

# I. Definitions and Acronyms

## Definitions / Acronyms

### **The Act -**

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA). "Act" may also refer to the Family Educational Rights and Privacy Act (FERPA) if such is the context of the section.

### **ARSD -**

Administrative Rules of South Dakota.

### **AT -**

Assistive Technology (See Section IX).

### **At No Cost -**

"At no cost" means that all specially-designed instruction and related services are provided without charge, but does not preclude incidental fees that are normally charged to students without disabilities or their parents as a part of the general education program. Sec. 300.39(b)(1).

### **Behavioral Intervention Plan -**

Sometimes called Behavioral Support Plan or Positive Behavior Intervention Plan, a "Behavioral Intervention Plan" is a plan that teaches replacement skills and manages consequences by positively reinforcing desired behaviors. (See Section XII).

### **BIP -**

Behavioral Intervention Plan.

### **Business Day -**

"Business day" means Monday through Friday, except for Federal and State holi-

days (unless holidays are specifically included in the designation of business day in a given regulation). Sec. 300.11(b).

### **C.F.R. -**

Code of Federal Regulations. The IDEA Part B regulations are contained at 34 C.F.R. section 300.1 through 300.818.

### **Child with a Disability -**

The term means a child evaluated as having an intellectual disability, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious 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).

### **Commensurate -**

Corresponding in size or degree; proportionate (for example, *a salary commensurate with her performance*).

### **Consent -**

Also referred to as "informed consent" and "parental consent," it means that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be

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released and to whom; and the parent understands that the granting of consent is voluntary on the part of the parent, and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive (*i.e.*, it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent. Sec. 300.9.

### **Day -**

"Day" means calendar day unless otherwise indicated as a business day or school day. Sec. 300.11(a).

### **Due Process -**

A legal term referring to procedures that protect a person's rights. In special education, being provided due process means that the required procedural safeguards are followed, and also describes the administrative hearing process (*i.e.*, "Due Process Complaint" and "Due Process Hearing").

### **Due Process Complaint -**

The document that parents must send to the school district and the State Depart-

ment of Education (SEA) to file for a due process hearing. It contains information on the child, a description of the alleged violation relating to the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education (FAPE), and a proposed resolution. The complaint places the school district on notice that the parent is requesting a hearing to resolve the issues at hand. If a school files for due process, it similarly must file a Due Process Complaint with the parents and the State. Sec. 300.508. (See Section XIII).

### **Due Process Hearing -**

When a party files a Due Process Complaint for a hearing under IDEA, it is referred to as a "due process hearing."

### **ESA -**

Educational Service Agency. An ESA is a regional public multiservice agency; authorized by State law to develop, manage, and provide services or programs to LEAs; recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and includes entities that meet the definition of intermediate educational unit... Sec. 300.12. In South Dakota, ESAs would be educational cooperatives.

### **ESSA -**

Every Student Succeeds Act of 2015.

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### **ESY -**

Extended School Year.

### **Every Student Succeeds Act of 2015 -**

Commonly known as **ESSA**, it is a federal law that was signed on December 10, 2015, to reauthorize the Elementary and Secondary Education Act of 1965 (ESEA). It replaces the No Child Left Behind Act. It made numerous changes to the prior law. Generally, it gave more authority and flexibility to States in determining accountability standards/goals and in the accountability systems the States utilize. It removed the "highly qualified teacher" requirements. It caps the number of students receiving alternative tests at one percent of all students (about 10 percent of students receiving special education). South Dakota's Accountability Plan serves as the framework for all ESSA efforts in the State. ESSA implementation began in the 2017-18 school year.

### **Extended School Year -**

Special education and/or related services provided when school is not in session for all students, such as during summer or other school breaks. (See Section VI or XII).

### **FAPE -**

Free Appropriate Public Education.

### **FBA -**

Functional Behavioral Assessment.

### **FERPA -**

Family Educational Rights and Privacy Act. It is contained at 34 C.F.R. Part 99.

### **Free Appropriate Public Education -**

The term "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; meet the standards of the SEA...; include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with an individualized education program (IEP) .... Sec. 300.17.

### **Functional Behavioral Assessment -**

A process for gathering information to understand the function (purpose) of behavior in order to write an effective behavior intervention plan. (See Section XII).

### **Habilitation -**

Services focused on providing a person with the skills and/or abilities to qualify or enable that person for a position or role.

### **IAES -**

Interim Alternative Educational Setting.

### **IDEA -**

Individuals with Disabilities Education Improvement Act of 2004.

### **IEE -**

Independent Educational Evaluation.

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### **IEP -**

Individualized Education Program. The document parents jointly develop at least annually with school personnel that contains services provided to a child with a disability. (See Section VI).

### **IEP Team -**

The group of individuals who make decisions regarding a child with a disability's identification, evaluation, placement, and provision of a free appropriate public education and who develop, review, and revise the child's IEPs. (See Section VI).

