

V. Eligibility

Eligibility Determination of Eligibility

What the Federal Regs. Say ...

Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the child determines whether the child is a "child with a disability" ... and the educational needs of the child; and the public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. A child must not be determined to be a child with a disability ... if the determinant factor for that determination is lack of appropriate instruction in reading...; lack of appropriate instruction in math; or limited English proficiency; and the child does not otherwise meet the eligibility criteria. Sec. 300.306(a), (b).

What the Regulations Mean ...

Following evaluations, a group of individuals (typically the IEP Team), including the parents, decides if the child qualifies for special education services. The team will use State rules to decide if the child qualifies for special education.

The team cannot decide the child has a disability if the child's delays are caused by poor or limited instruction in basic subjects or because the child has limited English skills.

What Parents Should Know ...

Parents are a part of the decision-making team and help in the process of determining eligibility. Parents must receive a copy of all evaluation reports regarding their child. Parents should ask to receive a copy of evaluation reports to review

before the meeting to assist them in actively participating in the meeting.

Children can be determined eligible for services based on a number of different categories. Parents should be wary of schools improperly using the criteria for specific learning disability to deny services to children who would be eligible in a different category.

In
South Dakota ...

For purposes of determining eligibility, South Dakota defines and/or provides criteria for determining the existence of autism, deaf-blindness, deafness, developmental delay, hearing loss, cognitive disability, multiple disabilities, orthopedic impairment, other health impaired, emotional disturbance, specific learning disability, speech or language disorder, traumatic brain injury, and vision loss including blindness. ARSD Chapter 24:05:24.01.

Included within this Chapter are definitions of "Prolonged Assistance" (24:05:24.01:15) and "IEP Team Override" (24:05:24.01:31).

Prolonged assistance defined - Children from birth through two may be identified as being in need of prolonged assistance if, through a full and individual evaluation, they score two standard deviations or more below the mean in two or more of the following areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, and adaptive development. ARSD 24:05:24.01:15.

South Dakota's Special Education Programs website contains a technical assistance guide for determining eligibility in South Dakota. See <http://doe.sd.gov/oess/documents/16-Eligib.pdf>.

Eligibility

"Child with a Disability"

What the Federal Regs. Say ...

"Child with a disability" means a child evaluated ... as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to [in Part B] as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services. Sec. 300.8(a)(1).

If it is determined, through an appropriate evaluation..., that a child has one of the disabilities identified in ... this section, but only needs a related service and not special education, the child is not a child with a disability under this part. Sec. 300.8(a)(2)(i).

Children aged three through nine experiencing developmental delays -

Child with a disability for children ages three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in Sec. 300.111(b), include a child who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures,

in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and who, by reason thereof, needs special education and related services. Sec. 300.8(b).

What the Regulations Mean ...

IDEA eligibility requires meeting the following two-part criteria: 1) A child must have a disability that fits into one or more of the above categories; and 2) As a result of the disability, the child must require special education services.

If evaluations demonstrate a child requires only a related service, the child is not a "child with a disability" and would not be eligible for services under IDEA.

Children may also be found eligible as a result of having a developmental delay.



Eligibility

"Child with a Disability" (cont.)

What Parents Should Know ...

The term "child with a disability" is a *term of art* in special education. When this term is used, it means that a child meets eligibility criteria under IDEA. Simply having one of the listed disabilities is insufficient for eligibility. The child must also need special education (specially-designed instruction) as a result of the disability. If not, the child would not be eligible for any services under IDEA. However, if the child requires only a related service, such as physical therapy, the child may be eligible for receiving that service from the school under Section 504 of the Rehabilitation Act. (See Section XII).

In South Dakota ...

South Dakota defines **developmental delay** as children ages 3 through 5, who are determined to have a disability listed in 24:05:24.01:01 or who experience a severe delay (2 or more standard deviations in one area or 1.5 standard deviations in two or more areas) in cognitive development, physical development, communication develop-

ment, social or emotional development, and adaptive development. ARSD 24:05:24.01:09.

South Dakota has an **IEP override process** in place that allows the IEP Team to determine that a child is eligible for special education or special education and related services because the child has a disability and needs special education, even though the student does not meet the specific definitions/criteria set out in the rules. The IEP Team must document: 1) The record must contain documents that explain why the standards and procedures that are used with the majority of students resulted in invalid findings for the student; 2) The record must indicate what objective data were used to conclude that the student has a disability and is in need of special education. These data may include test scores, work products, self-reports, teacher comments, previous tests, observational data, and other developmental data; 3) Since the eligibility decision is based on a synthesis of multiple data and not all data are equally valid, the team must indicate which data had the greatest relative importance for the eligibility decision; and 4) The IEP Team override decision must include a sign-off by the IEP Team members agreeing to the override decision. If one or more IEP Team members disagree with the override decision, the record must include a statement of why they disagree signed by those members.

The district director of special education shall keep a list of students on whom the IEP Team override criteria were used to assist the State in evaluating the adequacy of student identification criteria. ARSD 24:05:24.01:31.

Eligibility

Parental Consent for Services

What the Federal Regs. Say ...

A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. Sec. 300.300(b)(1).

The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. Sec. 300.300(b)(2).

If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, the public agency may not use the procedures in subpart E of this part (including the mediation procedures under Sec. 300.506 or the due process procedures under Secs. 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child. Sec. 300.300(b)(3).

If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the

public agency requests consent; and is not required to convene an IEP Team meeting or develop an IEP under Secs. 300.320 through 300.324 for the child for the special education and related services for which the public agency requests such consent. Sec. 300.300(b)(4).

What the Regulations Mean ...

Once a child is determined to be a "child with a disability," parents may choose to refuse special education services. Written consent is required before the initial provision of special education services. While schools must make reasonable attempts to get parental consent, schools may not use the procedural safeguards to require services (unlike where they are available if parents refuse evaluations). Furthermore, schools are immune from later litigation if parents specifically refuse consent or simply refuse to respond to the school's attempts to get their consent and are not required to develop an IEP.

