



Individuals with Disabilities Education Act (IDEA)

What is the IDEA?

The federal Individuals with Disabilities Education Improvement Act was first enacted in 1975 and was most recently reauthorized in 2004.¹ The purpose of the IDEA is to:

- ❖ Ensure that all children with disabilities are provided with a free appropriate public education (FAPE) designed to meet their unique needs and prepare them for employment and independent living.
- ❖ Ensure that the rights of children with disabilities and their parents are protected.
- ❖ Assist states, localities, educational service agencies,² and federal agencies to provide for the education of all children with disabilities.
- ❖ Assess and ensure the effectiveness of efforts to educate children with disabilities.³

To meet the requirements of the IDEA, federal funding is provided to states that annually submit a plan to the U.S. Department of Education, providing assurances that policies and procedures consistent with the IDEA have been enacted.⁴ The level of funding allocated to each state is based on the number of children with disabilities identified as residents of a particular state.⁵

The types of services that states are required to provide for children with disabilities depend upon the age of the child. Part B of the IDEA requires states to provide a FAPE for children ages three to 21. Part C of the IDEA requires states to provide early intervention services for infants and toddlers ages birth to two.⁶ In the 2009-10 academic year, 341,632 students ages six through 21 and 21,662 prekindergarten students were served under Part B of the IDEA.⁷

¹ U.S. Department of Education, Archived: A 25 Year History of the IDEA, July 2007, <http://www2.ed.gov/print/policy/speced/leg/idea/history.html> (last visited July 29, 2010).

² "Educational service agency" means a regional public multiservice agency authorized by state law to develop, manage, and provide services or programs to local education agencies or school boards and recognized as an administrative agency for purposes of providing special education and related services within elementary and secondary schools in the state. 34 C.F.R. s. 300.12.

³ 34 C.F.R. s. 300.1 and s. 1003.571, F.S.

⁴ 34 C.F.R. s. 700; *see also* The Florida Department of Education annual application under Part B of the IDEA for Federal Fiscal Year 2010, (2010), available at <http://www.fldoe.org/esepdf/idea-partb-09.pdf>.

⁵ 34 C.F.R. s. 300.100.

⁶ U.S. Department of Education, *Building the Legacy: IDEA 2004*, <http://idea.ed.gov/> (last visited July 29, 2010). Florida law incorporates the requirements under Part B of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) in ss. 1003.01(3), 1003.57 - 1003.576, F.S. Florida Law incorporates the requirements under Part C of the IDEA in ss. 391.301- 391.308, F.S.

⁷ Florida Department of Education, Bureau of Exceptional Student Education, *Students with Disabilities Enrollment, Ages 6-21, 2009-10* (Oct. 2009) available at <http://www.fldoe.org/esepdf/b-621.pdf> and www.esepdf/b-pre-06.pdf.

What is a free appropriate public education (FAPE)?

A FAPE means special education and related services⁸ that are provided by the public school system at no cost to the parent, which meet the standards of the state and which are provided in conformity with an individual educational plan (IEP).⁹ States are required to monitor school districts in order to measure their performance in providing a FAPE in the least restrictive environment (LRE).¹⁰

To be in compliance with the LRE requirement, states must educate students with disabilities with their nondisabled peers to the maximum extent appropriate. Special classes, special schooling, or other removal of the student from the regular education environment should only occur if the nature and severity of his or her disability is such that an appropriate education in regular classes cannot be achieved satisfactorily.¹¹ The LRE must be considered during the development of the student's IEP.¹²

Has the issue of FAPE ever been litigated?

Yes. The issue of what constitutes a FAPE has been extensively litigated in state and federal courts. Florida case law has held that the FAPE requirement does not require states to satisfy all particular needs of each child; however, the FAPE offered must be based on a full evaluation and designed to afford the child with a disability a meaningful opportunity to learn.¹³

The IDEA authorizes the court to award attorneys' fees in a proceeding brought under the act to:

- ❖ The prevailing parent of a child with a disability;
- ❖ The prevailing state or local education agency against the parent's attorney if the complaint is frivolous or if the attorney continued to litigate after the litigation became frivolous, unreasonable, or without foundation; or
- ❖ The prevailing state or local education agency against the parent or the parent's attorney if the complaint or subsequent cause of action was presented for any improper purpose, e.g., harassment, unnecessary delay, or needlessly increasing litigation costs.¹⁴

State courts have concurrent jurisdiction with federal courts to award attorney fees under the IDEA.¹⁵

⁸ "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, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." "Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34 (a).

