

PART I

INTRODUCTION

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LEGAL CITATIONS

Section 1. IDEA Amendments of 2004

The reauthorization of IDEA amendments of 2004 focused on sixteen major elements. The Handbook incorporates the changes outlined in IDEA 2004 (PL 108-466) and the corresponding regulations (34 CFR Parts 300 and 303).

Important dates to remember are:

- December 8, 2004 IDEA 2004 was enacted
- July 1, 2005 IEPs developed, reviewed, or revised on or after this date must comply with new IDEA provisions
- December 2005 IDEA 2004 federal regulations are expected to become effective
- July 1, 2006 Compliance with all of IDEA 2004 regulations will be required, as this is when Alaska is expected to receive funds appropriated for Federal Fiscal Year 2006 under Part B of IDEA 2004

Section 2. State Law and Regulations

Changes related to amended regulations for 2002–2003.

Section 3. Organization of the Handbook

Section 4. Basic Concepts

The following concepts from the foundation of special education services and will be discussed in the remainder of the Handbook:

- Free and Appropriate Public Education (FAPE) - 34 CFR §300.17, 34 CFR §300.101, 4AAC 52.090
- Least Restrictive Environment (LRE) - 34 CFR §300.114
- Disability - 34 CFR §300.8
- Special Education - 34 CFR §300.39
- Related services - 34 CFR §300.34
- IDEA 2004
- Section 504 of the Rehabilitation Act
- Full Educational Opportunity Goal - 34 CFR §300.109
- Memorandum of Agreement
- No Child Left Behind Act
- Presidents Commission on Excellence in Special Education

SECTION 1 ❖ IDEA AMENDMENTS OF 2004

The reauthorization of the Individuals with Disabilities Education Improvement Act (IDEA) Amendments of 2004 (hereafter referred to as IDEA 2004) focused on sixteen major elements. These items may be located on our website along with the corresponding PowerPoint presentations:

- Assessments - Statewide and District-wide
- Discipline
- Disproportionality and Overidentification
- Early Intervening Services
- Evaluations and Re-evaluations
- Funding - I. State
- Funding - II. Local
- Highly Qualified Teachers
- Individualized Education Program (IEP)
- Individualized Education Program (IEP) Team Meetings/Changes to IEP
- NCLB - Alignment with the No Child Left Behind Act
- Part C Option: Age 3 to Kindergarten Age
- Private Schools - Children Enrolled By Their Parents
- I. Procedural Safeguards Regarding Surrogates, Notice and Consent
- II. Procedural Safeguards Regarding Mediation and Resolution Sessions
- III. Procedural Safeguards Regarding Due Process Hearings

The Handbook incorporates the changes outlined in IDEA 2004 (PL 108-446) and the corresponding regulations (34 CFR Parts 300 and 303). Important dates to remember:

- December 8, 2004 - IDEA 2004 was enacted.
- July 1, 2005 - IEPs developed, reviewed, or revised after this date must comply with new IDEA provisions.
- December 2005 - IDEA 2004 federal regulations are expected to become effective.
- July 1, 2006 - Compliance with all of IDEA 2004 regulations will be required, as this is when Alaska is expected to receive funds appropriated for Federal Fiscal Year 2006 under Part B of IDEA 2004.
- October 13, 2006 – IDEA 2004 federal regulations became effective.

SECTION 2 ❖ STATE LAW & REGULATIONS

During the 2006-2007 school year, Alaska’s state special education regulations were amended to comply with federal changes.

SECTION 3 ❖ ORGANIZATION OF HANDBOOK

The Handbook is organized into the following twelve parts:

- Part I Introduction
- Part II Identification
- Part III Evaluation & Eligibility
- Part IV IEP Development, Implementation, Review & Revision
- Part V Placement in the Least Restrictive Environment
- Part VI Program Exit
- Part VII Procedural Safeguards & Confidentiality
- Part VIII Personnel
- Part IX Funding
- Part XI Parent Information
- Part XII State Performance Plan / Annual Performance Report

A glossary of commonly used terms and a resource list have also been included.

SECTION 4 ❖ BASIC CONCEPTS

Districts must provide special education and related services to eligible children with disabilities beginning at age 3 and continuing through age 21 (a student who is age 21 on the first day of the school year is entitled to Free Appropriate Public Education (FAPE) for the entire year even if his/her 22nd birthday occurs during the school year).

The following concepts form the foundation of special education services and will be discussed in the remainder of this section: Free Appropriate Public Education (FAPE), Least Restrictive Environment (LRE), Disability, Special Education, and Related Services.

FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

The concept of FAPE means regular and special education and related services that:

- are provided without charge to the parent - FREE;
- are provided in conformity with an appropriately developed Individualized Education Program (IEP) - APPROPRIATE;
- are provided at public expense, under public supervision and direction - PUBLIC; and
- include preschool, elementary school, and secondary school education that meet the education standards, regulations, and administrative policies and procedures issued by the State Education Agency - EDUCATION.