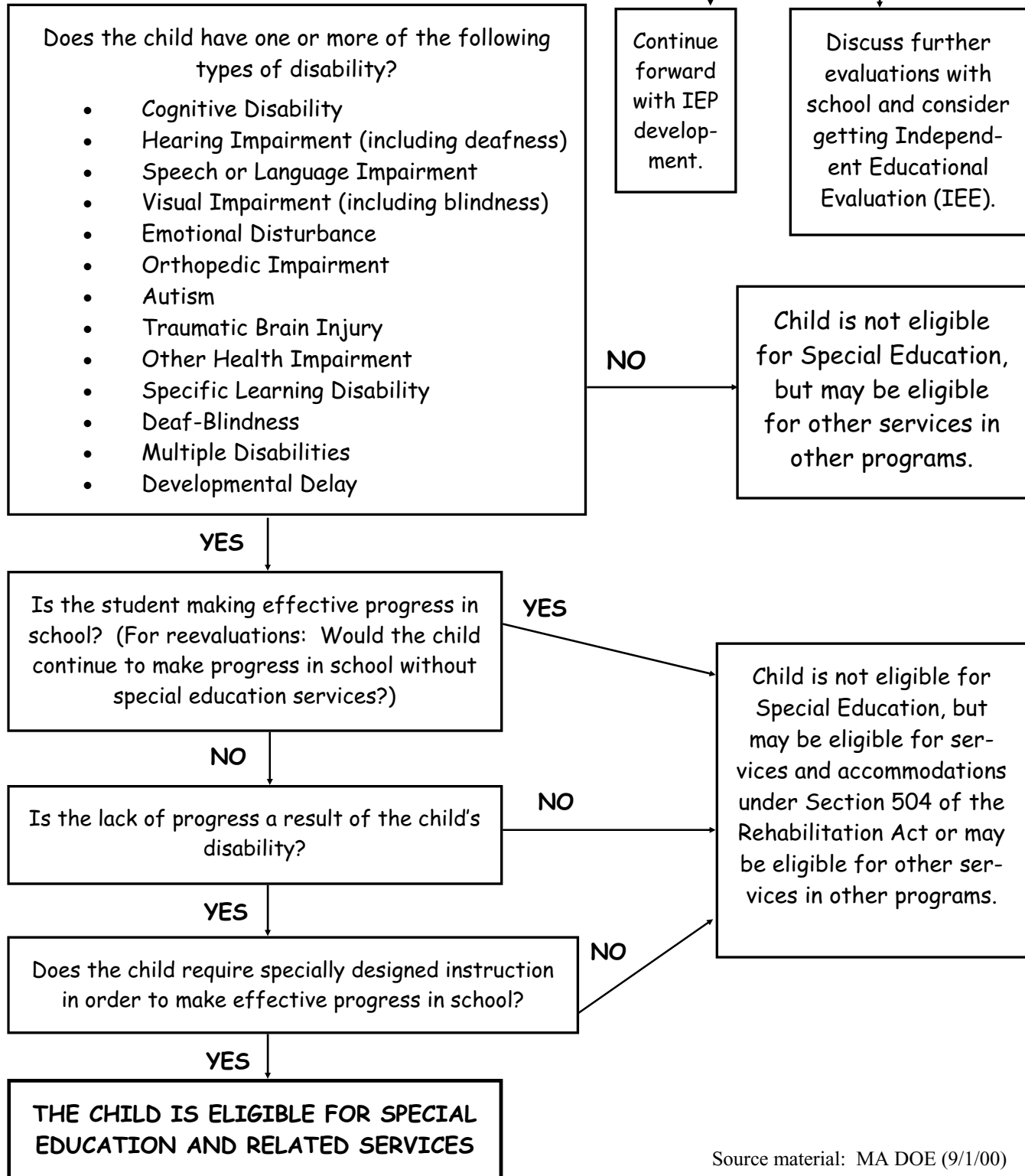
What Parents Should Know ...

If parents do not consent to the initial provision of special education services, parents cannot later claim they did not know better and sue a school for compensatory education services. Refusing services should be done only after careful consideration of the implications.



Eligibility

Eligibility / Initial and Reevaluation Determination (Diagram)



Source material: MA DOE (9/1/00)

VI. IEP Process / IEP Team

IEP Process / IEP Team IEP Team Participants

What the Federal Regs. Say ...

The public agency must ensure that the IEP Team for each child with a disability includes: the parents of the child; not less than one regular education teacher of the child (if the child is, or may be, participating in the regular educational environment); not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child; a representative of the public agency...; an individual who can interpret the evaluation results...; at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child...; and, whenever appropriate, the child with a disability. Sec. 300.321(a).

[Each of these participants are fully described on the following pages].

The determination of knowledge or special expertise of any individual ... must be made by the party (parents or public agency) who invited the individual to be a member of the IEP Team. Sec. 300.321(c).

What the Regulations Mean ...

The school decides who will be the school staff on the IEP Team and sends parents an invitation to the IEP Team meeting. The invitation will list the names or position of the people who represent each of the categories who must be on the IEP Team. Parents are equal participants on

the team and can invite other people of their choice to be a part of the IEP Team. School professionals should listen to the information presented by parents and their child experts.

What Parents Should Know ...

Parents should tell the school that they are coming to the IEP Team meeting. While not legally required, parents should tell the school who they are bringing along as a child expert or for support. Upon receipt of the meeting invitation (notice), parents should review the list of invited participants and notify the school of any other individuals they believe should be at the meeting. For example, parents may want their child's aide to attend.

The parents should make sure all required people are present at the meeting to help make the decisions. If all participants cannot attend, unless specifically excused, parents should ask that the meeting be rescheduled. Parents are equal partners on the IEP Team.



IEP Process / IEP Team
IEP Team Participants (cont.)

What the Federal Regs. Say ...

Parents - The parents of the child. Sec. 300.321(a)(1).

Regular Education Teacher - Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment). Sec. 300.321(a)(2).

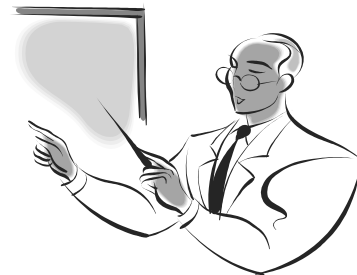
Requirement with respect to regular education teacher - A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and supports and other strategies for the child; and supplementary aids and services, program modifications, and supports for school personnel... Sec. 300.324(a)(3).

What the Regulations Mean ...

Parents, as the term is defined in IDEA, are part of the IEP Team. (See definition in Section I).

If the child is or might be participating in any regular education classroom or activity for any part of the day, a regular education teacher must be a part of the IEP Team. The regular education teacher helps write the IEP for the child, and helps to define the services, program modifications and what support will be needed for

school personnel to help the child succeed in the regular education classroom. The school will decide which regular education teacher(s) will be at the meeting.



What Parents Should Know ...

Parents should attend all IEP Team meetings. They should call the school if they cannot attend the IEP Team meeting. They can ask for the meeting to be held on a different date and/or at a different time.

A regular education teacher is an important part of the IEP Team whenever a child will be participating even part-time in regular classes or activities. The IEP Team, which includes the parent, decides if the child will be in regular education classrooms or programs for all or part of the child's school day. Therefore, unless a decision has somehow been made prior to the meeting that the child will not participate in the regular education environment, the regular education teacher should be a member of the IEP Team. Parents can help the IEP Team plan for the child to be successful when with his or her peers, in classrooms, or in special activities.