### **IFSP -**

Individualized Family Service Plan. This document contains the services provided to children from birth to age 3 under Part C of IDEA.

### **Include -**

In IDEA, "include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named. Sec. 300.20.

### **Independent Educational Evaluation -**

An evaluation obtained by a parent at public expense (paid for by the school district) from an evaluator independent of (outside) the local school district because the parent disagrees with an evaluation conducted or obtained by the school district. (See Section XIII).

### **Interim Alternative Educational Setting -**

A placement different from that called for in the child's IEP wherein the child must continue to have access to the general education curriculum and receive services that allow the child to progress toward meeting the child's annual IEP goals. A child is placed in an interim alternative educational setting in situations involving discipline. (See Section XIV).

### **LEA -**

Local Educational Agency - such as a school district.

### **LRE -**

Least Restrictive Environment. (See Section X).

### **Mediation -**

A voluntary process in special education bringing parties together with an impartial mediator to work with each other to attempt to resolve a disagreement. Parents and school districts may utilize mediation at any time to attempt to resolve a disagreement. Sec. 300.506. (See Section XIII).

### **Native Language -**

The term "native language," when used with respect to an individual who is limited English proficient, means the following: The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child...; In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an

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individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). Sec. 300.29.

**OT -**  
Occupational Therapy. (See Section VII).

**Parent -**  
The term "parent" means a biological or adoptive parent of a child; a foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, step-parent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed .... Sec. 300.30.

**Part B -**  
The portion of IDEA applying to services provided to children with disabilities ages 3 through 21. Part B is what is addressed in this book.

**Part C -**  
The portion of IDEA applying to services provided to children from birth to age 3.

**Personally Identifiable Information -**  
The term "personally identifiable information" means information that contains the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's Social Security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty. Sec. 300.32. (See Section XIII).

**Physical Education -**  
Part of the definition of "special education," "Physical Education" means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and includes special physical education, adapted physical education, movement education, and motor development. Sec. 300.39(b) (2).

**PLAAFP -**  
Present Levels of Academic Achievement and Functional Performance.

**Positive Behavioral Supports/ Interventions -**  
Individualized approaches to support students experiencing behavioral difficulties in school, home and community environments. It is a process that incorporates

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goal setting, functional behavioral assessment, plan design, implementation, and evaluation.

### **PT -**

Physical Therapy. (See Section VII).

### **Public Agency -**

The term "public agency" includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. Sec. 300.33. In most situations in South Dakota, it means the local school district (LEA).

### **Record -**

Any information recorded in any way, including handwriting, print, videotape, audiotape, or electronically stored documentation.

### **Related Services -**

"Related Services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Sec. 300.34. The list of related services contained in the federal regulations is non-inclusive, meaning not limited to those specifically listed. (See Section VII).

### **Resolution Meeting -**

A legally-required meeting between the parents and relevant IEP Team members to discuss the basis of a Due Process Complaint, so that the school has the opportunity to resolve the dispute before a hearing occurs. This meeting need not be held if **both the school and parents** agree to waive it. Sec. 300.510. (See Section XIII).

### **Response to Scientific, Research-based Intervention -**

A newly-introduced method for determining the existence of a Specific Learning Disability. It may also be referred to as "Response to Intervention," or "RTI." (See Section IV).

### **RTI -**

"Response to Intervention," short for "response to scientific, research-based intervention."

### **School Day -**

"School day" means any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. Sec. 300.11(c).

### **SDCL -**

South Dakota Codified Laws.

### **SEA -**

State Educational Agency. It means the State board of education or other agency or officer primarily responsible for the

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State supervision of public elementary schools and secondary schools.... Sec. 300.41. In South Dakota, SEA could refer to the State Department of Education or State Board of Education.

**Section 504 of the Rehabilitation Act -** From of the Rehabilitation Act of 1973, "Section 504" states that no program or activity receiving federal funds can exclude, deny benefit to, or discriminate against any person on the basis of disability. Section 504 is contained at 29 U.S.C. Section 794(a). (See Section XII).

**SLD -** Specific Learning Disability. (See Section IV for a description of the evaluation of a child suspected of having a specific learning disability).

**Special Education -** "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. Special education also includes each of the following...: speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; travel train-

ing; and vocational education. Sec. 300.39 (a).

**Specially Designed Instruction -** "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction to address the unique needs of the child that result from the child's disability; and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children. Sec. 300.39(b)(3).

**ST/SLT -** Speech Therapy/Speech-Language Therapy. (See Section VII).

**Supplementary Aids and Services -** "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate in accordance with the LRE requirements of IDEA. Sec. 300.42.

**Transition Services -** "Transition services" means a coordinated set of activities for a child with a disability that (1) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from



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school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes: Instruction; related services; community experiences; the development of employment and other post-school adult living objectives; and if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. Sec. 300.43(a).

Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. Sec. 300.43(b). (See Section VIII).