FAPE is required for a child with a disability who needs special education and related services, even though the child is advancing from grade to grade.

FAPE must be provided to the following children:

1. Those who experience a disability (as defined later in this section).
2. Those who are age 3 through 21 and have not graduated with a regular high school diploma.
3. Those who reside within the District's jurisdiction regardless of the residence of the child's parents (see [Part IV, Section 2 - Responsibility for Development and Implementation of IEP](#)).

Note: State boarding schools and Districts operating a statewide correspondence program (who enroll children from outside their District) are responsible for assuring that FAPE is provided to children with disabilities enrolled in their programs. Also, the requirement to provide special education and related services to children with disabilities voluntarily enrolled by their parents in a private school has been limited to the level of service required by IDEA 2004 ([See Part IV, Section 20, Private Schools](#)).

4. Those who are placed in an out-of-state educational setting by the District or another state agency.

To provide FAPE, the IEP must address all of the child's identified special education and related services needs. The needed services and placement must be based on the child's unique needs and not on the child's disability.

FAPE for Children Suspended or Expelled

1. FAPE for children with disabilities suspended or expelled for 10 days or less in a school year:
 - A. No services are required if services are not provided to a student without disabilities who has been similarly removed.

2. Children with disabilities removed for more than 10 days in a school year:
 - B. Provide services to enable the student to progress in the general education curriculum and advance toward achieving his/her IEP goals ([See Part IV, Section 12, Discipline Procedures](#)).

FAPE for Students in Adult Correctional Facilities

Students, aged 18-21 years in adult correctional facilities are entitled to services if:

1. the student received services under an IEP, in their last educational setting even if the student left school prior to his/her incarceration; or
2. the children did not have an IEP in their last educational setting, but had been identified as student with a disability.

Exceptions to Provision of FAPE

1. Students graduating with a regular high school diploma are no longer entitled to FAPE.
2. No services are required for students 18-21 years old in adult correctional facilities if, in the last educational placement prior to their incarceration in an adult correctional facility, the student was not previously identified as a child with a disability and the student did not have an IEP.

LEAST RESTRICTIVE ENVIRONMENT (LRE)

IDEA 2004 states that, to the maximum extent appropriate, children with disabilities are to be educated with children who are not disabled. This concept is known as the least restrictive environment (LRE). The IEP must contain an explanation of the extent, if any, to which the child will not participate in the general education classroom and curriculum, and extracurricular or other nonacademic activities ([See Part V of this handbook for more information](#)).

DISABILITY

Two federal laws protect children with disabilities: the Individuals with Disabilities Education Act (IDEA 2004), and Section 504 of the Vocational Rehabilitation Act of 1973. The U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS) administer IDEA 2004 and Section 504. However, the authority for compliance with the two laws lies within two different divisions of OSERS. The authority for ensuring compliance with IDEA 2004 falls under the auspices of the Office of Special Education Programs (OSEP). IDEA 2004 also gives responsibility for ensuring compliance with IDEA

2004 directly to the States. The authority for ensuring compliance with Section 504 lies with the Office of Civil Rights (OCR). Both these laws are binding on school districts.

MEDICATION

State and District personnel may not require a child to obtain a prescription for a substance covered by the Controlled Substances Act as a condition of attending school, receiving an evaluation, or receiving services. Teachers and other school personnel may consult and share classroom-based observations with parents or guardians regarding a student's academic and functional performance or behavior in the classroom or school or regarding the need for evaluation for special education or related services.

IDEA 2004

Under IDEA 2004, children with disabilities are those who meet the following three criteria:

1. The child has a physical or mental disability as defined in Part III (Specific eligibility criteria for the various disability categories are discussed in [Part III, Section 8](#)).
2. The presence of such physical or mental disability adversely affects the educational performance of the child.
3. Because of such physical or mental disability the student is in need of special education and related services.

HOMELESS CHILDREN

The State is responsible for ensuring that homeless children:

- receive a free and appropriate public education,
- meet the requirements of IDEA,
- are under the general supervision of individuals responsible for educational programs for children with disabilities,
- meet the educational standards of the State, and
- meet the requirements of the McKinney –Vento Homeless Assistance Act.

SECTION 504

"Any person who has a physical or mental disability which substantially limits a major life activity or has a record of such disability or is regarded as having such a disability."

If a child is disabled under IDEA 2004, the child will qualify as disabled under Section 504 since education is a major life activity (see [Appendix I](#) for more information on Section 504 and a sample Student Accommodation Plan). It is possible for a student qualified under Section 504 not to be eligible under IDEA 2004. Furthermore, it is possible for a child with a

disability not to qualify as disabled under either program. Examples of these situations follow:

1. A child who attends the regular school program has AIDS. This condition is not considered a disability under IDEA 2004, but may be under Section 504.
2. A child who uses a wheelchair requires a ramp or elevator to get to classes in a school building. Once she is provided access, her educational performance is not adversely affected. Consequently, she does not require special education, although she would be considered disabled under Section 504.
3. Some children have a disability, such as mild cerebral palsy, which requires no special accessibility adaptations or special education and which does not substantially limit one or more of life's major activities. These children would not qualify as disabled under Section 504 or IDEA 2004.