IEP Process / IEP Team IEP Team Participants (cont.)

What the Federal Regs. Say ...

Special Education Teacher or Provider - Not less than one special education teacher of the child, or if appropriate, not less than one special education provider of such child. Sec. 300.321(a)(3).

LEA Representative - A representative of the public agency who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; is knowledgeable about the general education curriculum; and is knowledgeable about the availability of resources of the public agency. Sec. 300.321(a)(4).

What the Regulations Mean ...

There must be a special education teacher or provider on the IEP Team who is licensed/certified according to State requirements. Schools should make sure teachers keep up-to-date in their skills by sending them to teacher training events.

The school district representative may be a superintendent, principal, special education director, teacher, or any other school district person who has been designated to fill this role. The school chooses the LEA representative. This person must know about the regular education curriculum and the school district's resources. **The school representative must have the authority to make decisions on behalf of the district, commit any school resources needed, and be able to ensure that**

whatever services are included in the IEP actually will be provided, whether that be evaluations, provision of additional staff, related services, and/or any particular placement a child may require, etc. 71 Fed. Reg. 46,670 (2006).

What Parents Should Know ...

If not sure, parents should ask who the LEA representative is at an IEP meeting. The LEA representative may serve more than one role on the IEP Team. If the LEA representative is not at the meeting, or attends but does not, in fact, have the authority to commit whatever resources are deemed necessary for the child, it is not a legally-constituted IEP Team. If there is no LEA representative who has authority to commit resources, parents should ask that the meeting be rescheduled for a time when an LEA representative can participate.

TIP - Only the IEP Team can make decisions regarding the services required and placement needed for a child. These decisions cannot be deferred to another school committee or to the school board. In other words, another committee, other school administrators, and the school board have no authority to veto an IEP Team's decision, whether that be provision of a specific service, the need to provide (hire) a certain staff member (like an aide or therapist), or an out-of-district placement, etc.

IEP Process / IEP Team IEP Team Participants (cont.)

What the Federal Regs. Say ...

Someone to Explain Tests - An individual who can interpret the instructional implications of evaluation results. Sec. 300.321(a)(5).

Other Participants - At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate. Sec. 300.321(a)(6).

The Child - Whenever appropriate, the child with a disability. Sec. 300.321(a)(7).

What the Regulations Mean ...

Somebody on the IEP Team must be able to explain what the evaluation scores, findings and recommendations mean in plain language or in the language the parents normally use. This person may also be one of the other participants.

The school or parents may bring other people to the IEP Team meeting. The law says these people must have "knowledge or special expertise." The party doing the inviting makes the decision about this person's "knowledge or special expertise." The school must consider information from others whom the parent brings to the meeting.

Parents may have their child with a disability attend and participate in IEP meetings at any age. However, the school must

invite the child whenever transition issues are being discussed.

What Parents Should Know ...

Parents can ask to have evaluation results explained if they do not understand them.

Parents can bring other people with knowledge or special expertise to the IEP Team meeting. Examples may include a friend, relative, neighbor, another parent, doctor, therapist, babysitter or child care provider, member of a parent support group, advocate, or attorney. While parents are under no legal obligation to inform the school whom they are inviting to the meeting, it is best practice that they do so.

Parents may choose to have their child attend the IEP Team meeting at any age. The child should participate as much as possible. Starting with the IEP to be in effect at age 16, the child must be invited and should be actively involved in the development of the IEP.



IEP Process /IEP Team IEP Team Attendance

What the Federal Regs. Say ...

A member of the IEP Team ... is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. Sec. 300.321(e)(1).

A member of the IEP Team ... may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent, in writing, and the public agency consent to the excusal; and the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting. Sec. 300.321(e)(2).

What the Regulations Mean ...

IDEA allows parents to waive attendance of certain IEP Team members under two circumstances. First, if a team member's area is not going to be discussed or changed at a meeting, the parent and school can agree to dismiss that member for part or all of the meeting. Second, even where a team member's area will be discussed and potentially changed, the

parent and school can agree to waive attendance for part or all of the meeting if the team member submits a written report/recommendations prior to the meeting. **Parents must consent to such excusal in writing.**

What Parents Should Know ...

While dismissing IEP Team members may be the right thing to do at times, parents should do so with caution. The problem with allowing individuals whose area is not going to be discussed to be excused, or even worse, with allowing individuals to simply file a report in an area that will be discussed, is that these actions take away from the collaborative team process. If questions arise for the dismissed team member, or if they would have had input on a topic discussed, no immediate input would be available. When a team member simply files a report or recommendations, obviously that team member would not be available to answer questions.

If team members cannot attend in person, parents may request that members participate through other methods, such as conference call, rather than dismiss them from the meeting altogether. Repeated absences of team members will potentially destroy the collaborative nature of the team process. Parents should proceed with caution when consenting to excuse team members.

IEP Process / IEP Team Parent Participation

What the Federal Regs. Say ...

Public agency responsibility - Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. Sec. 300.322(a).

Information provided to parents - The notice required under paragraph (a)(1) of this section must indicate the purpose, time, and location of the meeting and who will be in attendance; and inform the parents of the provisions in Sec. 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and Sec. 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act). For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice must also indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child ...

and that the agency will invite the student; and identify any other agency that will be invited to send a representative. Sec. 300.322(b).

Other methods to ensure parent participation - If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls... Sec. 300.322(c).

Conducting an IEP meeting without a parent in attendance - A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. Sec. 300.322(d).

Use of Interpreters or other action, as appropriate - The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. Sec. 300.322(e).

Parent copy of the Child's IEP - The public agency must give the parent a copy of the child's IEP at no cost to the parent. Sec. 300.322(f).

IEP Process / IEP Team Parent Participation (cont.)

What the Regulations Mean ...

Schools must arrange IEP Team meetings at a time and place that both the parents and school agree is okay. Schools must make sure parents are provided written notice about every IEP Team meeting. If parents cannot attend the meeting in person, they may be given another way to participate, such as by conference call, video conferencing, etc.

In South Dakota, schools must inform parents in writing at least five calendar days in advance of any IEP Team meeting (which can be waived by parents if they want to meet sooner).

The written notice of the meeting must include not only the time and place, but also the purpose of the meeting and who will be attending. The school must also inform the parents that they may bring people to the meeting.

If a purpose of the IEP Team meeting is to address transition services, the school must include that in the notice, as well as what outside agencies will be invited. The notice must also inform parents that the child with a disability will be invited to participate.

If the child's parents require an interpreter to participate in an IEP Team meeting, the school must provide (pay for) an interpreter.