⁹ 34 C.F.R. s. 300.17.; rule 6A-6.03028, F.A.C.

¹⁰ 34 C.F.R. s. 300.600 (d)(1).

¹¹ 34 C.F.R. s. 300.114(a)(2); s. 1003.57(1)(d); rule 6A-6.03028(3)(i), F.A.C.

¹² *L.G. et.al. v. School Bd. Of Palm Beach County, Fla.*, 512 F. Supp.2d 1240, 1247-1249 (S.D. Fla. 2007).

¹³ 34 C.F.R. s. 300.320(a)(4)(iii); rule 6A-6.03028(3)(i), F.A.C.

¹⁴ 20 U.S.C. s. 1415(i)(3)(B).

¹⁵ *W.R. v. School Bd. Of Osceola County, Fla.*, 726 So.2d 801, 804 (Fla. 5th DCA 1999).

What is “child find?”

The IDEA requires states to have policies and procedures in place to identify, locate, and evaluate all children with disabilities in the state who need special education and related services. These policies and procedures are known as “child find.” State child find activities must include policies for identifying not only public school children, but also homeless, migrant, and private school children with disabilities.¹⁶

Does the IDEA apply to children with disabilities enrolled by their parents in private schools?

Yes. In general, the IDEA requires states to have in effect policies and procedures that ensure that school districts and, if applicable, the state, meet the private school requirements under the IDEA.¹⁷ Additionally, the IDEA applies to children with disabilities enrolled by their parents in private, including religious, schools or facilities that are considered elementary, middle or high school as determined by state law.¹⁸

A services plan must be developed and implemented for each private school child with a disability who has been designated by the school district in which the private school is located to receive special education and related services.¹⁹ The school district must initiate and conduct meetings to develop, review, and revise a services plan for the child. The school district must ensure that a representative of the religious or other private school attends each meeting.²⁰

Funds provided to private schools must be used to meet the special education and related services needs of parentally-placed private school children with disabilities and not for meeting the needs of a private school or the general needs of the students enrolled in the private school.²¹

How are students determined to be eligible for IDEA services?

Students ages three to 21 may be referred for an evaluation for exceptional student education (ESE)²² services by their parents, a teacher, or other school staff.²³ In Florida, for students in kindergarten through grade 12 who are suspected of having a disability, school districts must ensure that a range of general education interventions²⁴ have been attempted prior to being

¹⁶ 34 C.F.R. ss. 300.111, 300.131, and 303.321.

¹⁷ 34 C.F.R. s. 300.129.

¹⁸ 34 C.F.R. s. 300.130; *see also* 34 C.F.R. ss. 300.13 and 300.136.

¹⁹ 34 C.F.R. s. 300.132(b).

²⁰ 34 C.F.R. s. 300.137(c).

²¹ 34 C.F.R. s. 300.141.

²² In Florida, Exceptional Student Education (ESE) is special instruction, facilities, and services that are provided to students with disabilities and students who are identified as gifted. Section 1003.01(3)(a), F.S.; *see also* Exceptional Student Education (ESE) Fact Sheet.

²³ 34 C.F.R. s. 300.301(b).

²⁴ The IDEA allows a school district the option of using no more than 15 percent of its federal special education funds to develop and implement coordinated early intervening services (general education intervention procedures) for students in kindergarten through grade 12 who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in general education. The IDEA encourages school districts to use this option for students in kindergarten through grade three. 34 C.F.R. s. 300.226; rule 6A-6.0331(1)(g), F.A.C.

evaluated as a student with a disability.²⁵ Once the evaluation team has determined that reasonable general education interventions are not sufficiently effective, a referral for evaluation is made. A team of professionals and the student's parent (i.e., staffing committee) review the evaluation results to determine if the student meets the requirements for eligibility under one or more State Board of Education rules and if there is evidence of a need for special education and related services.²⁶

For children below mandatory school attendance age and who are not yet enrolled in kindergarten, the general education intervention requirements are not applicable.²⁷ However, these children are required to have existing social, psychological, and medical data reviewed with a health screening, if necessary; and vision and hearing screenings are required to rule out sensory deficits. Additional screenings may be conducted, if warranted.²⁸