SPECIAL EDUCATION

Special Education means the specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability. Specially designed instruction means adapting the content, methodology, or delivery of instruction to address the unique needs of the child and to ensure access of the child to the general education curriculum. Special education is a service, not a place.

Special Education includes:

1. Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings.
2. Instruction in physical education.
3. Speech-language pathology services, or any other related service.
4. Travel training.
5. Vocational education.

In keeping with the criteria set forth previously, the child must be determined, through the evaluation process, to have a disability and be in need of special education. When a child meets both these criteria the IEP Team must identify the specific services that will comprise the special education program.

RELATED SERVICES

Related services means those supportive services that are required to assist a child with disabilities to benefit from special education. If a child does not need special education, there can be no related services provided under an IEP since a related service must be necessary for a child to benefit from special education.

A related service such as speech therapy may qualify by itself as special education. In such a case, the child must demonstrate a disability that meets one of the special education eligibility categories (such as speech-language impairment) and require specially designed instruction.

A child covered by Section 504 may be entitled to related services even if they are not in need of special education. Section 504 calls for the provision of regular or special education or the provision of related services.

Services commonly listed as related services include: transportation; speech language pathology and audiology 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; diagnostic and evaluative medical services; school health services; social work services; and parent counseling and training. Assistive technology services and transition services may also be related services (see the [Glossary](#) for definitions of these related services).

A service may be a benefit to a child with a disability, but this does not automatically qualify it as a related service. There are services that may be of benefit to such a child, but may not be the responsibility of the District to provide because the services are not required for a child to benefit from special education. For example, a student with a speech impairment that does not adversely affect his educational performance would not require special education services.

FULL EDUCATIONAL OPPORTUNITY GOAL

The provision of services and establishing the goal of providing full educational opportunity for all children with disabilities aged birth through 21. The State of Alaska achieves Full Education Opportunity for all children because of the collaboration that it maintains with the Department of Health & Social Services. DHSS and Part C provide Child Find and services for children birth to 3 years of age. Through our mutual responsibilities and the Memorandum of Agreement between the two state agencies, Full Educational Opportunity Goal is being met.

MEMORANDUM OF AGREEMENT

The Department maintains a Memorandum of Agreement with various State Agencies. The intent of these MOAs is to clearly define cross agency collaboration. The typical memoranda will offer a blueprint from which the District can create a local Memorandum of Agreement with your local support agencies.

Department of Health & Social Services - Part C MOA is for those services that are provided by the Infant Learning Programs of Alaska. It is important to outline mutual responsibilities between the state agencies. It is equally important to identify and define the roles that the District and local providers have with regard to services and supports to young children. The District MOA must define the role of the District in the “preschool transition” planning.

PART I – INTRODUCTION

Children must have an IEP/IFSP prior to the child's 3rd birthday. It is the Part C agency's responsibility to initiate this planning process and meeting.

Department of Labor –Division of Vocational Rehabilitation MOA is focused on Secondary Transitions and the mutual roles that the two agencies collaborate to ensure that students with disabilities have access to post school activities and employment.

Department of Corrections MOA outlines the mutual responsibilities that each agency has for young people in correctional facilities. Districts are responsible for FAPE to incarcerated youth.

The MOAs briefly described above are not the limit to the Memorandum that the EED can develop.

Note: It is important to note that any lead agency's participation in educational activities does not alter the District or SEA responsibility to ensure compliance.

NO CHILD LEFT BEHIND ACT (NCLB)

The No Child Left Behind Act is federal legislation signed into law by the President on January 8, 2002 and is intended to be a bold, new commitment to *every* child.

Direct access to No Child Left Behind Legislation is available on the Federal Department of Education website at <http://www.ed.gov/nclb/>.

PRESIDENT'S COMMISSION ON EXCELLENCE IN SPECIAL EDUCATION (PCESE)

The President's Commission on Excellence in Special Education (PCESE) was created on October 2, 2001. The 16-member commission continues to be the President's education vision for America – an America where every public school reaches out to every single student and encourages every child to learn to his or her full potential.

Additional information regarding the President's Commission on Excellence in Special Education may be located on the Federal Department of Education website at <http://www.ed.gov/>.

REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT

The Department will provide Districts with updated information as it becomes available. Information about these issues and changes to federal regulations is important.

Additional information regarding the IDEA 2004 reauthorization is available on the Federal Department of Education website at <http://idea.ed.gov/>.