The school must give the parents a copy of the completed IEP.

Schools can conduct IEP Team meetings without parents only when the school has made and documented several attempts to get the parents to participate.

What Parents Should Know ...

Parents should make plans to attend all IEP Team meetings. If they cannot attend the meeting, parents may ask to re-schedule or attend the meeting by phone. If parents refuse to attend an IEP Team meeting or ignore a school's attempts to contact them, the school may hold the meeting without the parents' participation.

When the parents receive their copy of their child's IEP, they should keep it in a safe place, presumably along with that child's previous IEPs, evaluations, etc. As records accumulate, keeping an orderly file becomes vital. (See "Parent Recordkeeping Tips" in Section XII).

IDEA 2004 eliminated the requirement of addressing transition services needs at age 14, changing the language to state only that transition services must be in place in the IEP in effect when the child turns age 16 (or younger if determined appropriate). (See Section VIII).



**IEP Process / IEP Team
Content of IEP / When in
Effect**

What the Federal Regs. Say ...

The IEP for each child with a disability must include:

- Present levels of academic achievement and functional performance;
- Measurable annual goals;
- Statement of how progress is measured and when parents are informed of progress toward goals;
- Special education and related services, supplementary aids and services, program modifications, and supports for school personnel;
- Least restrictive environment;
- Participation in State or district-wide assessments;
- Beginning date, frequency, location, and duration of services and modifications;
- Transition services;
- Transfer of rights at age of majority.

Sec. 300.320.

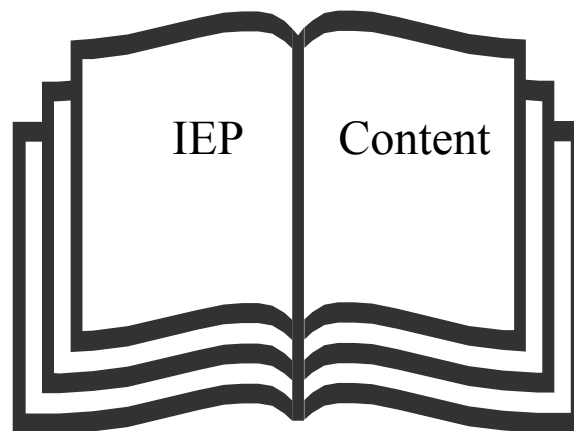
[Each of the above IEP components are described in more detail on the following pages]

Requirement that program be in effect

- At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in Sec. 300.320. Sec. 300.323(a).

What the Regulations Mean ...

The school must make sure that the IEP for each child who qualifies for special education services meets the requirements of the law and is up-to-date and ready for the beginning of the school year.



What Parents Should Know ...

School staff must make sure all parts of the IEP are up-to-date.

Parents should review their child's IEP at the beginning of the school year to make sure that all parts of the IEP fit the new school year. If the child or educational setting has changed in some way that requires a change in the IEP, the parents may ask for an IEP Team meeting to review and revise the IEP.

When a child is moving from one building to another (e.g., elementary school to middle school, middle school to high school), individuals from both schools should participate in an IEP Team meeting to ensure a smooth transition.

IEP Process / IEP Team Who Sees / Receives the IEP

What the Federal Regs. Say ...

Each public agency must ensure that the child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and other service provider who is responsible for its implementation; and each teacher and provider ... is informed of his or her specific responsibilities related to implementing the child's IEP; and the specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP. Sec. 300.323(d).

The public agency must give the parent a copy of the child's IEP at no cost to the parent. Sec. 300.322(f).

What Parents Should Know ...

Parents will get a copy of the new IEP every year, as well as any amendments to the IEP. Parents can give copies of the IEP to anybody they want. Parents should keep copies of the IEP in their file, and check it to see if the goals are being met. When parents get their copy of the IEP, they should read it carefully. If parents have questions, they should call the school. They may ask for an IEP Team meeting at any time if they believe the IEP should be changed. Parents should follow up with all of the child's teachers to be sure the teachers know the child is on an IEP and their responsibilities.

If school personnel do not provide the services, accommodations, modifications or supports contained in the IEP, the school is out of compliance with the IDEA.

What the Regulations Mean ...

The school must make sure all of the child's teachers and service providers can look at or get a copy of the IEP.

The school must make sure all of the child's teachers and service providers know their specific responsibilities for implementing the IEP and what services, accommodations, modifications, and supports they each must provide. This would include specific responsibilities included in a child's behavior plan. The school must give a final copy of the IEP to the child's parents.



**IEP Process / IEP Team
Present Levels of Academic
Achievement and Functional
Performance (PLAAPF)**

What the Federal Regs. Say ...

The IEP must include a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum (*i.e.*, the same curriculum as for nondisabled children); or for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. Sec. 300.320 (a)(1).

What the Regulations Mean ...

The IEP must provide information on how the child is currently performing, which provides a baseline to later determine whether the child is making sufficient progress to meet annual goals. The child's present levels of academic achievement and functional performance should address each area of need. The present levels of academic achievement and functional performance is a clear, descriptive statement of how the child is performing in specific areas of need as found through evaluations, observations, and parent input. The statement should include the child's strengths, interests, and needs, in areas of both academic achievement and functional performance.

The information for this statement is gathered from parents, teachers, assessments, etc.

There are two parts to the present levels of academic achievement and functional performance. First, the IEP will say how the child's participation in the general curriculum or other activities is affected by the disability. Second, it will also describe how the child performs in both academic and nonacademic areas of need.

What Parents Should Know ...

Information from the parents is helpful to the school in planning for the child's educational needs. Parents should share with the IEP Team how the child's disability affects everyday activities such as homework, play, and self-care. They can share information about the child's interests and activities, and also provide information about the child's strengths and areas of need. It is also helpful if parents provide any information about outside services and information from those providers.



IEP Process / IEP Team Measurable Annual Goals

What the Federal Regs. Say ...

The IEP must include a statement of measurable annual goals, including academic and functional goals 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. Sec. 300.320 (a)(2)(i).

For children with disabilities who take alternate assessments aligned to alternate achievement standards, [the IEP must include] a description of benchmarks or short-term objectives. Sec. 300.320(a)(2)(ii).

What the Regulations Mean ...

Each area of need, both academic and functional, will have a measurable annual goal. IDEA 2004 removed the requirement that each annual goal include benchmarks or short-term objectives to help measure the progress in meeting the goal, except in the case of students who take alternate assessments. Measurable annual goals are to help the child be involved in and make progress in the general education curriculum and participate in other activities at school. Annual goals cover what the child can be expected to achieve

within one year, and must include not only what the child is expected to achieve academically, but must also address how the child's disability affects the functional aspects of the child's education. For example, if a child's behavior is affecting the child's education, it may be appropriate to include a functional goal in the child's IEP to address that behavior.