### **Travel Training -**

Part of the definition of special education, "Travel Training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live; and learn the skills necessary to move effectively and safely from place to place within that environ-

ment (*e.g.*, in school, in the home, at work, and in the community). Sec. 300.39(b)(4).

### **U.S.C. -**

United States Code. IDEA is located at 20 U.S.C. Section 1400 *et seq.*

### **Vocational Education -**

"Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree. Sec. 300.39(b)(5).

### **Ward of the State -**

"Ward of the State" means a child who, as determined by the State where the child resides, is (1) A foster child; (2) A ward of the State; or (3) In the custody of a public child welfare agency. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in Sec. 300.30. Sec. 300.45.

# II. Purposes and Applicability of Part B to State and Local Educational Agencies

## Purposes and Applicability

### *What the Federal Regs. Say ...*

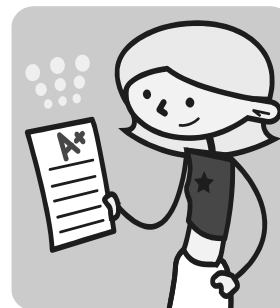
**Purposes** - The purposes of this part are: (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; (b) To ensure that the rights of children with disabilities and their parents are protected; (c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and (d) To assess and ensure the effectiveness of efforts to educate children with disabilities. Sec. 300.1.

**Applicability of Part B to State and local agencies - States** - This part applies to each State that receives payments under Part B of the Act, as defined in Sec. 300.4. Sec. 300.2(a).

**Public agencies within the State** - The provisions of this part - 1) apply to all political subdivisions of the State that are involved in the education of children with disabilities, including: (i) The State educational agency (SEA); (ii) Local educational agencies (LEAs), educational service agencies (ESAs), and public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA; (iii) Other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for children with deafness or children with blindness); (iv) State and local juvenile and adult correctional facilities; and 2) are binding on each public

agency in the State that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Act. Sec. 300.2(b).

**Private schools and facilities** - Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities - 1) referred to or placed in private schools and facilities by that public agency; or 2) placed in private schools by their parents under the provisions of Sec. 300.148. Sec. 300.2(c).



### *What the Regulations Mean ...*

The purposes of IDEA result from extensive Congressional findings. Prior to enactment of the first version of IDEA, the Education for All Handicapped Children Act of 1975 (Public Law 94-142), the educational needs of millions of children with disabilities were not being fully met because the children did not receive appropriate educational services, they were excluded entirely from the public school system and from being educated with their peers, their disabilities went undiagnosed and prevented them from having a successful educational experience, or there was a lack of resources within the public school system, forcing families to find services elsewhere.

The initial Congressional emphasis was on access to schools and providing children with

## Purposes and Applicability (cont.)

disabilities an appropriate education. Over the years, Congress has determined that IDEA has been impeded by low expectations.

With the 2004 Amendments, Congress stated that 30 years of research and experience has demonstrated that education for children with disabilities can be more effective by having high expectations for children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible, in order to: 1) meet developmental goals; 2) to the maximum extent possible, meet the challenging expectations established for all children; and 3) be prepared to lead productive and independent adult lives, to the maximum extent possible.

Congress listed numerous ways in which education of children with disabilities can be made more effective at 20 U.S.C. §1400(c). Some of those topics included: Strengthening the role and responsibility of parents; supporting high-quality, intensive preservice preparation and professional development for all school personnel who work with children with disabilities to ensure they have the skills and knowledge necessary to improve children's academic achievement and functional performance; supporting the use of technology to maximize accessibility; and being more responsive to both minority groups and children with limited English proficiency.

IDEA broadly applies to numerous educational agencies. It not only applies to the SEA (State Educational Agency) and LEAs (Local Educational Agencies), but it also applies to Educational Services Agencies, special State schools for children who are deaf or blind, State Departments of Corrections and Men-

tal Health, and charter schools for those states that have charter schools.

### *What Parents Should Know ...*

One of the purposes of IDEA is to ensure all children with disabilities receive a Free Appropriate Public Education (FAPE). IDEA is not a "one size fits all" law or program. Instead, each decision made on behalf of a child with a disability must be based on that child's unique needs, whether that be the evaluations performed to determine eligibility and/or the services the child requires, the measurable annual goals, the special education services a child requires, whether the child requires any related services, and when the services will begin, the frequency of the services, the duration of the services, and the location where services will be provided, etc.

Within the purposes of IDEA is the clear mandate that "appropriate services" means not only the provision of special education and related services to meet academic needs, but also to meet a child's functional needs and to be sufficient to prepare the child for further education, employment, and independent living. Congress has thus placed a much greater emphasis on "transition services," meaning a level of services to allow the child to seamlessly move from the public school to employment, various post-secondary education opportunities, independent living, adult services, and/or community participation. IDEA has come a long way from its initial emphasis on simply getting children with disabilities inside the school doors, to that of achieving specific outcomes by the time the child leaves the public school.