.**



MEDIATION (cont.)

- **Discussions occurring during mediation must be confidential and may not be used as evidence in subsequent due process or civil proceedings.**
- **Parties to mediation may be required to sign a confidentiality pledge before the mediation process begins.**

“STAY-PUT” PROVISION

Prior to IDEA 97

“During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.”

*34 Code of Federal Regulations Section
300.513(a)*



“STAY-PUT” PROVISION

Under IDEA 97

“Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child...”

Section 615(j)



THE HISTORY OF “STAY-PUT”

The EHA when originally passes in 1975, contained the provision that when there is a dispute about the child’s placement, the child was to stay in the current educational placement until the dispute was resolved.



THE HISTORY OF “STAY-PUT”


Schools could use their “normal procedures for dealing with children who were endangering themselves or others” [34 CFR 300.513], including temporary suspension for up to 10 school days.



- **Various court cases and the law's requirements have established certain standards.**
- **Expulsion of ten days or more is a change in placement and triggers the procedural safeguard protections of the law. (*Stuart v. Nappi, 1978*)**
- **If discipline of more than 10 days is considered, parents must be given notice.**



- **The IEP Team needs to consider the relationship between the misconduct and the student’s disability. (*S-1 v. Turlington, 1981*) The Office of Civil Rights referred to this as a “manifestation determination.”**

- 
- If the IEP Team decides that there is not relationship between the misconduct and the child's disability, the school could apply its normal disciplinary procedures, including expulsion. However, it could not stop educational services while the child was expelled. (*S-1 v. Turlington, 1981*)

Honig v. Doe

- Addressed the questions of whether there were exceptions to “stay put” for children with disabilities who were considered dangerous.

Honig v. Doe (cont.)

- Supreme Court ruled that schools' recourse to "stay put" was to demonstrate in court that "maintaining the child in his or her current placement is substantially likely to result in injury to himself or herself, or to others." (*Honig v. Doe, 1988*)



Honig v. Doe (cont.)

- If the school could demonstrate this, a court could order that the child be placed elsewhere and not returned to the then-current placement.



“STAY-PUT PROVISION

Under IDEA 97

“Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child...”

Section 615(j)



PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTINGS

Section 615(k)

Section 615(k)'s 10 subparagraphs:

- (1) Authority of school personnel
- (2) Authority of hearing officer
- (3) Determination of setting
- (4) Manifestation determination review



Section 615(k) (cont.)

- (5) Determination that behavior was not manifestation of disability**
- (6) Parent appeal**
- (7) Placement during appeals**



Section 615(k) (cont.)

- (8) Protections for children not yet eligible for special education and related services**
- (9) Referral to and action by law enforcement and judicial authorities**
- (10) Definitions**



ATTORNEYS' FEES HAVE CHANGED IN THE FOLLOWING WAYS:

- ❑ **IDEA 97 specifies that attorneys' fees may not be awarded related to IEP meetings, unless the meeting is convened as a result of a due process or judicial action.**
- ❑ **Additionally, at the discretion of the State, attorneys' fees may not be awarded for a mediation conducted before the filing of a due process complaint.**



ATTORNEYS' FEES HAVE CHANGED IN THE FOLLOWING WAYS (cont.):

- **Attorneys' fees may be reduced if attorney representing the parents did not provide the LEA with the appropriate information in the due process complaint [described in 615(b)(7)].**

Thank you