What Parents Should Know ...

Parents should take an active role in helping the rest of the IEP Team understand what they expect of their child in the general education curriculum and other activities.

Parents should take an active role in participating in the development of annual goals (and benchmarks and/or short-term objectives when required).

Parents should insist that measurable annual goals are included in non-academic areas wherein the child's disability results in functional limitations. When in place, parents should ask questions about how the short-term objectives, and/or benchmarks, will help achieve the annual goal. In other words, if the objectives/benchmarks are met, will the child be able to perform the task at the level identified in the annual goal?

While no longer legally required, parents may still request that short-term objectives be included in their child's IEP.

**IEP Process / IEP Team
Measuring Progress Toward
Annual Goals**

What the Federal Regs. Say ...

The IEP must include a description of how the child's progress toward meeting the annual goals ... will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided. Sec. 300.320(a)(3).



What the Regulations Mean ...

The IEP must include a statement of how the school will measure the child's progress toward the annual goals. The IEP must also include a statement of when and how the parents will be told about that progress. The regulations provide an example of "quarterly or other periodic reports, concurrent with the issuance of report cards," but do not place any limits on more frequent reports.

What Parents Should Know ...

With the removal of short-term objectives/benchmarks from the federal law, periodic reports become the only way parents have of tracking their child's progress. Parents should make sure they get reports about their child's progress on the annual goals of the IEP at the frequency agreed upon in the IEP. If parents have questions about the report, they should ask the school staff to explain it in plain language.

The frequency of the reports, what they will be based upon, and the form in which they will be given to parents, must be contained in the child's IEP.



IEP Process / IEP Team Special Education and Related Services

What the Federal Regs. Say ...

The IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum ... and to participate in extra-curricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the activities described in this section. Sec. 300.320(a)(4).

The IEP must include the projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications. Sec. 300.320(a)(7).

What the Regulations Mean ...

The IEP Team will decide which special education services and which related services, as well as modifications, accommodations and other services, the child will

need to be part of the general curriculum and other activities and advance toward attaining the annual goals. The IEP Team decides how the program will be changed for the child and what kinds of help school staff need so the child can: (1) make progress toward annual goals; (2) have as much success as possible in the general education curriculum; and (3) participate in other school activities.

The IEP must specifically describe the beginning date, the frequency, location and duration of services and modifications.

What Parents Should Know ...

Parents are part of the IEP Team. They work with the rest of the IEP Team to decide what services the child needs. The team's decisions are included in the IEP. The IEP Team must document clearly when services begin, where they are provided, and how often and for how long they will be provided.

The extent of a school's responsibility must be clearly set out in the IEP. Parents should not allow language such as "as needed," "when necessary," or "at teacher discretion" in the IEP.



TIP - This is an opportunity for parents and school personnel to include in the IEP any specialized or additional training the child's teachers need in order to appropriately educate the child.

**IEP Process / IEP Team
Least Restrictive
Environment (LRE)**

What the Federal Regs. Say ...

The IEP must include an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section. Sec. 300.320(a)(5).

What the Regulations Mean ...

The 1997 amendments to IDEA changed the language of this requirement. Instead of the IEP documenting how much the child with a disability *will* participate with children without disabilities, IEP Teams since have been required to determine how much the child with a disability *will not* participate with children without disabilities. This change shifted the presumption for IEP Teams - that the IEP Team is to presume the child will participate in the general education curriculum in the regular classroom and in other activities unless the IEP Team determines that is not appropriate.

If participation in the regular classroom or general curriculum is not right for the child, the IEP must explain why the child would not participate in regular classes or other school activities. This decision is made after reviewing all of the information regarding the needs of the child.

What Parents Should Know ...

The IEP Team needs to begin with the presumption that the child with a disability belongs and will be educated in the regular classroom.

Parents need to understand if, when, and why their child will not be in the regular classroom with children who do not have disabilities. Parents also need to understand if, when, and why their child will not participate with children without disabilities in extra curricular and other nonacademic activities.

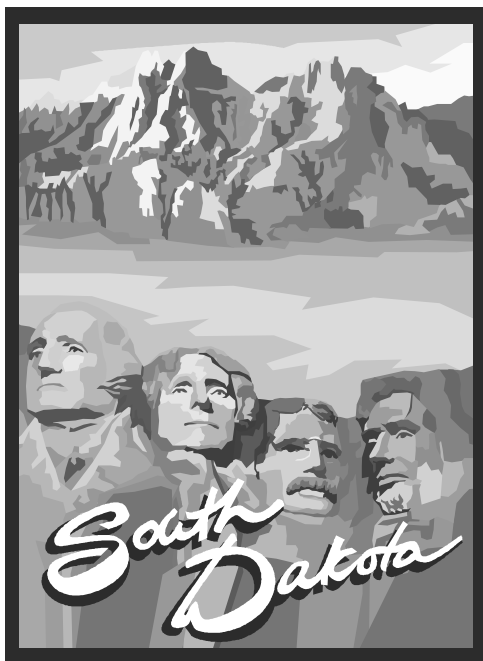


TIP - See additional information on Least Restrictive Environment (LRE) in Section X.

IEP Process / IEP Team State and District-wide Assessments

What the Federal Regs. Say ...

The IEP must include a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments...; and if the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why: the child cannot participate in the regular assessment; and the particular alternate assessment selected is appropriate for the child. Sec. 300.320(a)(6).



What the Regulations Mean ...

The IEP Team will decide what kind of help the child may need for State and school district tests.

The IEP Team decides if the child cannot do the State or district-wide tests. The team will state in writing why the child will not participate. For those few children who do not take the regular State or district-wide tests, an alternate assessment must be provided that is appropriate for the particular child. Districts must develop alternate tests for children who need them.

What Parents Should Know ...

Parents, as part of the IEP Team, help decide what assistance, if any, their child may need to take the State or district-wide tests.

Parents also help decide when alternate tests are necessary. Alternate testing can be different kinds of tests. They might not be written tests.

Children with disabilities who take alternate State or district-wide tests must have short-term objectives and/or benchmarks included for each annual goal on the child's IEP.

IEP Process / IEP Team Transition Services

What the Federal Regs. Say ...

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services (including courses of study) needed to assist the child in reaching those goals. Sec. 300.320(b).

What the Regulations Mean ...

IDEA 2004 eliminated the determination of "transition services needs" for children at age 14 that had been placed into IDEA in 1997.