The public agency conducting the initial evaluation must notify the parent and obtain informed consent from the parent prior to conducting an evaluation.²⁹ Eligibility for an ESE program requires that the student has a disability and a need for special education and related services; i.e., having the exceptionality alone does not constitute eligibility.³⁰

Infants and toddlers with disabilities means individuals from birth to two who are eligible for early intervention services when they have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay; or have been diagnosed as experiencing developmental delays in one or more of the following developmental areas:

- ❖ Cognitive development, such as thinking, learning, and problem solving.
- ❖ Physical development, such as health, hearing, and vision.
- ❖ Communication development, such as babbling, languages, and speech.
- ❖ Social or emotional development, such as playing and interacting with others.
- ❖ Adaptive development, such as self-help skills.
- ❖ Gross and fine motor skills, such as moving, walking, and coordination.³¹

For purposes of determining eligibility for early intervention services, states are required to define "developmental delay" and may elect to include children who are "at risk" for developmental delays in its eligibility formula.³² In defining the "at risk" population, states may include conditions such as genetic or congenital disorders, severe sensory impairments,

²⁵ Rule 6A-6.0331(1), F.A.C. The general education intervention requirements do not apply to students suspected of being gifted or who are being considered for specially designed instruction for students who are homebound or hospitalized. *Id.*

²⁶ Rule 6A-6.0331(5) and (6), F.A.C.

²⁷ Rule 6A-6.0331(2), F.A.C.

²⁸ *Id.*

²⁹ 34 C.F.R. s. 300.300; rule 6A-6.0331(4)(a), F.A.C.

³⁰ 34 C.F.R. s. 300.306(c).

³¹ 34 C.F.R. s. 303.16(a); *see also* Florida Department of Health, Division of Children's Medical Services, Early Steps Eligibility, http://www.cms-kids.com/families/early_steps/eligibility.html (last visited Aug. 10, 2010).

³² 34 C.F.R. ss. 303.16 and 303.300. Florida has elected to include children who are at risk of having developmental delays. Florida Department of Health, Division of Children's Medical Services, Early Steps Policy Handbook and Operations Guide, July 2010, Policy 3.1.1, http://www.cms-kids.com/home/resources/es_policy_0710/3-FirstContactsEvaluationAssessment/Comp3_Handbook.html (last visited Aug. 10, 2010).

congenital infections, and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.³³

Evaluations for infants and toddlers must be conducted by a multidisciplinary team.³⁴ The multidisciplinary team may consist of medical, mental health, education, and early childhood development professionals.³⁵ The team must evaluate and assess each child's family to identify its needs for assisting in the child's development. When a child is determined to be eligible for ESE or early intervention services, the evaluation team then identifies the services appropriate to meet the child's development needs.³⁶

If the parents of a disabled child disagree with the evaluation, then they may request an independent educational evaluation (IEE) at the public agency's expense. Should this occur, the public agency must either file a due process complaint to request a hearing to show that its evaluation is appropriate or provide the IEE at public expense.³⁷ The parents may also request a due process hearing to contest the school's evaluation.³⁸

What types of educational plans must be developed for infants and toddlers or students with disabilities?

If a child is found eligible for services under the IDEA, a plan is developed for the provision of the appropriate services needed. An IEP is developed for students with disabilities ages three through 21.³⁹ An individualized family support plan (IFSP) is prepared for children ages birth to two.⁴⁰ An IFSP may also be used through the age of five in lieu of an IEP.⁴¹ Parents participate in the development of the plan, which may not be implemented until the parent provides written consent for placement in the ESE or early intervention program.

Individualized Educational Plan. An IEP is developed by a team of professionals and the parent. The IEP team must include the parent; at least one ESE teacher of the child; at least one general education teacher of the child; a representative of the school district, i.e., a local educational agency representative; and when appropriate, the student with the disability.⁴²

The IEP team develops annual goals, both academic and functional, for the student based on his or her strengths, needs, and the effect of the disability.⁴³ Once the goals are determined, the team decides what type of special education services and supplementary aids the student needs, how often, and where the services should be provided, e.g., in the general education class or in an ESE classroom. The team also determines if the student needs related services such as occupational therapy or specialized transportation and any appropriate accommodations

³³ Note 1, 34 C.F.R. s. 303.16.