Beginning with the IEP in effect when a child turns age 16, the IEP must include measurable postsecondary goals and specific transition services the student requires to achieve one or more determined outcomes by the time the student graduates or ages-out of special education services from the school district. The IEP must also include what agencies, besides the school district, are responsible for providing transition services to the student and what services these agencies, if any, will provide. Like other IEP services,

a student's transition services must be reviewed at least every year and revised as needed to meet the student's individualized needs.

To help determine a child with a disability's postsecondary goals and needed transition services, schools must conduct transition assessments in areas of training, education, employment, and, if appropriate, independent living skills.

What Parents Should Know ...

"Transition Services" addresses preparing for life as an adult. Parents and their child with a disability will discuss with the rest of the IEP Team what the child wants for life beyond high school, so that appropriate postsecondary goals can be determined and classes and services can be selected to meet those goals. When it comes time for children to receive transition services, the child must receive appropriate transition evaluations to determine his or her transition needs.

While transition services must be included in a child's IEP in effect at age 16, consideration must be made as to whether they should begin sooner.

TIP - See Section VIII for more detailed information regarding transition services.

**IEP Process / IEP Team
Transfer of Rights at Age
of Majority**

What the Federal Regs. Say ...

Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under Sec. 300.520. Sec. 300.320(c).

What the Regulations Mean ...

The age of majority in South Dakota is age 18. Before a child turns 17 years old, the school must tell the child that he or she will be an adult in the eyes of the law when the child turns 18 years old. The school must document in the IEP in effect when the child turns age 17 that the child has been informed of the transfer of rights that will occur when the child turns age 18.

When a child with a disability reaches the age of 18, all rights under special education law transfer to that adult student, unless the child has been determined by a court to require a legal guardian. The school must notify both the adult student and the parents of the transfer of rights.

[See additional information on transfer of rights in Section XIII].

What Parents Should Know ...

Some children may need partial or full guardianship because of their disability. Guardianship is a legal process. Parents need to consult an attorney for help with the process. Only a court can appoint a guardian. Guardians are appointed for persons who are unable to make decisions about things in their life, such as education, health, finances and well-being.

At age 18, the student is legally an adult. When rights transfer, schools send meeting notices and consent forms to only the adult students. Parents should inform the school if they are in the process of filing for guardianship or need more information about it.



TIP - Your child's IEP can include instruction so that your child learns about his or her rights under IDEA as an adult upon reaching age 18.

IEP Process / IEP Team Extended School Year (ESY) Services

What the Federal Regs. Say ...

Each public agency must ensure that extended school year services are available as necessary to provide FAPE... Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with Secs. 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. In implementing the requirements of this section, a public agency may not limit extended school year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services.

Definition - As used in this section, the term extended school year services means special education and related services that are provided to a child with a disability beyond the normal school year of the public agency; in accordance with the child's IEP; and at no cost to the parents of the child; and meet the standards of the SEA. Sec. 300.106.

What the Regulations Mean ...

The school must give extended school year (ESY) services to children who need them in order to receive a FAPE. ESY is special education and/or related

services beyond the regular school year. The school may give ESY services during summer or other long vacations. ESY services must be provided free of charge to parents. The IEP Team decides annually if a child needs ESY services. This may require a separate meeting.

ESY is not just for children with certain disabilities. A child may need ESY services one year and not the next. The IEP Team considers whether the child's gains made during the regular school year are threatened if the school does not provide ESY services. Each child is unique. The IEP Team should look at:

- the extent of the disability,
- the likelihood of significant regression,
- the probable time needed to relearn skills,
- resources available to the parents,
- how quickly the child learns,
- whether lack of services over summer months will halt a student's progress toward developing critical life skills,
- whether the child is at a critical breakthrough period of a skill,
- if lack of services will intensify "interfering behavior" such as aggression or self-injury,
- other resources available to the child and family, and
- other appropriate factors.

ESY services are:

- Provided in order to prepare the child for the next school year.
- given in a variety of places, such as home, school, or community.

IEP Process / IEP Team Extended School Year (ESY) Services (cont.)

- sometimes limited to related services such as occupational therapy or physical therapy.

The IEP Team writes the ESY services into the IEP. If ESY services are needed for any of the reasons listed above in order for the child to receive FAPE, the IEP Team must determine the length of the school day, number of days per week, and the duration of the ESY services **based on the individual needs of the child.**

What Parents Should Know ...

All schools must be prepared to provide ESY services if the children within the district are determined to require such services. In other words, a school district cannot simply decide not to provide ESY services to its children with disabilities. Similarly, schools cannot choose to limit ESY services to children with specific disabilities or limit ESY services to specific services (*e.g.*, only provide speech therapy).

Parents should share relevant information about their child that may help the IEP Team decide whether their child needs ESY services. Parents should request an IEP Team meeting to discuss ESY services if the IEP

Team has not previously addressed that issue.

The amount of services provided per day and the duration of the services during the ESY period must be based on the individual needs of the child, **not the convenience or set schedule of the district.** Thus, decisions on whether a particular child requires ESY services, and if so, what those services will consist of, must be individualized. Once it is determined a child requires ESY services, the IEP Team must then determine when those services will start, how many hours per day/days per week the child will receive the services, and the duration of the services (*e.g.*, four weeks, eight weeks, all summer). Again, these decisions must be based on the individual needs of the child, not administrative convenience.

TIP - ESY services must be discussed and addressed annually, and should be determined early enough to: 1) allow sufficient time for the school to develop the program; and 2) allow parents sufficient time to challenge the school's decision through the due process procedures prior to the time ESY services should begin.

ESY services are not limited to summertime. Consideration can also be given to other school breaks. ESY determinations are made by the IEP Team. [ESY is covered again in Section XII, Special Topics]

IEP Process / IEP Team Development of IEP / Timelines

What the Federal Regs. Say ...

Development of IEP - In developing each child's IEP, the IEP Team must consider the strengths of the child; the concerns of the parents for enhancing the education of their child; the results of the initial or most recent evaluation of the child; and the academic, developmental, and functional needs of the child. Sec. 300.324(a).

Initial IEPs - Each public agency must ensure that a meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. Sec. 300.323(c).

What the Regulations Mean ...

The IEP Team will write down the child's strengths, not just needs, in the IEP. The IEP Team will listen to any concerns the parents have about their child's education. The IEP Team will look at all of the latest evaluations, and write the child's IEP from that information. In determining the services a child requires, the IEP Team must consider not just a child's academic needs, but a child's developmental and functional needs as well.

Once a child is determined eligible for special education services, the initial IEP must be developed within 30 calendar days, and once developed, must be implemented "as soon as possible."

What Parents Should Know ...

Parents play an integral part in planning their child's IEP. The school personnel should solicit information about the child from the parent. Parents should also be prepared to ask questions and make suggestions at IEP Team meetings.

Typically, the initial IEP is developed at the same time as when the IEP Team meets to determine initial eligibility, although that does not have to occur.

In
South Dakota ...

Determination of eligibility and the initial IEP Team meeting, as well as an IEP Team meeting following a reevaluation, must be held within 30 calendar days of completion of the 25 school day period for conducting the evaluation/reevaluation. ARSD 24:05:27:02.

TIP - An IEP is like a contract. If a school fails to comply with its terms, it is out of compliance with IDEA. If a school fails to provide services contained in an IEP because a provider is attending a training or another child's IEP Team meeting, or is out sick or on maternity leave, those services must be made up. The only legitimate reason for not providing the IEP services is if the child is not in school. When a school fails to comply with the IEP, parents may file a State Complaint or for a due process hearing to seek compensatory services for those that were not provided. (See Section XIII).

IEP Process/IEP Team Accountability

What the Federal Regs. Say ...

Purpose - To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. Sec. 300.1(a).

Free Appropriate Public Education - Free appropriate public education or FAPE means special education and related services that are provided at public expense, under public supervision and direction, and without charge; ... and are provided in conformity with an individualized education program (IEP) that meets the requirements of Secs. 300.320 through 300.324. Sec. 300.18 (a), (d).

A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in Sec. 300.530(d). Sec. 300.101(a).

Consistent with Sec. 300.323(c), the State must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined. Sec. 300.103(c).

What the Regulations Mean ...

IDEA requires the provision of FAPE, which means, among other things, the provision of special education and related services according to the child's IEP. Once an IEP is written, the school is obligated to provide all the services contained in the IEP in the manner described therein. For example, if an IEP calls for the related service of physical therapy 3 times per week for 20 minutes per session, then the school must provide the service in that manner.

Schools may not delay in providing special education or related services while waiting to find out if a third party will pay for the services. Such a delay is a violation of IDEA.

What Parents Should Know ...

If a school fails to comply with the terms of an agreed-upon IEP, it is out of compliance with IDEA. At that point, parents may want to consider reconvening the IEP Team, filing a State Complaint, requesting mediation, or filing for a due process hearing to seek compensatory services for the services the school had not provided.

The only legitimate reason for a school's failure to provide the services contained in the IEP is if the parents do not make the child available, whether that be due to going on a family vacation or because the child is kept home due to illness. Absent teachers or providers is not a valid reason for not complying with the IEP, as schools are supposed to have substitutes available or make up any missed services.

**IEP Process / IEP Team
Consideration of Special
Factors: Positive Behavioral
Intervention / Limited
English Proficiency**

What the Federal Regs. Say ...

The IEP Team must, in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. Sec. 300.324(a)(2)(i).

The IEP Team must, in the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP. Sec. 300.324(a)(2)(ii).

What the Regulations Mean ...

If a child has behavior problems that interfere with the child's learning or interfere with other children's learning, the IEP Team will look at what affects a child's behavior and must think about what positive behavioral interventions and supports, and other strategies, will be used to improve the child's behavior. The team will plan and direct how the school will manage specific behaviors.

The IEP Team must consider the special language needs of a child who has difficulties understanding and speaking English. The team must take these needs into consideration when writing the child's IEP.

What Parents Should Know ...

When a child's behavior is interfering with the child's academic or functional performance, parents should ask that a functional behavioral assessment be completed, and once completed, that a behavioral intervention plan be put in place that addresses the behaviors through appropriate positive interventions and supports. Parents often have good information for the IEP Team to consider regarding the behaviors they see at home and other settings.

If the child does not speak or understand English well, the parents should make sure the school knows this. The IEP Team will make sure the special language needs are documented and addressed in the services provided in the IEP.



TIP - If parents do not speak or understand English very well, they have the right to have the school provide an interpreter or translator so they can be equal partners on the IEP Team.

**IEP Process / IEP Team
Consideration of Special
Factors: Braille**

What the Federal Regs. Say ...

The IEP Team must, in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child. Sec. 300.324(a)(2)(iii).

prepared to discuss use of Braille, Braille instruction, and other options with the IEP Team. If the child requires Braille instruction, the school must ensure that a qualified instructor is provided. Sometimes this may require the school to hire additional personnel.

If the school fails or refuses to provide instruction in Braille and the use of Braille when appropriate for a child, or fails or refuses to provide a qualified instructor in Braille, parents may challenge the school's position by filing a Due Process Complaint to have a hearing officer rule on the issue. (See Section XIII).

What the Regulations Mean ...

The IEP Team must look at the need for providing Braille instruction and teaching the use of Braille to a child who has a visual impairment. The school will test the child's reading and writing skills. The IEP Team will determine whether the child would benefit, now or in the future, from the use of Braille. If the IEP Team does not feel instruction in Braille or the use of Braille is appropriate, that decision should be documented in the IEP.

What Parents Should Know ...

If the child has blindness or a visual impairment, the parents should be



**IEP Process / IEP Team
Consideration of Special
Factors: Communication
Needs**

What the Federal Regs. Say ...

The IEP Team must consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode. Sec. 300.324(a)(2)(iv).

What the Regulations Mean ...

The IEP Team must look at the communication needs of the child. If the child has a hearing impairment, the IEP Team must consider the child's:

- language;
- communication needs;
- opportunities for direct communication with peers and professional personnel;
- language and communication mode;
- academic level;
- full range of needs; and
- opportunities for direct instruction in the child's language and mode of communication.

What Parents Should Know ...

Sometimes children have special communication needs as a result of their disability. Parents should tell the IEP Team about how their child communicates best with friends and family. They should help the IEP Team understand how the child communicates with others.

If the child is deaf or has a hearing impairment, the parent and IEP Team should look at options to determine which placements will allow for direct communications with peers and professional personnel in the child's language and communication mode. The IEP Team should also look for opportunities for the child to have teachers who can provide direct instruction in the child's language and communication mode, *e.g.*, for a child who is deaf, teachers who are proficient in the type of sign language the child uses and who can sign the lessons directly such that an interpreter is not required.



**IEP Process / IEP Team
Consideration of Special
Factors: Assistive
Technology Devices and
Services**

What the Federal Regs. Say ...

The IEP Team must consider whether the child needs assistive technology devices and services. Sec. 300.324(a)(2)(v).

What the Regulations Mean ...

The purpose of assistive technology devices and services is to make sure the child gets a Free Appropriate Public Education (FAPE). The IEP Team must decide whether the child needs assistive technology devices and services in their general education classrooms or special education settings.