³⁴ 34 C.F.R. s. 303.322.

³⁵ 34 C.F.R. s. 303.12(c)-(e).

³⁶ 34 C.F.R. s. 303.322.

³⁷ 34 C.F.R. s. 300.502.

³⁸ 34 C.F.R. s. 300.507.

³⁹ 34 C.F.R. s. 300.320.

⁴⁰ 34 C.F.R. s. 303.340(b).

⁴¹ 34 C.F.R. s. 300.323(b); rule 6A-6.03029(2), F.A.C.

⁴² 34 C.F.R. s. 300.321; rule 6A-6.03028(3)(c), F.A.C.

⁴³ 34 C.F.R. s. 300.320(a); rule 6A-6.03028(3)(g), F.A.C.

necessary to measure the student's academic achievement and functional performance on state and district-wide assessments.⁴⁴ Beginning at age 16, a student's IEP must address goals and services required to assist the student in transitioning to life after high school.⁴⁵

School districts must ensure that 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.⁴⁶ In addition to the services identified in the IEP, state law requires the district school superintendent to fully inform the parent of a student with a physical or developmental disability of all available services that are appropriate for the student's disability.⁴⁷

If a child with a disability has been placed or referred to a private school or facility by a public agency, the state must make sure the child has all of the rights of a child with a disability attending a public school.⁴⁸ The state must make the private school or facility aware of the applicable standards and provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.⁴⁹ The state is required to monitor the private school or facility to ensure compliance with the IDEA through procedures such as written reports, on-site visits, and parent questionnaires.⁵⁰

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the child's parents.⁵¹

The Individualized Family Service Plan. An IFSP documents and guides the early intervention process for children with disabilities and their families. It must include a statement of the child's present levels of physical development, cognitive development, communication development, social or emotional development, and adaptive development and the outcomes expected to be achieved by the child and the family.⁵² The IFSP contains information about the services necessary to facilitate a child's development and enhance the family's capacity to facilitate the child's development.⁵³ Through the IFSP process, family members and service providers work as a team to plan, implement, and evaluate services specific to the family's concerns, priorities, and available resources.⁵⁴ A service coordinator then helps the family by coordinating the services outlined in the IFSP.⁵⁵

To prepare the child for transition from early intervention services to special education services, a transition planning meeting is to be held at least three months prior to the child's third birthday.

⁴⁴ *Id.*

⁴⁵ See 34 C.F.R. s. 300.320(b); rule 6A-6.03028(3)(h)9. and 10., F.A.C.

⁴⁶ 34 C.F.R. s. 300.323(c).

⁴⁷ Section 1003.57(1)(e), F.S.

⁴⁸ See 34 C.F.R. s. 300.146; rule 6A-6.03028(3)(n), F.A.C.

⁴⁹ 34 C.F.R. s. 300.147(b) and (c).

⁵⁰ 34 C.F.R. s. 300.147(a).

⁵¹ 34 C.F.R. s. 300.104; s. 1003.58, F.S.; rule 6A-6.03028(3)(o), F.A.C.

⁵² 34 C.F.R. s. 303.344(a) and (c); rule 6A-6.03029, F.A.C.

⁵³ 34 C.F.R. s. 303.344(d).

⁵⁴ 34 C.F.R. s. 303.342.

⁵⁵ 34 C.F.R. s. 303.344(g).

An exit IEP is prepared which determines the services that the child will receive after the transition.⁵⁶

Where may I get additional information?

Florida Department of Education

Bureau of Exceptional Education and Student Services
(850) 245-0475
<http://www.fldoe.org/ese/>

U.S. Department of Education

Office of Special Education and Rehabilitative Services and
Office of Special Education Programs
400 Maryland Avenue, S.W.
Washington, D.C. 20202-7100
(202)245-7468
<http://idea.ed.gov/>
<http://www2.ed.gov/about/offices/list/osep/index.html>

Florida House of Representatives

Education Committee
(850) 488-7451
<http://www.myfloridahouse.gov/>

⁵⁶ 34 C.F.R. ss. 303.344(h) and 303.148; rule 6A-6.03028(3)(e), F.A.C.