The IEP Team should consider any device (from a simple pencil grip to computerized equipment) that may help the child learn. The team may need information from an assistive technology specialist to help determine the child's needs. The IEP Team chooses services to help the child get and use assistive technology devices. For example, the IEP Team would talk about evaluating the child in the child's learning setting, getting equipment, and choosing, customizing, and repairing devices. They would talk about providing training on using the device. Any assistive technology services or devices agreed upon must be written in the IEP.

What Parents Should Know ...

The IEP Team must determine at least annually whether a child needs assistive technology devices and services. Parents can tell the IEP Team about what the child can do at home and in the community. (See Section IX for more information on assistive technology devices and services).



TIP - For information on specific items of assistive technology, contact:

DakotaLink
1161 Deadwood Avenue, Suite 5
Rapid City, SD 57702
(605) 394-6742 or
1-800-645-0673

IEP Process /IEP Team Review and Revision of the IEP

What the Federal Regs. Say ...

Each public agency must ensure that ... the IEP Team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and revises the IEP as appropriate to address any lack of expected progress toward the annual goals ... and in the general education curriculum, if appropriate; the results of any reevaluation conducted...; information about the child provided to, or by, the parents...; the child's anticipated needs; or other matters. Sec. 300.324(b)(1).

Consideration of Special Factors - In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section. Sec. 300.324(b)(2).

Requirement with respect to regular education teacher - A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP.... Sec. 300.324(b)(3).

What the Regulations Mean ...

The IEP Team must re-examine and revise a child's IEP at least once a year. The IEP Team must determine whether the child's annual goals are being accomplished. Because schools will report to parents at least quarterly on the child's progress to-

ward meeting IEP annual goals and in the general education curriculum, information will be readily available on whether sufficient progress is being made. If the child is not making sufficient progress, the IEP Team must reconvene to revise the IEP.

The IEP Team must also meet more often than annually if there are new evaluation results, or to consider new information provided by the parents, and revise the IEP as appropriate.

Each time the IEP Team meets to review a child's IEP, the special factors contained at Sec. 300.324(a)(2) (see previous four pages) must be considered by the IEP Team.

What Parents Should Know ...

As a member of the IEP Team, parents help review and revise the IEP. They should tell the IEP Team about changes in their child. They should help the IEP Team decide what needs to be worked on during the next school year. Parents can ask questions and bring suggestions to the team.

TIP - If a parent believes that sufficient progress is not being made toward their child's annual goals, they should request an IEP Team meeting. If the child is not making sufficient progress to achieve the IEP goals, and the school does not hold a meeting to revise the IEP, the school is in violation of IDEA.

IEP Process / IEP Team Amendments to the IEP

What the Federal Regs. Say ...

In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. Sec. 300.324(a)(4)(i).

If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes. Sec. 300.324(a)(4)(ii).

Changes to the IEP may be made either by the entire IEP Team or, as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. Sec. 300.324(a)(6).

To the extent possible, the local educational agency shall encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child. Sec. 300.324(a)(5).

What the Regulations Mean ...

Amendments to the annual IEP do not require a full team meeting; instead, the parent and a school team member may meet and revise the IEP. Such change may be

written as an IEP amendment, rather than redrafting the entire IEP. However, if parents request a new copy of the entire IEP that includes the amendments, the school must provide the parent a copy of the IEP in that form.

What Parents Should Know ...

Parents always must be involved when an IEP is changed. After the annual IEP Team meeting, IDEA 2004 allows for just the parent and a school person to meet to amend the IEP without having an official IEP Team meeting (without the full team in attendance). The law does not state who the school person must be, but the person would have to have authority to commit school funds. Any changes made would have the same effect as with any other IEP Team meeting, meaning they would be legally-binding on the part of the school. This means that school officials who did not attend the meeting when the amendment was created would not have the right to veto or otherwise deny the changes made through the amendment process.

When an IEP is amended, parents have the right to request that the entire IEP document be re-drafted to incorporate the amendments, rather than simply tacking an amendment page onto the original annual IEP document.

While the law encourages consolidation of meetings to review reevaluation results and the subsequent changes in the IEP, parents may still request IEP Team meetings as frequently as needed based on their child's unique needs.

IEP Process / IEP Team IEP Team Meeting Checklist

Before the IEP Team Meeting:

- 1) Request a copy of any assessment or evaluation reports and ask to have them **at least one week before the IEP Team meeting**. If you do not understand something within the report(s), call the teacher or person who administered the assessment and ask for clarification.
- 2) Review your child's current IEP.
- 3) Write a list of your child's strengths and needs.
- 4) Write a list of the goals that you would like your child to accomplish and also the goals your child wants to accomplish.
 - Think about what has worked or has not worked in the last year.
 - What are your child's interests?
 - What medical or physical needs should be considered?
 - Are there any behaviors that need to be addressed?
 - What are your main concerns for your child right now?
 - What goals are necessary for your child to receive an appropriate education and also move the child forward with his or her education?
- 5) It can be intimidating to go to an IEP meeting by yourself. If needed, ask someone who knows your child to come to the meeting with you for support. It is always best to notify the school that you are bringing an additional person.
- 6) Organize your materials. Include a note pad and a writing utensil.
- 7) Write down any questions you may have.
- 8) Go to the meeting with a positive attitude!

At the Meeting:

- 1) Openly and objectively listen to your child's Present Levels of Academic Achievement and Functional Performance and give your input.
- 2) Develop measurable annual goals, including both academic and functional goals.
- 3) Make sure you know how often you will receive progress reports.

**IEP Process / IEP Team
IEP Team Meeting Checklist
(cont.)**

- 4) Examples of topics to discuss:
 - grading
 - credits
 - transportation
 - adaptive devices
 - curriculum
 - staff
 - facilities
 - methods
 - assistive technology
 - State and district-wide assessments
- 5) Ask how much of the day your child will be with peers that do not have disabilities. Discuss what supports your child needs in order to be further integrated and included in opportunities provided to all children.
- 6) Have a clear understanding of how often related services will be provided, such as OT, PT, ST, etc.
- 7) Discuss ESY services and whether they are appropriate for your child.
- 8) Discuss transition for students ages 16-21, or younger if appropriate.
- 9) Obtain a copy of the new IEP or at least a verbal agreement from the case manager to send you a copy in the next few days.

After the Meeting:

- 1) If, after the meeting, you have a concern about a decision that was made by the IEP Team, call or schedule a time to meet with the case manager. Small changes can be made without reconvening the whole team. However, if needed, the IEP Team can be called together for a follow-up meeting to discuss any concerns.
- 2) Monitor your child's progress. Keep the lines of communication open with the teachers and case manager. Visit with them on a regular basis to find out how things are going for your child.
- 3) Keep all your child's records organized in a file for easy access.

Some information was taken from "ND P&A Project-Handout 2 (NDRN Conference 1.07)"